

District Court, Chaffee County, COLORADO  142 Crestone P.O. Box 279 Salida, Colorado 81201 (719) 539-2561	DATE FILED: July 16, 2021 1:53 PM CASE NUMBER: 2021CR78
<b>Plaintiff(s): THE PEOPLE OF THE STATE OF COLORADO,</b>  v.  <b>Defendant(s): MORPHEW, BARRY LEE</b>	<b>▲ COURT USE ONLY ▲</b>  Case No.: 2021CR78  Division: 2
<b>ORDER ON MOTION TO LIMIT PUBLIC ACCESS TO ARREST WARRANT          AFFIDAVIT FILED MAY 5, 2021 (D-7)</b>	

This matter is before the Court on nonparty Media Consortium’s Response to and Request for Reconsideration of the Court’s Order Granting Defendant’s Motion to Limit Public Access to Arrest Warrant Affidavit Filed May 5, 2021. No Responses were filed. The Court issues the following Order affirming its June 4, 2021 Order and denying the Motion for Reconsideration.

The Media Consortium questions the legitimacy of denying public access to the entire Affidavit based upon the length and details contained within it and also questions the likelihood that this information can’t be redacted. However, it wasn’t merely the details and length of the Affidavit that resulted in the Court’s decision to restrict public access. It was also the Court’s desire that efforts at redaction be done meaningfully and with reliable input from the parties, which cannot occur until the parties have had time to familiarize themselves with the investigation. To the extent the Media relies on *People v. Thompson*, 181 P.3d 1143 (Colo. 2008), that case is distinguishable since it involved a record of official action. *Id.* at 1146.

The Media Consortium maintains there are multiple alternatives to restricting public access to the Affidavit in its entirety, but the alternatives suggested only respond to abuse or harassment and do nothing to prevent it. There may be information contained in the 130-page Affidavit that remains forever inaccessible to the public but that may be released if efforts at redaction are done before the parties understand the case. Therefore, in furtherance of protecting the Morphew

daughters from abuse or harassment, the Court will allow time for meaningful efforts at redaction to be made.

The Media Consortium also discusses Mr. Morpew's right to a fair trial. Aside from the Court's concerns that the Media Consortium lacks standing to assert Mr. Morpew's right to a fair trial, the Court does not agree with the argument that it is "required by C.R.C.P 55.1(a)(6), [to find] that 'no less restrictive means . . . exists to achieve or protect' the Defendant's fair trial rights..." (Mot., p. 2, fn 1). This is because Mr. Morpew's fair trial rights were not identified by the Court as a substantial interest in its Order. Therefore, there is no requirement that the Court consider less restrictive means or balance Mr. Morpew's fair trial rights against the presumption of public access.

Finally, the Court sealed the Media Consortium's Response consistent with the language in C.R.C.P. 55.1(2) requiring that the clerk "make the motion [to limit public access] and the response inaccessible to the public pending the court's resolution of the motion." Since the Motion was granted, the Response was kept sealed. However, the Court can unseal this document in its discretion and make it accessible to the public during the time the motion is pending resolution. This implies that these documents could also be unsealed after the Court has granted the motion. Given the content of the Media Consortium's Response, the Court will unseal it. As well as the Media's Motion for Reconsideration.

### **Conclusion**

The Media Consortium's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

By the court, this 16<sup>th</sup> day of July, 2021.  
/s/ Patrick W. Murphy, District Court Judge