

DISTRICT COURT CITY & COUNTY OF DENVER 1437 Bannock Street Denver, Colorado 80202	DATE FILED: October 27, 2023 4:58 PM CASE NUMBER: 2023CR2763
Plaintiff: The People of the State of Colorado, v. Defendant: Stephen D Matthews.	<p style="text-align: center;">▲ COURT USE ONLY</p> <p style="text-align: center;">▲</p> <hr/> Case Number: 2023CR2763 Courtroom: 4G
Order Limiting Public Access To Specified Documents	

Pursuant to Crim. P. 55.1(a)(4), and guided by C.R.S. § 24-72-304, CJD 05-01, the Court now makes the following findings and issues the following ORDERS:

1. This case has been and will be subject to intense reporting by the press.
2. The Court fully supports the freedom of the press and the 1st Amendment; the Court also understands that it is precisely in cases of public interest that these Rights are most salient.
3. The names of potential witnesses contained are contained in discovery and have been mentioned in various documents already filed with the Court. It is a certainty that they will be mentioned in documents filed with the Court in the future.
4. The press has already contacted named victims.¹

¹ Named victims have contacted the Office of the District Attorney to inform them that they have been contacted by a press organization. The Deputy District Attorneys assigned to this case have, in turn and as officers of the court, informed the Court this has happened.

5. The Court previously indicated that it would include the good faith witness list on the jury questionnaires in order to screen the venire.
6. Information related to named victims is protected pursuant to C.R.S. §24-72-304.
7. This Court has a substantial interest in shielding third parties' private, sensitive information from the public eye, as well as in protecting the individuals, who have no connection to this case, from potential physical harm, embarrassment, harassment, intimidation, tampering, and other risks arising from the individuals' public association with this high-profile matter. *See Bowlen v. District Court, Adams County*, 733 P.2d 1179, 1181, 183 (Colo.1987) (concluding that "protective orders may be entered to prevent annoyance, embarrassment, oppression, or undue expense" even where the pending litigation is "a matter of public interest"); *Gillard v. Boulder Valley School Dist. Re.-2*, 196 F.R.D., 382, 387 (D. Colo. 2000) (*quoting Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-36 (1984) (Since pretrial discovery can be subject to abuse and litigants may obtain information that is not only 'irrelevant but if publicly released could be damaging to reputation and privacy,' the court is justified in taking measures to prevent such abuse)); *cf. United States v. White*, No. 04-CR-370, 2004 WL 2399731, at *5 (E.D.Pa. Sept. 22, 2004) (observing that unrestricted public access "could be disruptive to a fair trial for all parties, and also to the detriment of individuals who have not been accused of any crime") (emphasis added); *cf. Merritt v. People*, 842 P.2d 162, 166 (Colo. 1992) (in the context of a defendant's confrontation rights, noting a countervailing interest in "protect[ing] witnesses from harassment, undue embarrassment, or danger to his or her personal safety").
8. Given the nature of this case, it is certain that many future pleadings will contain references to medically protected information (HIPAA), or implicate individual's privacy rights in various proceedings before state agencies.
9. Further, it is a certainly that future filings will refer to information contained in discovery. Some, if not most, of this type of information will not be part of the publicly accessible court record. Materials furnished in discovery "may only be used for purposed of preparation and trial of the case and may only be provided to others and used by them for purposes of preparation and trial of the case." Crim. P.

16(III)(c). These discovery materials may later be deemed inadmissible at trial and may never be part of the publicly accessible court record. Although “[t]here is a strong presumption in favor of public access to documents and materials filed in court and used in public court proceedings . . . materials produced to an adverse party via the discovery process are treated differently from materials submitted to a court for adjudicative purposes or introduced into evidence during trial.” *Strough v. General Motors LLC*, No. 18-CV-03303-PAB-NRN, 2019 WL 2357306 at *2 (D.Colo. June 4, 2019); cf. *United States v. Anderson*, 799 F.2d 1438, 1441 (11th Cir. 1986) (“Discovery is neither a public process nor typically a matter of public record. . . . Discovery, whether criminal, or civil, is essentially a private process because the litigants and the courts assume that the sole purpose of discovery is to assist trial preparation.”). Because such materials may never be admitted at trial or be part of the publicly accessible court record, public disclosure of such confidential materials would be prejudicial both to the individuals referenced therein and, potentially, to the parties’ ability to empanel a fair and impartial jury.

10. The Court has an obligation to preserve the Defendant’s Constitutional Rights.

11. Based upon the pre-trial publicity to date, it is probable that if public access to certain court documents (or portions thereof) is not limited press or social media coverage would interfere with the ability of the court to pick neutral, fair, and impartial jury.

I now conclude that no less restrictive means than limiting access exists to achieve or protect the substantial interests identified; and concludes that any substantial interests identified override the presumption of public access. The presumptive date of the lifting of the order is May 30, 2024. Should the substantial interests identified by the Court become moot prior to that date, the Court will issue an order lifting the restriction. If the identified interests continue after May 30, 2024, the Court will extend the restriction(s).

Consistent with this Crim. P. 55.1(a)(4) and the above findings, the Court **ORDERS** the following:

The following previously filed documents are to be reclassified as “suppressed,” access will only be given to the parties and the Court.

a. Affidavit for Arrest Warrant, 9 pages, filed 16 May 2023.

- b. Mandatory Protection Order Pursuant to § 18-1-1001 filed 17 May 2023.
- c. Supplemental Endorsed List of Witnesses filed 12 June 2023.
- d. Supplemental Endorsed List of Witnesses filed 14 June 2023.
- e. Supplemental Endorsed List of Witnesses filed 21 June 2023.
- f. All Mandatory Protection Orders issued by the Court on 22 June 2023
- g. Supplemental Endorsed List of Witnesses filed 28 September 2023.
- h. Expert Witness Endorsement filed 10 October 2023.
- i. All exhibits admitted during the preliminary hearing held on 18 August and 12 September 2023.²

As of the date of this Order, and until further order of the Court, the above documents are to be made inaccessible to the public, pending a final order of the Court. Objections to this Order becoming permanent will be entertained for the next 14 days, after which the Court will either set a hearing on this issue or enter a ruling based on the pleadings.

SO ORDERED this Friday, October 27, 2023

BY THE COURT:



Eric M. Johnson
District Court Judge

² The case law cited by The Fuller Project at pg. 2 of their motion deals with exhibits admitted at trial, and thus is inapposite as to a preliminary hearing as the rules of evidence are relaxed and there is no guarantee that evidence admitted at a PH would be admissible at trial. Here, the defendant's right to receive a fair trial by an impartial jury is paramount over any right the public has to access evidence potentially inadmissible at a trial.