DISTRICT COURT ARAPAHOE COUNTY, COLORADO Court Address: Arapahoe County Justice Center 7325 South Potomac Street, Centennial, CO 80112	DATE FILED: October 18, 2021 4:34 PM CASE NUMBER: 2021CR2072
THE PEOPLE OF THE STATE OF COLORADO vs. Defendant: SHAWN RALPH,	
	COURT USE ONLY
	Case Number:**21CR002072** Division/Ctrm: **402**

ORDER RE: OBJECTION TO RELEASE OF VIDEO AND/OR AUDIO RECORDING

The Court has reviewed the Defendant's Motion pursuant to C.R.S. § 24-31-902 Defendant's Objection to Release of Video and/or Audio Recording, filed October 5, 2021, the Media Coalition's Response, and heard argument from counsel at a hearing commenced on October 12, 2021 and continued to October 15, 2012. Being fully advised in the premises of the objection and responses thereto, the Court finds and orders as follows:

1. This matter arises from an arrest on or about September 14, 2021, in which the Defendant, a law enforcement officer, was arrested in connection with the above captioned Complaint. The matter stems from an incident which occurred on September 3, 2021 in Sheridan, Colorado.

2. The Defendant seeks to prevent to disclosure his body-worn cameras in the context of this case. The Defendant asserts that disclosure of the body worn camera footage and accompanying audio files may prevent him for having a fair trial in light of the allegations contained in the above captioned complaint.

3. The Defendant asserts that his concern "is significant in light of the current atmosphere surrounding law enforcement officers, . . . that disclosing the body worn camera" he may not receive a fair trial. *See* Objection 10/5/21 at ¶ 4.

4. The Colorado Media Coalition seeks access to all "unedited body worn camera and dash camera recordings of the September 3, 2020 [sic] incident which led to the Defendant's arrest." *See* Response 10/14/21 at ¶ 4.

5. The People take no position on the release of the body worn camera.

6. Under Colorado Law, except under certain exceptions contained in the statute[1], "a peace officer shall wear and activate a body-worn camera or dash camera, if the peace officer's vehicle is equipped with a dash camera when responding to a call for service or during any interaction with the public initiated by the peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law." § 24-31-902.

7. Section 24-31-902(2)(a), C.R.S. provides: "for all incidents in which there is a complaint of peace officer misconduct by another peace officer, a civilian or a nonprofit organization, through notice to law enforcement agency involved in the alleged misconduct, the local law enforcement agency or the Colorado State Patrol shall release all unedited video and audio recordings of the incident, including those from body-worn cameras, dash cameras, or otherwise collected through the investigation, to the public within twenty-one days after the local law enforcement agency or the Colorado State Patrol received the complaint of the misconduct."

8. Section 24-31-902(c), C.R.S. permits an officer facing a misconduct complaint to file a constitutional objection to the "release of the recording in the pending criminal case before the twenty-one-day period expires." This section does not create a mechanism allowing the defendant to bar the release of body camera video or other related footage to the public upon request. Instead, once the defendant asserts a constitutional objection to disclosure, the Court must consider whether the release of the footage, based on the evidence, would in fact impinge on the defendant's right to a fair trial.

9. In this case, the Defendant filed a constitutional objection stating that he believed that the release of the body-worn camera video, as contemplated by the statute, to the media and use of it on social media would deny him the right to a fair trial due to "massive, pervasive, and inherently prejudicial," pretrial publicity. *See* Objection at ¶ 3.

10. The Defendant argues that his "concern, which is significant in light of the current atmosphere surrounding law enforcement officers, is that disclosing the body-worn camera" will prevent him from receiving a fair trial. *Id.* at ¶ 4.

11. The Court of Appeals most recently considered the dangers of pretrial publicity in *People v. Hankins*, 361 P.3d 1033, 1036 (Colo. App. 2014). It instructs the trial court that it "must strike the proper balance between the right to trial by a panel of impartial jurors and the right of the public and press under the First Amendment. *People v. Botham*, 629 P.2d 589, 596 (Colo.1981), superseded on other grounds as recognized in *People v. Rath*, 44 P.3d 1033, 1039 (Colo.2002)."

12. Pretrial publicity sometimes may prevent a defendant from selecting impartial jurors, and to avoid such prejudice the court may order a change of venue. Id. However, "pretrial

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[1] Section 24-31-902(1)(a)(II)(A) provides that except as provided in subsection (1)(a)(II)(B) or (C) of this subsection, which permits turning off body cameras to avoid recording personal information that is not case related, when working on an unrelated assignment, when there is a long break in the incident, and in administrative, tactical and management discussions or when working undercover. None of these exceptions apply under the circumstances of this case.

publicity does not alone trigger a due process entitlement to a change of venue. Rather, the Court can only presume prejudice only in extreme circumstances." *People v. Harlan*, 8 P.3d 448, 469 (Colo. 2000). "Only when the publicity is so ubiquitous and vituperative that most jurors ... could not ignore its influence is a change of venue required before voir dire examination." *People v. McCrary,* 190 Colo. 538, 545, 549 P.2d 1320, 1326 (1976). *See Hankins*, 361 P.3d at 1036.

13. To support a request for a change of venue, a defendant must establish one of two circumstances. *Botham*, 629 P.2d at 597. First, the defendant can show that pretrial publicity is so "massive, pervasive and prejudicial as to create a presumption that the defendant [will be denied] a fair trial." *People v. Bartowsheski*, 661 P.2d 235, 240 (Colo.1983). Alternatively, the defendant can demonstrate that any publicity will create actual prejudice and hostility in the jury panel. Id.

14. To determine whether pretrial publicity was so massive, pervasive, and prejudicial as to create a presumption of public bias, courts examine the following factors: "the size and type of the locale, the reputation of the victim, the revealed sources of the news stories, the specificity of the accounts of certain facts, the volume and intensity of the coverage, the extent of comment by the news reports on the facts of the case, the manner of presentation, the proximity to the time of trial, and the publication of highly incriminating facts not admissible at trial." *McCrary*, 190 Colo. at 545, 549 P.2d at 1326.

15. These factors must establish that publicity is so "ubiquitous and vituperative that most jurors in the community could not ignore its influence." *Harlan*, 8 P.3d at 469. This is a stringent standard, and it is difficult to meet. *See People v. Munsey*, 232 P.3d 113, 121–23 (Colo. App. 2009) (denial of the motion for change of venue was proper even though the media published approximately ninety articles, of which several appeared on the front page while others contained highly inflammatory facts and commentary such as a political cartoon that suggested the defendant be hanged); see also Harlan, 8 P.3d at 470 (holding that the trial court properly exercised its discretion to deny a change of venue even though there was an extensive amount of publicity about an extremely heinous offense); McCrary, 190 Colo. at 542, 549 P.2d at 1323 (upholding the court's denial of change of venue where news articles indicated the defendant may have been connected to twenty-two murders across the country); *Bartowsheski*, 661 P.2d at 240–41 (concluding that although numerous, the articles were neither sensational nor inflammatory).

16. The difficulty in meeting this stringent standard is best illustrated by *Botham*, 629 P.2d at 597. There, seventy percent of the county's residents subscribed to its only daily newspaper, which had published a hundred articles on the case involving four murders. *Id.* Throughout the pendency of the case, the newspaper extensively reported the arrest, details about the ongoing investigation, gruesome descriptions of the corpses, and comments about the relief in the community after the arrest of the defendant. Id. at 596. Despite these facts, the supreme court concluded that pretrial publicity was not so massive, pervasive, and prejudicial that the denial of a fair trial could be presumed. Id. at 597.

17. Here, the Defendant argued that after the circumstances and publicity of the George Floyd homicide and resulting trial, that there had been a "massive shift in public opinion towards police officers and what they do and how they do their jobs." Thus, the Defendant

argues that no police officer could have a fair trial if body-worn camera footage was released. The Defendant failed to provide the Court with any evidence to support a finding for this proposition.

18. The Court is cognizant that in June of 2020 and June of 2021 the Denver metro area also experience civil unrest after the George Floyd murder and the death of Elijah McClain in Aurora. *What Four Days of Protest looked like after the Death of George Floyd in Denver.* https://www.cpr.org/2020/06/01/photos-denver-protests-george-floyd-death; Thousands Protest Death of Elijah McClain. https://www.denverpost.com/2020/06/27/elijah-mcclain-protests-aurora-saturday.

19. The Court also acknowledges that there has been media coverage of the allegations contained in the Complaint. https://www.thedenverchannel.com/news/local-news/sheridan-police-officer-charged-with-assault-accused-of-choking-shoplifting-suspect.

20. The Court reiterates that at hearing the Defendant provided no evidence of any kind at hearing to support his allegations that the release of the body worn camera footage would have any effect on his rights, let alone prevent him from empaneling an impartial jury or failing to in any way effect his right to a fair trial. Counsel admitted at the hearing that at best, prejudice flowing from this release, would be speculative in nature. The People took no position on the issue and did not argue that its release would hamper any further investigation or taint the jury pool.

21. The Court must therefore determine if there would be any prejudice flowing from release of the body worn camera footage which would affect the Defendant's right to a fair trial. Prejudice exists only in rare and extreme circumstances. *See United States v. McVeigh*, 153 F.3d 1166, 1181 (10th Cir.1998); see also *Sheppard v. Maxwell*, 384 U.S. 333, 355, 358, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966) ("bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom"; calling the court a "carnival atmosphere"); *Rideau v. Louisiana*, 373 U.S. 723, 726, 83 S.Ct. 1417, 10 L.Ed.2d 663 (1963) (describing the trial as "kangaroo court proceedings"). As the Defendant presented no evidence, the Court has no basis to find any presumption of prejudice that has occurred as result of the pretrial publicity thus far in this case, i.e. the new stories arising from the statements of Sheridan Police Chief, or the release of the affidavit in this case. The Court notes that there has been no motion to suppress the affidavit or any other pleadings in this case or any request to prevent any person involved with this case from commenting to the media.

22. In the absence of presumed prejudice, the defendant must show actual prejudice—a nexus between pretrial publicity and a panel of partial jurors. *See Harlan*, 8 P.3d at 470. Here, the Court can address such prejudices at voir dire. Courts do not find actual prejudice if an extensive voir dire reveals that jurors can set aside their opinions. Id. Such a finding satisfies "the constitutional requirement of impartiality." Id. (concluding that voir dire revealed that most prospective jurors were critical of the media and that they were willing to set aside their opinions); *see also McVeigh*, 153 F.3d at 1184 (holding that the parties' comprehensive voir dire, including two screening questionnaires, individual questioning by the court, and questioning by both counsel, produced an impartial. Here, the Defendant similarly failed to provide any

evidence of actual prejudice or indeed, anything other than speculation that release of the body worn camera footage would create such prejudice that no impartial jury could be impaneled.

23. The 18th Judicial District has encountered massive and extreme pretrial publicity in the past in dealing with the Aurora Theater Shooting Case. In that case the Court was able to pick a jury, from the large available jury pool in this jurisdiction, which enabled an untainted jury and a fair and free trial in an infamous case which received international publicity. The Court presumes that it could do the same in the instant case if the pre-trial publicity impacted created a concern affecting the ability of the Defendant to have an impartial and untainted jury.

24. Therefore the Court notes the Defendant's speculative concern, but has no factual basis for a finding that release of the body worn camera would impact the Defendant's right to a fair and free trial, or prevent the impaneling of a fair and impartial jury. As a result, it denies the objection and the body worn camera footage can released as redacted.

25. The only section that the People noted should be redacted concerned an attempted interview with the victim. With regard to that portion of the body worn camera video dealing with the interview of the victim, the Court orders that the face of the victim be redacted or blurred by the Sheridan Police Force prior to releasing the footage to the media. See § 24-31-902(2)(b)(II)(A), C.R.S.

THE OBJECTION IS DENIED.

Done this 18 day of October, 2021

BY THE COURT

Elizabeth A. Weishaupl
District Court Judge