

DISTRICT COURT ARAPAHOE COUNTY, COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	DATE FILED May 8, 2025 8:13 PM CASE NUMBER: 2023CV31185
<hr/> Plaintiffs: DANIELLE BRAVERMAN, an individual, and DAVID REIS, an individual, v. Defendant: HLS DESIGNS LLC, a Colorado limited liability company, and HAYLEY LOUISE SERVATIUS, an individual.	<hr/> ▲ COURT USE ONLY ▲ <hr/> Case Number: 2023CV31185 Courtroom: 14
<p style="text-align: center;">ORDER RE MOTION TO QUASH SUBPOENA ON THIRD-PARTY JESSICA LARUSSO</p>	

This matter comes before this Court upon attached Third-Party Movant Jessica LaRusso’s Motion to Quash Subpoena on Third-Party Jessica LaRusso. The Court, having considered the oral motion, any response or objections, and reviewed the file and being fully advised issues the following:

Introduction

Plaintiffs served a Subpoena to Attend Trial on Third-party Movant Jessica LaRusso (“LaRusso”). Plaintiffs assert that they are not asking LaRusso to identify any news sources or testify regarding any news information. Rather, Plaintiffs state that they are simply seeking LaRusso to testify consistently, and limited to, the information she has already declared—that she and 5280 Magazine have no such information. Plaintiffs contend that there are no First Amendment interests at stake in this case and LaRusso waived the qualified privilege when she signed the Declaration.

LaRusso moves the Court to quash Plaintiffs’ subpoena on the grounds that all communication at issue and sought by Plaintiffs are subject to the Press Shield Statute (C.R.S. §13-90-119) and that the United States Constitution and Colorado Constitution has recognized that in civil cases, such as this one, where the protected “newsperson” is not a party to the suit, the civil

litigant's need for such testimony does not outweigh the newsperson's First Amendment interests at stake.

Analysis

The press shield statute in Colorado, specifically C.R.S. §13-90-119, provides a qualified privilege for newspersons, which means that under certain conditions, a newsperson may be protected from being compelled to testify or disclose information obtained in their capacity as a newsperson. However, this privilege is not absolute and can be overridden under specific circumstances.

The Colorado press shield statute grants newspersons a qualified privilege from disclosing news information obtained in their professional capacity. This privilege protects newspersons from being compelled to disclose information or testify about it in judicial proceedings, except under certain conditions. According to the statute, a newsperson cannot be compelled to disclose information unless the party seeking the information can demonstrate by a preponderance of the evidence that: 1) the news information is directly relevant to a substantial issue involved in the proceeding; 2) the information cannot be obtained by any other reasonable means; and 3) that a strong interest of the party seeking the information outweighs the First Amendment interests of the newsperson in keeping the information confidential. C.R.S. §13-90-119(3)(a)-(c).

The statute also outlines specific exceptions where the privilege does not apply. These include: 1) news information received at a press conference; 2) news information that has been published or broadcast; 3) news information based on a newsperson's personal observation of the commission of a crime if substantially similar news information cannot reasonably be obtained by any other means; and 4) news information based on a newsperson's personal observation of the commission of a class 1, 2, or 3 felony. C.R.S. §13-90-119(2)(a)-(d).

In *Henderson v. People*, the Colorado Supreme Court emphasized that the newsperson's privilege is qualified and not absolute. The court may compel a newsperson to reveal information if the conditions outlined in *Gordon v. Boyles* are met. *Henderson v. People*, 879 P.2d 383 (Colo. 1994).

The court must weigh the interests of the party seeking the information against the First Amendment interests of the newsperson in withholding it and the public's interest in promoting the gathering and reporting of news. This balancing test requires the court to consider the First Amendment values set forth in *Branzburg v. Hayes*, 408 U.S. 665 (1972), where the newsperson's

privilege should give way only under circumstances where the party seeking the information has a truly significant interest at stake, such as the interest that defamation plaintiffs have in protecting their reputations. *Gordon v. Boyles*, 9 P.3d 1106, 1119 (Colo. 2000).

So, in summary, while the press shield statute in Colorado provides significant protection for newsmen, it does not offer absolute immunity from testifying. The privilege can be overridden if the party seeking the information meets the statutory requirements, and it does not apply in cases where the newsmen has personally observed a crime.

Here, Plaintiffs seek contingent impeachment testimony from LaRusso. LaRusso is the editor-in-chief of 5280 Magazine. 5280 Magazine is a monthly magazine focused on Denver and the greater Colorado region. Under Colorado law, 5280 Magazine is a mass medium. *See* C.R.S. §13-90-119(1)(a). Under Colorado law, LaRusso is a newsmen. *See* C.R.S. §13-90-119(1)(c).

As aforementioned, Plaintiffs seek LaRusso's testimony about her signed Declaration; namely, that "5280 has searched its readily-accessible business systems, including its email server, and I have spoken with current employees, and to the best of my knowledge, 5280 has no records relating to, or any recollection of, Hayley Servatius, or anyone on behalf of 5280 walking through a residential property located at 6600 East Ida Avenue Greenwood Village, CO 80111 between January 2022 and this year." Exhibit A. LaRusso objects to testifying.

Under the Press Shield Statute, a newsmen may be compelled to disclose news information if it is directly relevant to a substantial issue involved in the proceeding, cannot be obtained by any other reasonable means, and if a strong interest of the party seeking the information outweighs the First Amendment interests in keeping the information confidential. *Gordon v. Boyles*, 9 P.3d at 117. The statute specifically states that the news information must be directly relevant to a substantial issue involved in the proceeding. C.R.S. §13-90-119(3)(a). This means that in some cases, the confidential information may be the only evidence of a crucial aspect of the case, while in other situations, the information may be only marginally relevant to a less significant issue. *Id.* at 118.

For example, in a media defamation case, information about the reliability of the declarant's sources may be relevant to the significant issue of the reporter's state of mind about the truth or falsity of his broadcasts. The less credible the sources, the more likely the declarant acted with malice or a reckless disregard of the truth by broadcasting the information they provided. *Id.*

LaRusso argues the following: 1) the potential impeachment testimony Plaintiffs seek does not rise to the level of being “directly relevant to a substantial issue involved in the proceeding,” let alone unavailable from any other source; 2) Plaintiffs do not explain why having LaRusso testify that no such records exist is so critical; 3) Plaintiffs do not tie this potential impeachment testimony to any question of a breach of contract at issue, nor connect it to any other fundamentally important question that will be tried to the jury; and 4) Plaintiffs do not explain how challenging Ms. Servatius to provide documentary evidence of any such communications by her with 5280 at trial (plainly none exist) will not achieve the very same outcome. Reply, page 2.

The Court agrees. Plaintiffs did not address any of these factors in their Response. Instead, Plaintiffs argue that the potential impeachment testimony is not “news information”. Response, page 4. The statute defines “news information” broadly to include any knowledge, observation, notes, documents, photographs, films, recordings, videotapes, audiotapes, and reports, and the contents and sources thereof, obtained by a newsperson while engaged as such, regardless of whether such items have been provided to or obtained by such newsperson in confidence. C.R.S. §13-90-119(1)(b); *Henderson v. People*, 879 P.2d 383, 392-93 (Colo. 1994). This definition encompasses a wide range of materials that a newsperson might gather in the course of their work.

Here, any information garnered (or not) by LaRusso regarding the residential property located at 6600 East Ida Avenue, Greenwood Village falls within the statutory definition of “news information.”

Plaintiffs next argue that LaRusso waived the qualified privilege when she signed the Declaration. Response, pages 6-7. A newsperson can waive the qualified privilege pursuant to C.R.S. §13-90-119. The statute explicitly states that the privilege of nondisclosure may be waived only by the voluntary testimony or disclosure of a newsperson that directly addresses the news information or identifies the source of such news information sought. C.R.S. §13-90-119(4). This means that the privilege is not automatically waived by the publication or broadcast of a news report through the mass media concerning the subject area of the news information sought, unless it directly addresses the specific news information sought.

Now, LaRusso raises a compelling argument. LaRusso points out that Plaintiffs assert that the potential impeachment testimony would revolve around LaRusso’s one paragraph declaration that 5280 Magazine does not have any records relating to the publication walking through the residential property. However, Plaintiffs estimate LaRusso’s testimony to be 30 minutes on direct.

LaRusso argues that “[g]iven Plaintiffs’ repeated concession that the sole testimony they seek is her confirmation that 5280 has no records of any communications with Defendants in its readily-accessible business systems – purely for the potential impeachment of Defendants’ potential testimony – and given the overriding purposes of the Press Shield Statute, along with the arguments on all three factors that require consideration by this Court as presented in the Motion, this Court should quash the subpoena calling for such minimally-relevant “evidence” because of the obvious danger that both direct and cross-examination will improperly invade LaRusso’s knowledge as to 5280’s news gathering processes and materials. Reply, page 4-5. The Court agrees.

Simply put, the Court does not find that a strong interest of the party seeking the information outweighs the First Amendment interests of LaRusso in keeping the information confidential.

Conclusion

For these reasons, Third-Party Movant Jessica LaRusso’s Motion to Quash Subpoena on Third-Party Jessica LaRusso is GRANTED.

DATED: May 8, 2025

BY THE COURT:

Don Jesse Toussaint

Don Jesse Toussaint
District Court Judge