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DISTRICT COURT
DENVER, COLORADO

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DATE FILED: October 18, 2018
CASE NUMBER: 2017CV30570

District Court, City and County of Denver, Colorado City and County Building, Room 256 1437 Bannock Street Denver, CO 80202	
PETITION OF: KENDALL ROBERTSON, Defendant	Case Number: 17CV30570
Victoria M. Cisneros, Reg. No. 45519 Deputy District Attorney Beth McCann, District Attorney 201 West Colfax Ave., Dept. 801 Denver, CO 80202 720-913-9014 Victoria.Cisneros@DenverDA.org	Related Crim. P. 37 appeal: - County Court: 15M04518 - District Court: 16CV030738 Division: Civil Courtroom: 259
Amended Petition to Unseal	

In accordance with § 24-72-702(1)(e), C.R.S. (2017), the People of the State of Colorado request that this case be unsealed for the purpose of allowing the Denver District Attorney to make limited comments about the procedural history of this case.

Background. In October 2015, the defendant was convicted of invasion of privacy for sexual gratification in violation of § 18-3-405.6. He appealed, arguing that his actions did not violate that statute. The People agreed with the defendant's contention and conceded that the conviction should be vacated and the case remanded for the entry of a judgment of acquittal. The district court then issued an order agreeing that the plain language of the statute does not cover the defendant's conduct. The district court reversed the conviction

and remanded the case to the trial court for entry of a judgment of acquittal. On remand, the trial court entered a judgment of acquittal. Thereafter the case was sealed in a separately-filed action handled by a different judge. The sealing order was based on § 24-72-702, which expressly allows sealing when a judgment of acquittal has been entered.

News story. On September 27, 2018, Fox News aired a story about this case. The story contained the defendant's name and image; it presented a general account of the acts that gave rise to the conviction; it suggested that District Attorney Beth McCann had agreed to vacate the conviction for political reasons; and it suggested that the case was then sealed to hide those improper actions:

<https://kdvr.com/2018/09/27/district-attorney-secretly-acquits-school-sex-offender-after-jury-votes-guilty/>

As a result of this news story, members of the public have questioned the integrity of the criminal justice system. Ms. McCann is unable to shed light on the matter because the case is sealed. Under the sealing statute, she is obliged to say that “no such records exist with respect to the person.” § 24-72-702(1)(d).

Request to unseal. The sealing statute allows the prosecuting attorney to request that a record be unsealed for a limited purpose:

Inspection of the records included in an order sealing criminal records may thereafter be permitted by the court only upon petition by the person who is the subject of the records or by the prosecuting attorney and only for those purposes named in the petition.

§ 24-72-702(1)(e).

Here, Denver District Attorney Beth McCann requests that the record be unsealed so that she can correct the misleading impression created by the Fox News story. Specifically, Ms. McCann would make the following observations:

1. The defendant was charged and convicted under the “Peeping Tom” statute, § 18-3-405.6.
2. On appeal, the defendant argued that his conduct did not constitute a violation of that statute.
3. After receiving the defendant’s brief, experienced lawyers in the DA’s Appellate Division (including the Chief Deputy) carefully evaluated the Peeping Tom statute. They ultimately agreed that the statute is violated only if the perpetrator personally observes or photographs (as the statute defines “photograph”) the victim’s intimate parts. Because the defendant did neither of those things, the People conceded that his conviction must be vacated.
4. The People’s concession was drafted and filed without Beth McCann’s personal knowledge. It was in no way influenced by political considerations. And it was legally correct and ethically required under the Colorado Rules of Professional Conduct. *See* Colo. RPC 3.8.
5. After receiving the parties’ written submissions, the district court judge independently evaluated the issue and agreed that the evidence did not support a conviction under § 18-3-405.6.
6. Thereafter, a second district court judge determined that the file was appropriately sealed under § 24-72-702.

In support of these observations, Ms. McCann would refer to a limited number of documents contained in the currently-sealed record:

1. *Defendant’s Opening Brief* (redacted) and *People’s Response* (redacted). (The parties have conferred and are confident that they can agree on the necessary redactions.)
2. *District court’s order vacating the conviction.*

3. *District court's order (different judge) sealing the case.*
4. *This petition to unseal.*

The People contemplate that a motion to reseal the case will be filed once the limited purpose noted above has been fulfilled.

Defendant's position. The People have been in contact with opposing counsel, Dean Neuwirth and Craig Truman. Mr. Neuwirth and Mr. Truman have no objection to this Amended Petition.

October 18, 2018.

Respectfully submitted,

FOR THE DISTRICT ATTORNEY:



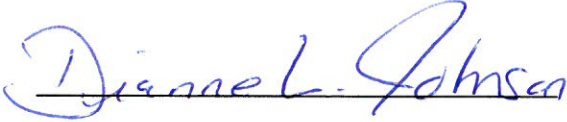
Victoria M. Cisneros
Deputy District Attorney

CERTIFICATE OF SERVICE

I certify that on October 18, 2018, I mailed, through the U.S. Postal service, a true and complete copy of the foregoing to:

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