

District Court, Weld County, Colorado 910 10 <sup>th</sup> Avenue Greeley, CO 80631	
<b>THE PEOPLE OF THE STATE OF COLORADO</b>  v.  <b>KENNETH AMICK,</b> Defendant	<b>▲ COURT USE ONLY ▲</b>
<b>Attorneys for Defendant:</b> BRUNO, COLIN & LOWE, P.C. David M. Goddard, Atty No. 34930 1999 Broadway, Suite 4300 Denver, CO 80202 Telephone: (303) 831-1099 Facsimile: (303) 831-1088 E-mail: <a href="mailto:dgoddard@brunolawyers.com">dgoddard@brunolawyers.com</a>	Case No. D0622021CR001321  Div: 17      Courtroom:
<b>OBJECTION TO RELEASE OF INCIDENT RECORDINGS AND MOTION FOR PROTECTIVE ORDER</b>	

COMES NOW, KENNETH AMICK, by and through counsel, submits his Objection to Release of Incident Recordings, pursuant to C.R.S. § 24-31-902(2)(c) and the United States and Colorado Constitutions, and moves this Court for a Protective Order pursuant to C. R. Crim. P. 16(III)(d) prohibiting the public pre-trial release of incident recordings. As grounds, Mr. Amick states as follows:

1. A Felony Complaint and Information was filed on June 28, 2021 by the District Attorney's Office alleging one count of Second Degree Assault, a class Four Felony.
2. Undersigned counsel entered his appearance and demand for discovery on June 29, 2021.
3. On June 30, 2021 counsel obtained initial discovery from the District Attorney's Office to include video recordings of the underlying incident.
4. Upon information and belief, the District Attorney's Office has received several requests from local and regional media outlets seeking release of the incident recordings preserved in this matter.

5. Pursuant to newly amended C.R.S. § 24-31-902(2)(c) in the event of criminal charges being filed against any party to the incident recorded, “that party must file any constitutional objection to release of the recording in the pending criminal case before the twenty-one-day period expires...the twenty-one-day period shall begin from the date of...the Defendant’s receipt of the video in discovery.” C.R.S. § 24-31-902(2)(c) (as amended July 6, 2021 by Governor’s signature of HB 21-1250).

6. Pursuant to Colo. R. Crim. P. Rule 16(III)(d) the court may, upon showing of good cause and at any time, enter a protective order that specified disclosures be restricted or deferred, or make such other protective order as is appropriate.

7. Once an objection is lodged, the Court “shall hold a hearing on any objection no later than seven days after it is filed and issue a ruling no later than three days after the hearing.” C.R.S. § 24-31-902(2)(c).

8. The Colorado Rules of Professional Conduct, Sections 3.6 and 3.8 along with the American Bar Association Standards for Criminal Justice, Sections 8-1.1 and 8-2.1 govern the parties and the court with regard to pretrial publicity.

9. The comment section to C.R.P.C. Section 3.6 states “[t]here are certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to ... a criminal matter ... these subjects relate to: (a) *the character, credibility, reputation* , or criminal record of a party, suspect in a criminal investigation, or witness, or *the identity of a witness, or the expected testimony of a party or a witness*; ... (c) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or *the identity or nature of physical evidence expected to be presented.*” (emphasis added).

10. Specifically, a prosecutor in a criminal case shall, “except for statements that are necessary to inform the public of the nature and extent of the prosecutor’s action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused...” C.R.P.C. 3.8(f).

11. Here, the incident recordings, to include surveillance and body worn camera recordings, will relate to the credibility of the prosecution’s witnesses and that of Mr. Amick, could serve to publicly identify potential witnesses and moreover their anticipated trial testimony prior to trial and the recordings themselves represent evidence expected to be presented by the parties at trial. Further, given the current societal climate and attitudes toward police officers in general and police reform in particular, the release of any incident recordings to the media by the District Attorney’s Office or the Greeley Police Department at the direction of the District Attorney’s Office has a substantial likelihood to increase public condemnation of Mr. Amick as

well as irrevocably taint potential jurors jeopardizing Mr. Amick's right to a fair and impartial trial.

12. The Sixth Amendment through the Fourteenth Amendment of the United States Constitution and Article II, Section Sixteen of the Colorado Constitution guarantees the criminally accused a right to fair trial by an impartial jury.

13. The right to a fair trial, one guaranteed by the Fourteenth Amendment, is one by a panel of impartial and indifferent jurors whose verdicts are based upon evidence developed at trial. *Morgan v. Illinois*, 504 U.S. 719, 726-27 (1992); *Wafai v. People*, 750 P.2d 37, 43-44 (Colo. 1988).

14. A juror's ability to fairly decide a case is influenced by the tone and extent of pre-trial publicity. *Nebraska Press Association v. Stuart*, 427 U.S. 539, 554-555 (1976). "Due process requires that the accused receive a trial by an impartial jury free from outside influences....[T]he trial courts must take strong measures to ensure that the balance is never weighed against the accused....Of course, there is nothing that proscribes the press from reporting events that transpire in the courtroom." *Id.* at 553.

15. Justice Olive Wendall Holmes once observed, "[t]he theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." *Patterson v. Colorado*, 205 U.S. 454, 462 (1907).

16. Nearly a Century later, the Colorado Court of Appeals observed, "[t]raditional notions of fairness have required an instruction to jurors that they may not discuss a case during trial recesses. This helps to protect a defendant's constitutional right to a fair trial, and promotes a defendant's due process right to place the burden on the government to prove its case beyond a reasonable doubt." *People v. Preciado-Flores*, 66 P.3d 155, 166 (Colo. App. 2002).

17. The Court of Appeals went on to find:

"Several jurisdictions have confronted the issue of judicially instructed predeliberation jurors discussions. The consensus is that, in criminal cases, it is improper for jurors to discuss the evidence before completion of the presentation of evidence and receipt of the trial court's instructions and closing argument of counsel. The reasons given include: (1) the jury system is meant to involve decision making as a collective, deliberative process, and premature deliberations among individual jurors may thwart that goal; (2) a juror who expresses views in the presence of other jurors is likely to continue to adhere to that opinion and therefore to approach the case with less than a fully open mind; (3) premature deliberations may occur before a defendant has a chance to present all of his or

her evidence and may, therefore, be unfavorable to defendant in violation of the right to a fair and impartial trial; (4) premature conclusions about a case effectively shift the burden to the defendant to change the opinion thus formed; and (5) jurors who engage in predeliberation do so in a vacuum, without benefit of the court's instructions.”

*Id.* (citations omitted).

18. Here, release of any incident recordings will allow potential jurors to pre-judge this incident and some, but not all, of the potential evidence to be presented at trial. The risk of the juror pre-deliberation is too high and the prejudice to Mr. Amick’s right to a fair and impartial trial too great for the Court to allow the pre-trial release of the incident recordings in this case.

19. As such, Mr. Amick objects to the release of any incident recording in this matter and seeks a protective order prohibiting such pre-trial release as necessary to protect his right to a fair and impartial trial and prevent the unfair prejudice that will result from a prospective juror pre-judging this case without the benefit of all the evidence and arguments to be presented at trial and the collective, deliberative process the United States and Colorado Constitutions demand.

WHEREFORE, Mr. Amick respectfully moves this Court for a Protective Order preventing the public pre-trial release of any incident recordings in this matter pursuant to C. R. Crim. P. 16(III)(d).

DATED this 20<sup>th</sup> day of July, 2021.

BRUNO, COLIN & LOWE, P.C.

*s/David M. Goddard*

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David M. Goddard, #34930

*Attorney for Mr. Amick*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of July, 2021, a true and correct copy of the foregoing **OBJECTION TO RELEASE OF INCIDENT RECORDINGS AND MOTION FOR PROTECTIVE ORDER** was e-filed and e-served via ICCES E-System, which will electronically serve the following:

Michael J. Rourke  
Nineteenth Judicial District  
District Attorney, #28812  
PO Box 1167  
915 10<sup>th</sup> Street  
Greely, CO 80632

cc: Client

*s/Jennifer Fate*  
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Jennifer Fate, Paralegal  
Bruno, Colin & Lowe, P.C.