

COMBINED COURT,
Fremont County, State of Colorado
136 Justice Center Road, Canon City, Colorado
81212
(719) 269-0100

People of the State of Colorado,

v.

William Jacobs,
Defendant

DATE FILED: May 29, 2024 5:48 PM

▲ COURT USE ONLY ▲

Case Number: 23CR191
Div.: 1
Courtroom: 302

**ORDER GRANTING MOTION TO DISMISS FOR
OUTRAGEOUS GOVERNMENT CONDUCT [D-18]**

This matter comes before the Court on Mr. Jacobs' motion to dismiss for outrageous government conduct based on the actions of elected District Attorney Linda Stanley. The People oppose dismissal of the charges.

The Court held hearings on the motion on February 1, 2024, and March 22, 2024. The defendant was present and represented by Attorneys Jake Taufer and Daniel Zettler. The People were represented by Deputy District Attorney Wendy Owens.

The Court notes that there is a co-defendant charged in this matter, Ms. Brook Crawford, and that case is before the Honorable Thomas Flesher, who was assigned by the State Court Administrator when Chief Judge Patrick Murphy entered an order recusing all judges in the 11th Judicial District from presiding over that case. The Court takes judicial notice of Judge Flesher's order granting Ms. Crawford's motion to dismiss

the charges against her, based on District Attorney Linda Stanley's outrageous government conduct. That order is pending review before the Colorado Court of Appeals.

This Court has heard statements and arguments of counsel and has reviewed voluminous exhibits, including video recordings of elected District Attorney Linda Stanley making statements about this case and the co-defendant's case to KRDO television reporter Sean Rice.

The court has had an opportunity to review:

- a. The defendant's initial Motion to Dismiss for Outrageous Government Conduct, filed on December 15, 2023
- b. The People's response to the motion to dismiss, filed on January 5, 2024
- c. The defendant's reply to the motion, filed on January 31, 2024
- d. The People's additional response to the motion to dismiss, filed on February 1, 2024
- e. The defendant's supplemental motion to dismiss, filed on March 15, 2024
- f. The People response to the supplemental motion to dismiss, filed on March 20, 2024.

The Court, having considered the statements and arguments of counsel, the written motions and responses, and the exhibits filed, and being fully advised in this matter, finds and orders as follows.

I. BACKGROUND

The People charged Mr. Jacobs with first-degree murder and other offenses related to the death of [REDACTED], a [REDACTED] child. The prosecution's theory is that, while Mr. Jacobs was alone with the [REDACTED] on the morning of May 21, 2023, Mr. Jacobs shook the [REDACTED], and the [REDACTED] had an immediate reaction to this shaking event and ultimately died. At the July 12, 2023, setting conference, the magistrate court scheduled a preliminary hearing for Mr. Jacobs. DA Linda Stanley appeared on behalf of the People in-person at this setting conference. That is the only time DA Stanley

appeared in this case. KRDO reporter Sean Rice and his cameraman attended this setting conference and approached DA Stanley following the hearing to request an interview. DA Stanley agreed to an interview right after the setting conference, and Mr. Rice and the cameraman were escorted into the District Attorney's Office inside the Fremont County Courthouse. Portions of this interview were first aired on news station KRDO on that same day, July 12, 2023. (Defendant's Mot. [D-18], Exhibit D, *Embattled 11th JD DA Addresses Allegations She's Contributed to Case Dismissals, Freed Sexual Predators*, <https://krdo.com/news/2023/07/12/embattled-11th-jd-da-addresses-allegations-shes-contributed-to-case-dismissals-freed-sexual-predators>, published 7/12/2023; last visited May 29, 2024.) The parts of the interview related to Mr. Jacobs and co-defendant Brook Crawford first aired on August 1, 2023. KRDO News, *Fremont Co. District Attorney believes accused [REDACTED] killer got with [REDACTED] mom just to 'get laid'*; [https://krdo.com/news/2023/08/01/fremont-co-district-attorney-believes-accused-\[REDACTED\]-killer-got-with-\[REDACTED\]-mom-just-to-get-laid](https://krdo.com/news/2023/08/01/fremont-co-district-attorney-believes-accused-[REDACTED]-killer-got-with-[REDACTED]-mom-just-to-get-laid), published 8/1/2023, last visited May 29, 2024.

A preliminary hearing before the magistrate court took place over several days in October and November 2023. The magistrate found probable cause for the three felony counts and bound the case up to this Court's division.

The defendant alleges DA Stanley's recorded statements to KRDO reporter Sean Rice amount to outrageous government conduct and warrant dismissal. The People oppose dismissal of the charges and argue that, while the elected District Attorney's statements certainly do not reflect her best judgment, they do not rise to the level of outrageous government conduct.

II. APPLICABLE LAW

Colorado recognizes the due process claim of outrageous governmental conduct. *Bailey v. People*, 630 P.2d 1062 (Colo. 1981); *People v. Burlingame*, 2019 COA 17, ¶ 11. “Outrageous governmental conduct is conduct that violates fundamental fairness and is shocking to the universal sense of justice.” *Burlingame*, 2019 COA 17, ¶ 12 (quoting *People v. Medina*, 51 P.3d 1006, 1011 (Colo. App. 2001)). When outrageous governmental conduct occurs, dismissal of the charges is warranted. *People v. Auld*, 815 P.2d 956, 959 (Colo. App. 1991) (upholding the dismissal of charges based on a finding of outrageous government conduct).

Trial courts determine whether outrageous government conduct has occurred by “reviewing the totality of the facts in a given case.” *People v. McDowell*, 219 P.3d 332, 336 (Colo. App. 2009) (citing *People in Int. of M.N.*, 761 P.2d 1124, 1129 (Colo. 1998)). “The question whether circumstances are demonstrated which would bar prosecution under due process principles is for the court.” *People in Int. of M.N.*, 761 P.2d at 1129 (citing *United States v. Szycher*, 585 F.2d 443, 445 (10th Cir. 1978)). A trial court has discretion to dismiss when ruling on the issue of outrageous government conduct. *Int. of M.N.*, 761 P.2d at 1129; *see also Burlingame*, 2019 COA 17, ¶ 10; *People v. Medina*, 51 P.3d 1006 (Colo. App. 2001) (applying abuse of discretion standard to review of ruling denying motion to dismiss for outrageous government conduct).

III. FACTUAL FINDINGS

In the spring and early summer of 2023, DA Stanley and her office faced media scrutiny after courts had imposed severe discovery sanctions based on the DA Office’s years-long pattern of discovery violations. *See People v. Tippet*, 2023 CO 61 (detailing the 11th Judicial District Attorney’s Office’s pattern and practice of discovery violations

and affirming the district court's reduction of a first-degree murder charge). News coverage of the discovery violations and other alleged problems within DA Stanley's office received widespread media coverage throughout Colorado. (*See, e.g.*, Defendant's Mot. [D-18], 12/15/2023, Exhibit A, "Colorado Judge Sanctions Fremont County District Attorney Linda Stanley for repeatedly violating court procedures," Exhibit B, "*Fox 21 Exclusive: 11th Judicial DA breaks her silence to address allegations of misconduct*," <https://www.fox21news.com/news/fox21-exclusive-11th-judicial-da-breaks-her-silence-to-address-concerns>, published 7/11/2023, last visited May 29, 2024; Exhibit D, "Embattled 11th JD DA Addresses Allegations She's Contributed to Case Dismissals, Freed Sexual Predators," and Exhibit F, "District Attorney Linda Stanley Speaks Out.")

In the six months before July 12, 2023, KRDO reporter Sean Rice had repeatedly reached out to DA Stanley for comment on stories his news channel had reported about her office and had not received a response from her. (Defendant's Suppl. Mot. [D-26] Exhibit E, Tr. 135: 21-23, 3/15/2024; Defendant's Suppl. Mot. [D-26], Exhibit D, 29-min video recorded interview with KRDO, 3/15/2024.) Reporter Rice and photojournalist Peter Miller approached DA Stanley right after a hearing in Mr. Jacobs' case on July 12, 2023, and she invited them into her office for an interview. (Defendant's Suppl. Mot. [D-26] Exhibit E, Tr. 135: 24-25, 136: 1-5, 3/15/2024.)

The interview began with an off-the-record conversation that lasted about an hour. (Defendant's Suppl. Mot. [D-26] Exhibit E, Tr. 137: 6-12, 3/15/2024.) DA Stanley next engaged in a recorded on-the-record conversation for about 30 minutes. (Defendant's Suppl. Mot. [D-26] Exhibit E, Tr. 137: 2-25, 3/15/2024.) During the recorded part of the conversation, DA Stanley commented on Mr. Jacobs' case, co-

defendant Brook Crawford's case, and another unrelated case, the death of Suzanne Morpew. The on-the-record portion of the conversation began with DA Stanley providing information about Mr. Jacobs' juvenile criminal record. She told reporter Rice, "He has a pretty awful past, including fondling his mom ... It's not good ... It's kinda weird ... What kid fondles their mom, right?" (Defendant's Suppl. Mot. [D-26], Exhibit D, 29-min video recorded interview with KRDO, 00:00-00:44, 3/15/2024.)

DA Stanley acknowledged that she was aware of public discussion about Mr. Jacobs' case saying, "I agree with the general public from what I understand on social media when they're talkin' about, 'how could the mom have, you know, done all this?' Well quite frankly, I think she saw a live-in [REDACTED]. Now she can just really pound out the hours, right? She's got a live-in [REDACTED] now. She doesn't have to worry about anything right?" (Defendant's Suppl. Mot. [D-26], Exhibit D, 29-min video recorded interview with KRDO, 3:43-4:00, 3/15/2024.)

DA Stanley's on-the-record comments included:

1. she felt so strongly about Mr. Jacobs' case that she decided to be the lead prosecutor;
2. she stands by her decision, made in the days after the [REDACTED] was pronounced dead, to upgrade charges against Jacobs from child abuse resulting in death to first-degree murder;
3. the [REDACTED] death was completely avoidable;
4. Mr. Jacobs had access to a [REDACTED] he did not care about;
5. Mr. Jacobs moved in with Ms. Crawford just days after meeting her;
6. Mr. Jacobs had recently been released from a youth correctional facility;
7. Mr. Jacobs was previously convicted of a sex crime;

8. Mr. Jacobs had “a violent past”;
9. Mr. Jacobs was a flight risk and “would be gone” if he was not immediately arrested.

(Defendant’s Suppl. Mot. [D-26], Exhibit D, 29-min video recorded interview with KRDO, 3/15/2024.)

At no time during the on-the-record conversation did DA Stanley state that the charges against Mr. Jacobs were merely accusations or that Mr. Jacobs is presumed innocent until and unless proven guilty. (Defendant’s Suppl. Mot. [D-26], Exhibit D, 29-min video recorded interview with KRDO, 3/15/2024.)

DA Stanley’s on-the-record statements, broadcast repeatedly by KRDO, included:

1. “I’m going to be very blunt here. He (referring to Mr. Jacobs) has zero investment in this child. Zero. He’s watching that [REDACTED] so he can get laid. That’s it. And have a place to sleep.” “I’m sorry to be that blunt, but honest to God, that’s what’s going on.”
2. “I had just had so many buzzers going off when they said the boyfriend (referring to Mr. Jacobs) was watching [REDACTED].”
3. “I said you got to hook him because he’s going to be gone. He knows what’s going on. He’s no dummy to this process and what’s happening and he knows what he did.”
4. Characterizing Ms. Crawford’s use of Mr. Jacobs as a live-in [REDACTED] so “she can just really pound out the hours.”
5. “She’s got a live-in [REDACTED] (referring to Mr. Jacobs) now she doesn’t have to worry about anything.”
6. “There is a whole lot of things indicative of prior --- a prior incident with that [REDACTED].”
7. “Without the caring factor, without the love factor, then its, the [REDACTED] is a pain in the ass.”

(Defendant’s Mot. [D-18], Exhibit C, KRDO News, *Fremont Co. District Attorney believes accused [REDACTED] killer got with [REDACTED] mom just to ‘get laid’*; <https://krdo.com/news/2023/08/01/fremont-co-district-attorney-believes-accused->

[-killer-got-with- -mom-just-to-get-laid](#), published 8/1/2023, last visited May 29, 2024; deposited 12/15/2023.)

DA Stanley knew when she made these statements that she was being recorded. For one, DDA Owens conceded during the March 22, 2024, hearing that DA Stanley knew she was being recorded during the 29-min segment of her interview with reporter Rice. In addition, reporter Rice testified under oath to the following:

1. DA Stanley herself placed the live microphone on her lapel when the recorded part of their interview began.
2. The video camera used was visible and pointed directly at DA Stanley.
3. Prior to donning the microphone, DA Stanley had not asked reporter Rice to refrain from broadcasting the recorded portions of the interview.

(Defendant's Suppl. Mot. [D-26] Exhibit E, Tr. at 144: 1-8, 3/15/2024.)

4. At no time during the interview did DA Stanley ever change her mind and convey she wanted a statement to be off the record or on background.

(Defendant's Suppl. Mot. [D-26] Exhibit E, Tr. at 144: 18-21, 3/15/2024.) Finally, DA Stanley herself revealed that she knew she was being recorded during the interview when she told reporter Rice, "I wanna really hit my button here right now but I can't do that since we're recording." (Defendant's Suppl. Mot. [D-26], Exhibit D, 29-min video recorded interview with KRDO, 25:19 – 25:52, 3/15/2024.) Despite acknowledging she knew she was being recorded, moments later, DA Stanley hit her button and it emitted this phrase, "If bullshit were money, you'd be a millionaire." (Defendant's Suppl. Mot. [D-26], Exhibit D, 29-min video recorded interview with KRDO, 25:19 – 25:53, 3/15/2024.)

IV. ANALYSIS

District Attorney Stanley made pretrial, extrajudicial, on-the-record comments to reporter Rice. These comments were made public in writing online and in newspapers and were broadcast on television news and the radio.

Improper extrajudicial statements taint the jury pool and deprive individuals of the right to a fair trial. U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 25; *Wafai v. People*, 750 P.2d 37, 43 (Colo. 1988).

Colorado Rules of Professional Conduct, Rule 3.6 and 3.8, provide a framework regarding making extrajudicial statements. Rule 3.6(a) provides that: “A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.”

Rule 3.8(f), which refers to the Special Responsibilities as a Prosecutor provides that the prosecutor in a criminal case shall:

“ . . . except for statements that are necessary to inform the public of the nature and extent of the prosecutor’s action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused unless such comments are permitted under Rule 3.6(b) or 3.6(c) or other law, and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.”

As cited in Mr. Jacobs’ motion, the American Bar Association Standards for Criminal Justice, Fair Trial and Public Discourse, Standard 8.2.1(a) provides:

“Subject to any additional limitations imposed by local or professional rules, during the pendency of a criminal matter, a lawyer participating in

that criminal matter should not make, cause to be made, condone or authorize the making of a public extrajudicial statement if the lawyer knows or reasonably should know that it will have a substantial likelihood of: (i) influencing the outcome of that or any related criminal trial or prejudicing the jury venire, even if an untainted panel ultimately can be found; (ii) unnecessarily heightening public condemnation of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation, or of a witness or victim; or (iii) undermining the public's respect for the judicial process.”

(Defendant's Mot. [D-18] ¶ 39, 12/15/2023.)

The comment section following Colorado R.P.C. 3.6, specifically comment [5] subparagraphs (1), (4), (5) and (6), describes certain subjects that are more likely than not to have a material prejudicial effect on a proceeding. These subjects include “. . . the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness . . .”; “any opinion as to the guilt or innocence of a defendant or suspect in a criminal case”; “information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial”; and “the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.” Comment [6] to Rule 3.6 provides, “Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be the most sensitive to extrajudicial speech.”

The People argue that whether DA Stanley's pretrial, extrajudicial statements would be admissible at trial or constitute prosecutorial misconduct is “completely irrelevant” to this Court's determination of the motion for outrageous government conduct. (People's Resp. to Def. Reply to [D-22] ¶¶ 1.d. and 1.e., 2/1/2024.) The Court recognizes that the preamble of the Colorado Rules of Professional Conduct provides:

“Violation of a Rule should not in and of itself give rise to a cause of action nor should it create any presumption that a legal duty has been breached.” Colo. R.P.C., Preamble, Scope and Terminology. Yet ethical standards for prosecutors may provide a framework for determining whether the rights of the defendant have been violated by prosecutorial misconduct. *See, e.g., People v. Antunes*, 680 P.2d 1321, 1323 (Colo. App. 1984) (referencing ABA prosecutorial standards in determining whether prosecutorial conduct violated the defendant’s rights). All lawyers are presumed to know the rules of professional conduct. *People v. Heaphy*, 470 P.3d 728, 739 (Colo. O.P.D.J. 2015).

DA Stanley knew or reasonably should have known that her on-the-record comments to reporter Rice about Mr. Jacobs and co-defendant Ms. Crawford would be disseminated by means of public communication and that they would have a substantial likelihood of materially prejudicing these criminal proceedings. *See* Colo. R.P.C. 3.6(a). First, DA Stanley’s comments were made while (1) talking to a reporter, (2) wearing a microphone, (3) with a camera pointed directly at her, (4) which camera was operated by a cameraman. Second, DA Stanley’s comments were imbued with a substantial likelihood of heightening public condemnation of Mr. Jacobs. Her comments included her vituperative, sensational, and inflammatory opinions of Mr. Jacobs’ character, his credibility, his reputation, and his criminal record.

Third, DA Stanley had notice that improper pretrial, extrajudicial statements would have a substantial likelihood of materially prejudicing a defendant’s rights to a fair trial. In another high-profile, first-degree murder case, *People v. Morphey*, Chaffee County District Court 21CR78, DA Stanley made pretrial, extrajudicial statements, including:

- (1) stating during a press conference that Mr. Morpew had invoked his privilege against self-incrimination and had refused to talk to police after being arrested;
- (2) repeatedly making statements about the case on true crime YouTube broadcast shows “Profiling Evil” and “True Crime with Julez”;
- (3) commenting about the pending case to the hosts of these broadcasts through text messages and Facebook Messenger; and
- (4) using her own name as her username, posting about the pending case and responding to critics of her office in the written comments sections of these broadcasts.

(Defendant’s Mot. [D-18], Exhibit J, Request for Investigation; Exhibit K, OARC Complaint, ¶¶ 17-26, 41-54, 57-59, 64-69, 121-26, 144-166, 12/15/2023.) As a result of DA Stanley’s pretrial, extrajudicial statements, Judge Lama made findings, in a January 31, 2022, order, that DA Stanley had violated the court’s pretrial publicity order and her statements had materially prejudiced Mr. Morpew’s right to a fair and impartial jury. (Order Re: [D-34] ¶ 5 in Chaffee County case 21CR78, dated January 31, 2022.)

Lastly, during the on-the-record conversation, DA Stanley demonstrated she had actual knowledge of the pitfalls of a district attorney speaking with the media about a pending case. DA Stanley stated, “I don’t like to bring any DA business out in the public because that’s a risky thing to do.” (Defendant’s Suppl. Mot. [D-26], Exhibit D, 29-min video recorded interview with KRDO, 6:59 – 7:10, 3/15/2024.) She added, “I can’t talk about an open case, right. I’m forbidden from it. Defense can do it all day long. I can’t say a word about an open case.”¹ (Defendant’s Suppl. Mot. [D-26], Exhibit D, 29-min video recorded interview with KRDO, 21:20-21:30, 3/15/2024.)

¹ Notably, the Court is not aware of any statements made to the media by the defense in this case.

Like the Court in Ms. Crawford's case, this Court cannot find that there was any legitimate reason for District Attorney Stanley to make the statements she made to reporter Rice and thus the Court infers and finds that those statements were made to specifically prejudice Mr. Jacobs and co-defendant Brook Crawford. To the extent that any statements were more specific to Ms. Crawford, they implicate and impact Mr. Jacobs. DA Stanley's comments undermined the public's respect for the judicial process. Because there is no legitimate purpose for making these statements, the Court finds the District Attorney's actions to be shocking to the universal sense of justice and the standards and presumptions on which our criminal justice system is based.

The People suggest that the appropriate remedy for any presumed prejudice caused by DA Stanley's prejudicial statements is a change of venue. (People's Resp. [D-26] ¶ 13, 3/20/2024.) The Court rejects this suggestion. An accused has the right to a public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. Colo. Const. art. II, § 16. The requirement that a trial be held in the county or district of the offense is solely for the benefit of the defendant. *Davis v. People*, 264 P. 658, 659 (1928).

Mr. Jacobs has not requested a change of venue. Rather, Mr. Jacobs asserts that his right to a trial to a jury of his peers includes the right to trial in his community, here in Fremont County. The Court acknowledges its inherent power to change venue on its own motion if such action is necessary to provide a defendant a fair trial. *Wafai*, 750 P.2d at 42-43. Whether to change the place of trial is a question to be determined by the court in its sound discretion. § 16-6-102, C.R.S. (2023). The Court notes that it can find no reported Colorado cases construing a right for the prosecution to request a change of venue. Here, the Court determines that exercising its discretion to change venue over

the objection of the defendant would not serve the interests of justice. Were the Court to order a change of venue over the defendant's objection, the Court would in effect condone improper pretrial extrajudicial statements by a prosecutor. A prosecutor should not perceive license to make public comments heightening public condemnation of an accused only to then turn around and suggest that a change of venue can excuse such prejudicial conduct.

Finally, the People assert that even if sanctions are appropriate, dismissal is too severe a sanction. The People suggest that the disciplinary sanction sought by the Office of Attorney Regulation Counsel in *People v. Stanley*, 23PDJO41, would potentially serve as a deterrent sanction for DA Stanley's prejudicial statements. As discussed during the motions hearing, the People fail to persuade the Court on this basis. The outcome of that disciplinary proceeding is yet to be determined. Any sanction potentially imposed by the presiding disciplinary judge would not help cure the prejudice suffered by Mr. Jacobs. Even if DA Stanley were ultimately sanctioned for her alleged failures to comply with the Colorado Rules of Professional conduct, those proceedings are not an adequate remedy to restore Mr. Jacobs' right to due process.

V. CONCLUSION

Having reviewed the totality of the facts, the Court concludes that DA Stanley's actions reflect knowing and intentional outrageous government conduct. This conduct violated Mr. Jacobs' right to due process. As a result, dismissal of the charges is an appropriate remedy. *See Auld*, 815 P.2d at 959.

The Court, therefore, orders dismissal of the charges against the defendant, William Jacobs.

Done this 29th day of May 2024.

A handwritten signature in blue ink, appearing to read "Kaitlin B. Turner".

Kaitlin B. Turner
District Court Judge