

STATE OF ILLINOIS)
)SS
COUNTY OF WILL)

IN THE CIRCUIT COURT
OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

FILED
2809 MAY 27 PM 2:43
DREW PETERSON
COURT REPORTER
1001 W. WASHINGTON ST.
SPRINGFIELD, IL 62760

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
)
v.)
)
DREW PETERSON,)
Defendant.)

09 CF 1048

**MOTION TO SEAL DISCOVERY FILINGS AND PRECLUDE PUBLIC
DISSEMINATION OF DISCOVERY DOCUMENTS**

The People of the State of Illinois, by James W. Glasgow, Will County State's Attorney, through his assistant, John R. Connor, move that this Court enter an order: (1) providing that all future state and defense discovery documents be filed under seal; and (2) precluding all counsel and defendant from releasing, directly or indirectly, any discovery material or potential discovery material to the public. In support thereof, the People state as follows:

1. The investigation of the death of Kathleen Savio, defendant's third wife, and the filing of these first-degree murder charges have been accompanied by extensive media coverage. Likewise, the investigation of the disappearance of defendant's fourth wife, Stacy Peterson, has received intense media scrutiny.

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2. Some potential state witnesses have expressed concern that their names and addresses will be publicly revealed in the discovery filings in this case and that, as a result, they will be contacted by the media. These witnesses are also concerned about possible public harassment.

3. These concerns are not unwarranted. In December 2007, some documents regarding an investigation of defendant were stolen from a locked Illinois State Police squad car in a garage. Around April 2009, copies of some of these documents were purportedly obtained by the local Fox News station. On May 5, 2009, Fox News contacted a potential witness whose name appeared in those documents and requested that she comment on her role in the investigation.

The People further note that in People v. Vaughn, 07 CF 1308, a pending quadruple-homicide that has received local media attention, witnesses were contacted by the media shortly after the discovery was filed. As a result, the trial judge in Vaughn ordered that the discovery in that matter be filed under seal.

4. Also, during the pendency of 08 CF 1169, another matter in which defendant was charged, a portion of a document that was tendered to defendant in discovery was disseminated to the media by defense counsel in arguable violation of Supreme Court Rule 415(c), which provides that: "[a]ny materials furnished to an attorney pursuant to these rules shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms and conditions as the court may provide." As a result of that disclosure, a previously unidentified potential witness was subject to media harassment.

5. Filing the discovery under seal in this matter will not only protect the privacy interests of the witnesses in this case, but it will serve to prevent undue pretrial publicity that might affect the jury selection in this case. Indeed, Sheppard v. Maxwell, 384 U.S. 333, 363 (1966), held that a

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defendant may be deprived of due process when trial publicity in the community has unfairly influenced the jury. And, while the People do not likewise assert due process protection, they are, nonetheless, also entitled to a fair trial. See People v. Kuhfuss, 241 Ill.App.3d 311, 317 (3rd Dist. 1993). Sheppard advised that trial judges should take measures to prevent the undue influence of publicity, stating that:

The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function.

Sheppard, 384 U.S. at 363.

6. Expressly precluding all counsel from releasing, directly or indirectly, any discovery material or potential discovery material to the public will also serve to prevent undue pretrial publicity. In fact, the Sheppard court noted that the trial court in that matter could have, but unfortunately did not, “proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters.” Id. at 361.

7. Moreover, the Illinois Supreme Court has recognized that, under certain circumstances, a pretrial gag order applied to the parties and counsel can serve to protect the parties’ right to a fair trial. Kemner v. Monsanto Company, 112 Ill.2d 223, 243 (1986). In Kemner, a civil matter, the Court held that a gag order may be issued if the parties’ and counsel’s conduct “poses a clear and present danger or a serious and imminent threat to the fairness and integrity of the trial.” 112 Ill.2d at 244. To withstand constitutional scrutiny, such order must specify “in an adequately clear fashion what conduct and utterances are proscribed.” Id. at 248.

8. The People also observe that the committee comments to Supreme Court Rule 415(c), which regulates the use of discovery materials by counsel, state that: "If the materials to be provided were to become, in effect, matters of public availability once they had been turned over to counsel for the limited purposes which pretrial disclosures are designed to serve, the administration of criminal justice would likely be prejudiced."

9. Finally, the People recognize that Rule 3.6 of the Illinois Rules of Professional Conduct contains a prophylactic measure designed to prevent prejudicial pretrial publicity. The Rule provides

in part that:

A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it would pose a serious and imminent threat to the fairness of an adjudicative proceeding.

The relief requested in the instant motion dovetails with the purpose of Rule 3.6.

10. For the reasons discussed above, the People submit that, to protect the privacy interests of the witnesses and to prevent undue pretrial publicity, this Court should enter an order: (1) providing that all state and defense discovery documents be filed under seal; and (2) precluding all counsel and defendant from releasing, directly or indirectly, any discovery material or potential discovery material to the public. See United States v. Brown, 218 F.3d 415, 431 (5th Cir. 2000) (court, in applying a "substantial likelihood" test rather than a "clear and present danger," upheld a gag order, noting that other remedial measures were inadequate to address the problem of potentially prejudicial pretrial publicity).

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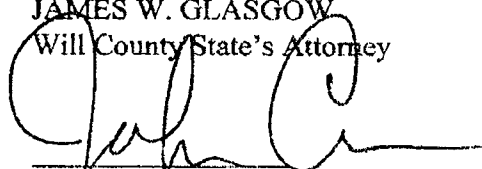
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11. In order to facilitate this order, the Circuit Clerk must be ordered not to make publicly available any scanned documents referencing discovery from the date of the order forward in this matter.

WHEREFORE, the People request that this Court enter an order: (1) providing that all state and defense discovery documents be filed under seal; and (2) precluding all counsel and defendant from releasing, directly or indirectly, any discovery material or potential discovery material to the public.

Respectfully Submitted,

JAMES W. GLASGOW
Will County State's Attorney

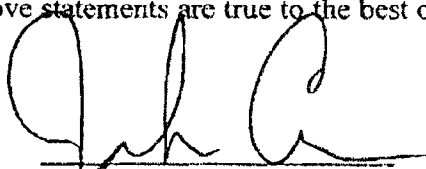


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) SS
COUNTY OF WILL)

VERIFICATION

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), I certify that the above statements are true to the best of my knowledge and belief.



John R. Connor

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