

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE)	
)	17 CR 9700
v.)	
)	Judge Domenica Stephenson
)	
DAVID MARCH, ET AL)	

**MOTION BY THIRD-PARTY JOURNALIST BRANDON SMITH TO VACATE ANY
ORDERS RESTRICTING DISSEMINATION OF RECORDS OR INFORMATION**

This Court has entered various orders restricting the dissemination of information or records related to this case. The practical effect of that order has been to block the release of public records related to this case that have been requested under the Freedom of Information Act from law enforcement agencies involved in this matter. This case having been tried to verdict, all orders entered by the Court restricting the dissemination of records or information should be vacated. A proposed order is attached as Exhibit 1, and the orders of which Smith is aware and that appear to restrict release of public records are attached as Exhibit 2.

Movant Brandon Smith is a journalist who has requested, and in the future intends to request, records under FOIA that are impacted by one or more of the orders sought to be vacated by this motion.

RESPECTFULLY SUBMITTED,

Matthew Topic
Joshua Burday
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor

Chicago, IL 60607
312-243-5900
matt@loevy.com
joshb@loevy.com
Atty. No. 41295

Craig B. Futterman
EDWIN F. MANDEL LEGAL AID
CLINIC
University of Chicago Law School
6020 S. University
Chicago, Illinois 60637
(773) 702-9611
Attorney # 91074

CERTIFICATE OF SERVICE

I certify that on February 5, 2019, I served a copy of MOTION BY THIRD-PARTY JOURNALIST BRANDON SMITH TO VACATE ANY ORDERS RESTRICTING DISSEMINATION OF RECORDS OR INFORMATION by email to James McKay (jpmckaylaw@gmail.com), Patricia Brown Holmes (pholmes@rshc-law.com), Thomas Breen (TBreen@breenpughlaw.com), and William N. Fahy (wnfahy@fahylawoffice.com).

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE)	
)	17 CR 9700
v.)	
)	Judge Domenica Stephenson
)	
DAVID MARCH, ET AL)	

[PROPOSED] ORDER

All orders entered by this Court restricting the dissemination of any records or information are hereby vacated.

STATE OF ILLINOIS) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
)
v.) **Case No. 17 CR 9700**
)
DAVID MARCH,)
JOSEPH WALSH, and)
THOMAS GAFFNEY,)
)
Defendants.)

AGREED PROTECTIVE ORDER

Pursuant to Illinois Supreme Court Rule 415(d), the Court finds justice requires the entry of this Agreed Protective Order, previously agreed to by the State of Illinois and defendants March, Walsh and Gaffney. Accordingly, it is ORDERED:

1. Applicability. This Agreed Protective Order applies to all materials produced or adduced in the course of discovery in this Action, including information produced by the State, defendants, and third parties, responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom (hereinafter collectively “Documents”).

2. Protected Information. Documents that meet the definition of “Protected Information” shall be handled according to the provisions of this Order. Protected Information shall include:

- (a) Information regarding a potential or actual crime, including the identities of individuals who were a witness to or victim of a crime, other than the events that are the subject of this Action.

(b) Personally Identifiable Information regarding an individual, which is defined as:

1. For civilians, the combination of an individual's name and an additional unique identifying characteristic other than the individual's name such as home address, Social Security number, or personal telephone number;
2. For CPD personnel, the combination of an individual's name and an additional unique identifying characteristic other than the individual's name such as home address, Social Security number, or personal telephone number. Personally Identifiable Information does not include a CPD officer's "star number," other employee number, business address, or business phone number.

(c) Protected Health Information regarding any individual, such as health status or information regarding the provision of health care. Protected Health Information shall have the same scope and definition as set forth in 45 C.F.R. § 160.103 and 164.501. Protected Health Information includes, but is not limited to, health information, including demographic information, relating to either (a) the past, present, or future physical or mental condition of an individual, (b) the provision of care to an individual, or (c) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual

3. Identification of Protected Information. The producing party is not required to designate a document as containing or constituting Protected Information. It is each party's obligation to ensure Protected Information is treated consistent with this Order.

4. Use of Protected Information. Information produced in this Action shall not be used or disclosed by the receiving parties, counsel for the parties or any other persons for any purpose whatsoever other than in this Action, including any appeal thereof. The parties and counsel for the parties shall not disclose or permit the disclosure of any Protected Information to any third person or entity except as set forth in subparagraphs (a)-(h). Subject to these requirements, the following categories of persons may be allowed to review Protected Information:

- (a) Parties. Individual parties and appropriate representatives of the State;
- (b) The Court and its personnel;
- (c) Court Reporters and Recorders. Court reporters and recorders engaged for depositions or other proceedings;
- (d) Contractors. Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents, including outside vendors hired to process electronically stored documents;
- (e) Consultants and Experts. Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation and trial of this action but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;
- (f) Witnesses. Witnesses to whom disclosure is reasonably necessary. Witnesses shall not retain a copy of documents containing Protected Information, except witnesses may receive a copy of all exhibits marked at any deposition that may occur in connection with review of a transcript. Pages of transcribed deposition testimony or exhibits to depositions that are designated as Protected Information pursuant to the process set out in this Order must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order.

- (g) Author or recipient. The author or recipient of the document (not including a person who received the document in the course of litigation); and
- (h) Others by Consent. Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered.

5. Court Filings. All Protected Information filed with the Court shall either be redacted or filed in a sealed container on which must be written the caption of this action, the nature of the contents, and a statement in substantially the following form: CONTAINS RESTRICTED INFORMATION SUBJECT TO PROTECTIVE ORDER - OPEN ONLY AS DIRECTED BY THE COURT.

6. Action by the Court. Applications to the Court for an order relating to materials or documents related to Protected Information shall be by motion. Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make orders concerning the disclosure of documents produced in discovery or at trial.

7. Challenges by Members of the Public to Sealing Orders. A party or interested member of the public has a right to challenge the sealing of particular documents that have been filed under seal, and the party asserting protection will have the burden of demonstrating the propriety of filing under seal.

8. Use at Trial or Hearing. Nothing in this Order affects the use of any document, material, or information at any trial or hearing in this matter. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

9. Control of Documents. Counsel for the parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Protected Information.

10. Protected Information Subpoenaed or Ordered Produced in Other Litigation.

- (a) If a receiving party is served with a subpoena or an order issued in other litigation that would compel disclosure of any material or document that

constitutes Protected Information, the receiving party must so notify the producing party, in writing, immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

- (b) The receiving party also must immediately inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject of this Order. In addition, the receiving party must deliver a copy of this Order promptly to the party in the other action that caused the subpoena to issue.
- (c) The purpose of imposing these duties is to alert the interested persons to the existence of this Order and to afford the producing party in this case an opportunity to try to protect its Protected Information in the court from which the subpoena or order issued. The producing party shall bear the burden of seeking protection in that court of its Protected Information, and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court. The obligations set forth in this paragraph remain in effect while the party has in its possession, custody or control Protected Information produced in connection with this case.

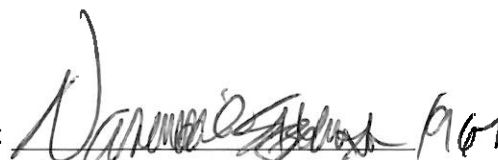
11. Order Subject to Modification. This Order shall be subject to modification by the Court on its own initiative or on motion of a party or any other person with standing concerning the subject matter.

12. No Prior Judicial Determination. This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any document or material identified as Protected Information by counsel or the parties is entitled to protection under Rule 415(d) of the Illinois Supreme Court Rules or otherwise until such time as the Court may rule on a specific document or issue.

13. Persons Bound. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

DATE: 11-2-17

ENTERED:



Hon. Domenica Stephenson
Judge of the Circuit Court
of Cook County

ENTERED
TIME _____ AM
PM
NOV - 2 2017
Judge Domenica Stephenson-1967
Deputy Clerk Signature _____

STATE OF ILLINOIS) SS.
COUNTY OF COOK)

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
v.)	Case No. 17 CR 9700
)	
DAVID MARCH,)	
JOSEPH WALSH, and)	
THOMAS GAFFNEY,)	
)	
Defendants.)	

Attachment A to Agreed Protective Order

Acknowledgment of Understanding and Agreement to Be Bound

1. Third-party _____ hereby (i) consents to the terms and conditions of the Agreed Protective Order (the “Order”), as entered by the Court, and (ii) consents to the jurisdiction of the Court for purposes of enforcing the terms of the Order.

2. By executing this Acknowledgment of Understanding and Agreement to Be Bound, the third-party may designate material it has been subpoenaed or requested to produce as Protected Information, as provided in the terms of the Order. The third party agrees to abide by the terms and conditions of the Order.

3. The terms used in this Acknowledgment of Understanding and Agreement to Be

Bound have the same meanings as set forth in the Order.

Name: _____

Street Address: _____

City, State, ZIP: _____

Telephone: _____

Facsimile: _____

Email Address: _____

Counsel for Third Party: _____

Dated: _____

Signature: _____

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)	
Plaintiffs,)	
)	17 CR-09700-01
v.)	17 CR-09700-02
)	17 CR-09700-03
DAVID MARCH,)	
JOSEPH WALSH, and)	
THOMAS GAFFNEY,)	
Defendants)	

ORDER

It is the Order of this Court that no attorney with this case as Prosecutor or Defense Counsel, nor any other attorney working in or with the offices of either of them, nor their agents, staff, or experts, nor any judicial officer of court employee, nor any law enforcement employee or any agency involved in this case, nor any persons subpoenaed or expected to testify in this matter, shall do any of the following:

1. Release or authorize the release for public dissemination any purported extrajudicial statement of either the defendant or witnesses relating to this case;
2. Release or authorize the release of any documents, exhibits, photographs or any evidence, the admissibility of which may have to be determined by the Court;
3. Make any statement for public dissemination as to the existence or possible existence of any documents, exhibits, photographs or any evidence, the admissibility of which may have to be determined by the Court;
4. Express outside of court an opinion or make any comment of public dissemination as to the weight, value, or effect of any evidence as tending to establish guilt or innocence;
5. Make any statement outside of court as to the content, nature, substance, or effect of any statements or testimony that is expected to be given in any proceeding in or relating to this matter;
6. Make any out-of-court statement as to the nature, source or effect of any purported evidence alleged to have been accumulated as a result of the investigation of this matter.
7. This Order also incorporates Article VIII Illinois Rules of Professional Conduct, effective January 1, 2010.

This Order does not include any of the following:

1. Quotations from, or any reference without comment to, public records of the Court in the case.
2. The scheduling and result of any stage of the judicial proceedings held in open court in an open or public session.
3. Any witness may discuss any matter with any Prosecution or Defense Attorney in this action, or any agent thereof, and if represented may discuss any matter with his or her own attorney.

Anyone in violation of this court order may be subject to contempt of court.

ENTERED: *Domenica Stephenson* 1967
Judge Domenica A. Stephenson
Circuit Court of Cook County
Criminal Division

DATE: 5-31-18

