

<p>DISTRICT COURT, ADAMS COUNTY, COLORADO</p> <p>1100 Judicial Center Drive Brighton, Colorado 80601</p> <hr/> <p>THE PEOPLE OF THE STATE OF COLORADO,</p> <p>Plaintiff,</p> <p>v.</p> <p>NATHAN WOODYARD,</p> <p>Defendant.</p>	<p style="text-align: center;">^ COURT USE ONLY ^</p>
<p>PHILIP J. WEISER, Attorney General Natalie Hanlon Leh, #18824* Chief Deputy Attorney General Ann M. Luvera, #51988* First Assistant Attorney General Robert James Booth II, #51042* Assistant Deputy Attorney General Jason Slothouber, #43496* Senior Assistant Attorney General Hanna J. Bustillo, #53790* Assistant Attorney General Fellow Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, Colorado 80203 (720) 508-6599 *Counsel of Record</p>	<p>Case Nos.: 21CR2794</p> <p>Division: L</p>
<p style="text-align: center;">(P-14-NW) URGENT MOTION FOR PROTECTIVE ORDER</p>	

PHILIP J. WEISER, Attorney General of the State of Colorado, by and through undersigned counsel, respectfully moves this Court for a protective order regarding certain Suppressed/Sealed filings that were inadvertently disclosed to the Denver Gazette by the Adams County Clerk’s office. The Court has already issued such an Order, and this Motion is filed to memorialize the situation precipitating that Order. In support thereof, the People state the following:

1. The People were contacted on April 25 by a reporter from the Denver Gazette, Julia Cardi, who notified the People that the Adams County Clerk produced Defendant Woodyard's Motion for Probable Cause Review, the People's response to it, and Cooper's Request for Probable Cause Review, and the People's response to that. There may be other materials that were disclosed but those are the only documents the People have been made aware of. These documents were ordered to be Suppressed/Sealed by the Court and were provided by the clerk in error.
2. The Gazette and Ms. Cardi indicated they intend to publish a story related to the information they received as early the afternoon of April 25, 2022.
3. Publication of these materials would violate the Court's order Suppressing/Sealing the filings, as well as Chief Judge Martinez's Grand Jury Secrecy Order. It would also cause substantial harm to the state's interest in the secrecy of grand jury proceedings, and it would cause substantial harm to Defendants' rights to a fair trial and impartial jury.
4. The Court has the inherent authority to issue a *sua sponte* order forbidding publication of confidential court files. *People v. Bryant*, 94 P.3d 624, 632-34 (Colo. 2004).
5. In the Kobe Bryant case, a court reporter accidentally produced transcripts of in-camera rape shield proceedings to the press, which intended to publish those confidential materials. The *Bryant* trial court ordered any media organization who received the confidential transcripts to "not reveal any contents thereof, or be subject to contempt of Court." *Id.* at 626. The media challenged that order, but the Colorado Supreme Court ultimately upheld it, finding that such prior restraint on the press is permissible when publication "would cause great and certain harm to a state interest of the highest order." *Id.*
6. In the *Bryant* case, the state had an interest in protecting the privacy of the alleged rape victim, and keeping her testimony about her prior sexual history confidential unless it became admissible at the public trial. *Id.* at 635. Here, the state has an interest equally of the highest order in protecting the confidentiality and integrity of grand jury investigations, as well as protecting the rights of the Defendants to a fair trial and an impartial jury. The Court has previously highlighted these exact interests in its "ORDER

RE: (P-9-NW) MOTION TO LIMIT PUBLIC ACCESS TO GRAND JURY MATERIALS SUBMITTED IN RESPONSE TO NW-3-2.”

7. The state has an interest of the highest order in grand jury secrecy “to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors.” *Granbery v. Dist. Ct. for City and Cnty. of Denver*, 531 P.2d 390, 394 (Colo. 1975). If materials relating to the grand jury’s probable cause determination were publicized, it would undermine the freedom of the grand jury’s deliberations as their probable cause determination would be scrutinized and second-guessed in the media. This is particularly true given that the information in the materials contained by the Gazette is an incomplete view of some of the grand jury’s decisions and considerations. Such an impact on grand jury secrecy would have far reaching repercussions, including on future grand juries and grand jury investigations.

8. The state has an interest of the highest order in preserving grand jury secrecy “to encourage free and untrammelled disclosures by persons who have information with respect to the commission of crimes.” *Id.* It would chill the testimony of witnesses before the grand jury who were promised secrecy if they knew that an innocent error by a court clerk could expose their secret testimony to worldwide publication and criticism. It is imperative to the investigative role of the grand jury that the secrecy of witness testimony can withstand inadvertent administrative disclosure of that information. The public’s interest in information about this case will be satisfied by the open and public trial where all the relevant factual information and legal theories will be presented, without having to trample on the grand jury’s right and expectation of secrecy.

9. The court has additional equitable powers to ensure that its orders are complied with, particularly when the disclosure came from the court itself. “The judiciary has inherent authority to use all powers reasonably required to protect the efficient function, dignity, independence, and integrity of the court and judicial process.” *People v. Aleem*, 149 P.3d 765, 774 (Colo. 2007); *see, e.g., In re Marriage of Dauwe*, 97 P.3d 369, 370 (Col. App. 2004) (“A Colorado court may invoke its equitable authority under C.R.C.P. 70 to enforce a prior court order.”) (citing *People v. Neptune*, 866 P.2d 176, 176 (Colo. App. 1993)). Here, under these broad powers, the court has inherent authority to correct an error that its staff made.

10. Additionally, it would undermine each Defendant's right to a fair trial and impartial jury as the materials in possession of the press are potentially misleading, incomplete, inflammatory, and mostly irrelevant to the public evidence that would be produced at trial. This is a particular concern given the high-profile nature of this case.

WHEREFORE, the People respectfully move this Court for a protective order barring the Denver Gazette and its agents/assigns from disseminating the material in the Suppressed/Sealed files and requiring them to delete and destroy any copies of said files.

Dated this 27th day of April, 2022.

PHILIP J. WEISER
Attorney General

/s/ Jason Slothouber

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CERTIFICATE OF SERVICE

This is to certify that the within **(P-14-NW) URGENT MOTION FOR PROTECTIVE ORDER** was served upon all parties via the Colorado Courts E-Filing system, on April 27, 2022.

/s/ Sally Ott
