

**IN THE MATTER OF A REQUEST FOR
AFFIDAVITS OR SWORN TESTIMONY
MADE BY BOB THIBAUT, KSNT and
CATHERINE BERNARD, KC STAR**

SNCO KS DISTRICT COURT
2021 APR 8 AM 10:17:57

RELATED CASE NUMBER 2021-CR-582

ORDER PURSUANT TO K.S.A. 22-2302

On March 27, 2021, a request for the release of affidavits or sworn testimony in support of the probable cause requirement of K.S.A. 22-2301 et seq. (charging affidavit), was filed with the Clerk of the District Court by Bob Thibault of KSNT. In addition, on March 29, 2021, a request for the release of an affidavit or sworn testimony in support of a blood draw search warrant was requested by Catherine Bernard of the Kansas City Star.

Having reviewed the requests, the relevant statute, the parties' responses, and being otherwise fully and duly advised in the premises, the Court finds and orders as follows:

The Clerk of the Court promptly notified the defendant's counsel, the prosecutor and the Criminal Duty Judge that such requests were filed.

Within five business days after receiving the notice of requests for disclosure from the Clerk of the Court, the prosecutor submitted under seal, proposed redactions to the requested documents and the reasons supporting such proposed redactions.

Within five business days after receiving the notice of requests for disclosure from the Clerk of the Court, the defendant's counsel submitted, under seal, an

objection to the requests and request to seal the affidavits. By way of email, dated April 5, 2021, Defendant also requested a short hearing on the matter.

The Court finds that a hearing is not necessary for two reasons. First, a hearing is not contemplated or required under K.S.A. 22-2302. Second, Defendant has not presented any reason why a hearing will produce any additional argument or authority not already contained in his answer to the request for disclosure and motion to seal. As such, the Court does not find that a hearing would materially aid the Court in this matter.

K.S.A. 22-2302(c)(4) provides that a magistrate may make appropriate redactions or seal an affidavit, “*as necessary*” to prevent the public disclosure of information that would result in ten (10) specifically described circumstances. (Emphasis added.) Defendant alleges that the affidavits should be sealed for the following statutory reasons: (1) disclosure of the affidavits would endanger the life or physical safety of the defendant; (2) disclosure of the affidavits would jeopardize the physical, mental or emotional safety of the defendant; and (3) the affidavits contain information that, “upon the Defendant being found not guilty, would constitute an unwarranted invasion of personal privacy.”

The Court finds that sealing the affidavits is not necessary to protect against the concerns raised by the defendant and authorized by statute.

First, with regard to Defendant’s life or physical safety (K.S.A. 22-2302(c)(4)(F)), appropriate redactions can and will be made to protect the life or physical safety of the Defendant, which includes redacting any personally identifiable

information, such as address. Defendant has not alleged how the “detailed” and “specific” information regarding his alleged criminal conduct further endangers his life or physical safety.

Second, Defendant argues that the affidavits should be sealed to protect his physical, mental or emotional safety. However, K.S.A. 22-2302(c)(4)(A) provides that appropriate redactions or sealing shall be made to prevent the public disclosure of information that would jeopardize the physical, mental or emotional safety or well-being of a “victim, witness, confidential source or undercover agent.” This provision does not include “defendants,” which are contemplated in subsection (c)(4)(F).

Third, with regard to K.S.A. 22-2302(c)(4)(J), a “clearly unwarranted invasion of personal privacy;” the statute defines such term as:

“revealing information that would be highly offensive to a reasonable person and is totally unrelated to the alleged crime that resulted in the issuance of the arrest warrant, including information totally unrelated to the alleged crime that may pose a risk to a person or property and is not of legitimate concern to the public.”

Moreover, the statute provides this provision may only be used to redact affidavits, and not seal them. The Court finds that the information contained within the requested affidavits does not constitute a “clearly unwarranted invasion of personal privacy,” as defined by the statute. The information contained in the affidavits is not totally unrelated to the alleged crime that resulted in the issuance of the arrest warrant.

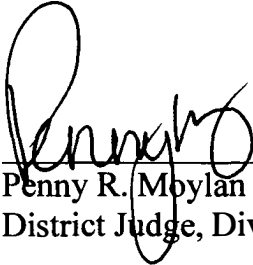
Finally, Defendant generally argues that the affidavits should be sealed because he denies culpability; and if proven not guilty, the disclosure of the affidavits

will result in irreparable damage. This is not a factor contemplated in the statute. All defendants are innocent unless and until proven guilty; and disclosure of affidavits which contain specific allegations regarding the crime charged always poses the risk of unwanted publicity and damage to a defendant. However, K.S.A. 22-2302(c)(4) does not address this factor or list it as justification for sealing the affidavits.

For the reasons discussed herein, the Court orders that redactions shall be made as proposed by the State and ordered by the Court, and that the requests for disclosure are thereafter granted.

IT IS SO ORDERED.

DATED: 4/8/21



Penny R. Moylan
District Judge, Division Seven

This Order is effective on the date and time shown on the electronic file stamp.