



ENTRY ORDER

MAY TERM, 2022

State of Vermont v. Kory L. George*	}	APPEALED FROM:
	}	Superior Court, Chittenden Unit,
	}	Criminal Division
	}	CASE NO. 4031-11-19 Cncr

In the above-entitled cause, the Clerk will enter:

In the above-captioned case, the criminal division denied defendant Kory George's request for a protective order preventing disclosure of testimony he provided to prosecuting authorities during a proffer session. Defendant sought and the trial court granted him permission for an interlocutory appeal to this Court. Pending the appeal's resolution, the criminal division stayed enforcement of its order denying the protective order. Accordingly, the transcript of the proffer remained sealed when filed with this Court. See V.R.P.A.C.R. 6(i) ("When a case is appealed, the public-access status of the records in the case remains as it was in the trial court while the case is on appeal absent further order."); V.R.A.P. 25(a)(4). The sole issue presented to this Court on appeal was whether the State may disclose the substance of the proffer. The parties moved to file their appellate briefs confidentially. They explained that the briefs refer or cite directly to the proffer transcripts and argued that, pursuant to the criminal division's order, the proffer is nonpublic pending this appeal. We granted the parties' motion.

On March 7, 2022, this Court issued an order to show cause why oral argument should be closed to the public. Defendant argued that oral argument should be closed because the argument was highly likely to require a discussion of the contents of the proffer. He explained that, should oral argument be public, the substance of the proffer would be disclosed, undermining the question presented to this Court and the criminal division's order prohibiting disclosure of the contents of the proffer pending this Court's decision on appeal. The State took no position. We agreed with defendant that a public oral argument could irreversibly contravene the interests sought to be protected in this appeal and potentially violate the criminal division's order sealing the transcript, and ordered oral argument be closed to the public pursuant to Vermont Rule of Appellate Procedure 34(j). In that order, we also explained that the recording of oral argument would not be publicly available but qualified that the public-access status of the recording could change after the opinion issued. Closed oral argument took place on March 23, 2022.

On May 6, 2022, this Court issued its opinion in this case. See State v. George, 2022 VT 21. We concluded that the trial court abused its discretion when it failed to consider the potential danger disclosure of the contents of the proffer poses to defendant and his wife and remanded for the trial court to consider this argument in the first instance. That opinion is public because it does not disclose the contents of the proffer bar specific excerpts of the proffer transcripts containing

conversations unrelated to the events surrounding defendant's underlying criminal charges. See *id.* ¶ 1 n.1. In the opinion, we explained that the Court would issue entry order(s) regarding the public-access status of the parties' appellate briefs and the recording of oral argument. *Id.* As a result, we now clarify the status of the Court's orders allowing the appellate briefs to be filed confidentially and closing oral argument to the public.

Consistent with our opinion in *State v. George*, 2022 VT 21, this Court will make a redacted recording of the oral argument in this case publicly available on the judiciary website. See V.R.A.P. 34(j); V.R.P.A.C.R. 6(b)(17) (exempting recordings of nonpublic proceedings from public access rules). The redacted recording removes any reference to the contents of the proffer beyond that which has already been revealed in the criminal division's public order below and specific excerpts of the proffer transcript unrelated to the events underlying defendant's criminal charges.

Reviewing the briefing in light of this Court's decision, only discrete portions reference the contents of the proffer beyond what is already in public documents, and it is therefore appropriate to make redacted versions of the briefing available to the public. See V.R.P.A.C.R. 9(a)(1); see also Reporter's Notes, V.R.P.A.C.R. 9 (explaining preference for redaction over wholesale sealing where possible). By May 20, 2022, the parties are instructed to stipulate to and file redacted versions of the briefing as confidential documents for this Court's review. Should the parties be unable to agree, they should separately file redacted versions of their respective brief(s) for the Court's review. In either situation, the Court will then make the approved redacted briefs publicly available.

The Court will maintain the unredacted versions of the briefing and recording of oral argument under seal. Access to the unredacted briefs will be available by motion only, pursuant to Public Access Rule 9(c). The transcript of the proffer session filed confidentially with this Court shall remain sealed consistent with the criminal division's order. See V.R.P.A.C.R. 6(i). The Court may further change the public-access status of the unredacted appellate briefs and recording of oral argument based on the criminal division's determinations on remand.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice