

DISTRICT COURT EAGLE COUNTY, COLORADO 885 E. Chambers Road P.O. Box 597 Eagle, Colorado 81631	
Plaintiff: PEOPLE OF THE STATE OF COLORADO. Defendant: KOBE BEAN BRYANT.	σ COURT USE ONLY σ
	Case Number: 03 CR 204 Div.: R
FOURTH ORDER RE RELEASE OF TRANSCRIPTS OF JUNE 21-22 PURSUANT TO THE ORDERS OF THE UNITED STATES AND COLORADO SUPREME COURTS	

This matter comes before the Court on the Orders of the Colorado Supreme Court entered July 19, 2004 and the Opinion of Justice Breyer of the United States Supreme Court entered on July 26, 2004. The orders were entered in response to appeals pursued by the various media entities (“the media”) to stay this Court’s order entered on June 24, 2004, which prohibited dissemination and ordered destruction of the transcripts of the June 21, 2004 and June 22, 2004 *in camera* hearings. These *in camera* hearings included argument and evidence pertaining to Rape Shield and Crime Victim Compensation (“CVC”) issues.

In *People v. Bryant*, 2004 WL 1613774 (Colo. July 17, 2004), the Colorado Supreme Court upheld the prohibition against dissemination but struck the portion of the June 24 order requiring destruction of the transcripts. The Colorado Supreme Court further ordered this Court to: (1) make its relevancy and materiality determinations under the Rape Shield statute as expeditiously as possible and enter its findings of fact and conclusions of law thereon; (2) determine whether some or all portions of the transcripts are relevant and material, and therefore admissible at trial; and (3) enter an appropriate order that may include releasing a redacted version of the transcripts by which the Court may release those portions deemed relevant and material while maintaining the confidentiality of those portions deemed irrelevant and immaterial.¹ The media subsequently filed an application for stay in the United States Supreme Court on July 21, 2004. This Court thereafter issued its *Order Re: Defendant’s Motion to Admit*

¹ The Colorado Supreme Court made no specific findings as to the CVC records.

Evidence Pursuant to C.R.S. § 18-3-407 and People's Motions in limine #5 and #7 (Filed Under Seal) ("Rape Shield Order") on July 23, 2004.²

As noted above, Justice Breyer issued an Opinion in Chambers on July 26, 2004, denying the media's request for stay but without prejudice to refile in two days. This Court directed the parties to confer on proposed redactions on July 26, 2004,³ and the Court also set the matter for argument on July 30, 2004. On July 28, 2004, the People filed their *Motion in Limine Regarding the Opinions of Elizabeth Johnson and Yvonne Woods (filed under seal)*. On July 29, 2004, the Court entered its sealed *Order Re: Mr. Bryant's Motion for Use of Crime Victim Compensation Records at Trial for Purposes of Impeachment* ("CVC Order") and released a partial redacted transcript of the June 21, 2004 hearing, which included argument pertaining to the CVC records. Also on July 29, 2004, the media filed a second application for stay. At the July 30, 2004 hearing, the Court heard argument on the transcript redactions, and the People withdrew their *Motion in Limine*.

After consideration of the proposed redactions, arguments of counsel, the withdrawal of the People's *Motion in Limine*, and in further light of the findings as to relevance, materiality and admissibility in the Rape Shield Order and the CVC Order, the Court hereby authorizes the release of the remainder of the transcripts pursuant to the instructions of both Supreme Courts as to those matters, which should remain redacted. Justice Breyer indicated in his Opinion in Chambers that, if the media were to refile the application for a stay, the trial court shall file a response indicating why any redacted portions of the transcript must remain confidential. This Court, therefore, has entered a separate order under seal specifically addressing each of the redactions.

In summary, this Court ordered certain redactions as follows.

1. The name of the alleged victim was redacted pursuant to C.R.S. § 24-72-304(4)(a), which provides that "[t]he name of any victim of sexual assault or of alleged sexual assault shall be deleted from any criminal justice record prior to the release of such record....").
2. Argument and evidence pertaining to sexual conduct held to be inadmissible under the Rape Shield statute was redacted pursuant to the findings in the Court's July 23, 2004 Order.
3. Argument pertaining to the alleged use of prescribed medication and mental health history was redacted pending this Court's ruling on *Defendant's Motion to Admit Evidence of the Accuser's Purported Suicide Attempts and Prescribed Medication* (with offer of proof filed under seal) and the People's *Motion in Limine: Medical and Mental Health History of Victim With Offer of Proof Attached Filed Under Seal*

² The Court also issued a public order which summarized the findings in the sealed order.

³ The parties subsequently indicated to this Court that they were unable to submit a joint proposed redaction and each party submitted a separate proposed redaction.

(*People's #10*). The Court will reconsider release of this portion of the transcript after such determinations are made.

4. Argument concerning certain portions of the CVC records were redacted pursuant to C.R.S. § 24-4.1-107.5, which requires that CVC materials remain confidential pending an *in camera* determination by the Court and pursuant to the Court's CVC Order concluding that certain records were inadmissible.
5. Argument and evidence pertaining to alleged drug and alcohol use was redacted pending this Court's ruling on the *People's Motion in Limine Re: Any Evidence of Drug or Alcohol Use (People's #4)* and pursuant to this Court's findings in the CVC Order. The Court will reconsider release of this portion of the transcript after such determination is made.

It is with great reluctance that this Court releases these transcripts. The release of these transcripts is contrary to the explicit intent of the Colorado legislature to secure the privacy of alleged victims of sexual assault offenses and other crimes through the enactment of the Rape Shield statute and the statutory provision pertaining to the confidentiality of CVC records. The effect of this release is to present narrowly limited, one-sided evidence and argument to the public prior to the selection of a jury and without reference to the totality of the evidence. This Court has struggled for several weeks with the obvious and conflicting convergence of rights presented by this situation.

The privacy rights of the alleged victim, the interests of the participants in conducting a fair trial and the First Amendment rights of the media are each significant rights recognized under the laws of the State of Colorado and the United States and Colorado Constitutions. However, there is considerable precedent in the United States Supreme Court decisions which have weighed the various interests and found the First Amendment considerations to be paramount as to prior restraints. This precedent was considered by the Colorado Supreme Court in its decision directing this Court to consider the release as to relevant, material, and admissible portions of these transcripts. After careful consideration of the competing interests, and upon review of the Orders of the Colorado Supreme Court and Justice Breyer of the United States Supreme Court, this Court has concluded that it is compelled to release these transcripts notwithstanding the concern that the release will compromise the rights of some of the participants.

Distribution of Transcripts

Redacted transcripts for the June 21-22, 2004 proceedings will be distributed utilizing the Court's normal distribution process. The Court will not be distributing any transcripts nor will they be posted on the web site. As in the past, these transcripts will be available for purchase at www.exemplaris.com or can be ordered from the court stenographer, Michelle Goodbee. You may leave a message for her at (303) 569-3272 (ext. 19). In addition, the Court further notes that all transcripts are work product, produced by the court stenographer. All parties, including the prosecution and defense, must pay for their individual copies.

DATED THIS 2nd DAY OF August, 2004.

BY THE COURT


W. Terry Ruckriegle
Chief District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I have, on this _____ day of _____, 2004, mailed and/or faxed a true and correct copy of the foregoing ORDER by U.S. Mail, postage prepaid, to the following:

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