ADVANCE SHEET HEADNOTE
March 3, 2025

2025 CO 11

No. 24SA234, *In re People v. Silva-Jaquez*—Discovery—Inherent Authority—Postconviction Proceedings—*People v. Kilgore*, 2020 CO 6, 455 P.3d 746—*People v. Owens*, 2014 CO 58M, 330 P.3d 1027—Crim. P. 35(c) —C.A.R. 21.

The supreme court holds that a trial court may not rely on its inherent authority to order discovery in a postconviction proceeding. In Colorado, a trial court has no freestanding authority to order discovery in a criminal case beyond what is authorized by a constitutional provision, statute, or rule. When, as here, no constitutional provision, statute, or rule authorizes discovery, a trial court errs in ordering discovery. Because the postconviction court here improperly relied on its inherent authority to compel certain expert disclosures from the defense, it erred. Accordingly, the supreme court makes absolute the order to show cause, and remands the matter for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 11

Supreme Court Case No. 24SA234
Original Proceeding Pursuant to C.A.R. 21
Adams County District Court Case No. 12CR3445
Honorable Stephen Enderlin Howard, Senior Judge

In Re
Plaintiff:

The People of the State of Colorado,

v.

Defendant:

Roberto C. Silva-Jaquez.

Order Made Absolute
en banc
March 3, 2025

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JUSTICE SAMOUR delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 A trial court enjoys ample discretion as it fills its case-management canvas. *People v. Kilgore*, 2020 CO 6, ¶ 1, 455 P.3d 746, 747. But that discretion is not unfettered and does not permit coloring outside certain lines. *Id.*

¶2 Roberto C. Silva-Jaquez petitions this court, pursuant to C.A.R. 21, for relief from the district court's postconviction order (the "discovery order") directing him to make certain disclosures to the prosecution regarding an expert witness he endorsed in connection with a Crim. P. 35(c) ineffective assistance of counsel claim (the "disclosures"). Although the postconviction court acknowledged its lack of authority under Crim. P. 16 to order discovery in a postconviction proceeding, it nonetheless believed that it could rely on its "inherent authority to manage its cases" to order Silva-Jaquez to provide discovery consistent with, and modeled after, that same rule.

¶3 We now hold that a trial court may not rely on its inherent authority to order discovery in a postconviction proceeding. In Colorado, a trial court has no freestanding authority to order discovery absent authorization by a constitutional provision, statute, or rule. Thus, we make absolute the order to show cause and remand the case to the postconviction court for further proceedings consistent with this opinion.

I. Facts and Procedural History

¶4 In 2014, following a jury trial, Silva-Jaquez was convicted of two counts of first degree murder, two counts of attempted first degree murder, and one count of second degree assault with a deadly weapon. A division of the court of appeals affirmed his convictions.

¶5 Thereafter, Silva-Jaquez filed a pro se Crim. P. 35(c) motion seeking postconviction relief. The postconviction court appointed alternate defense counsel, who supplemented the motion. The supplemented motion alleged, generally, that Silva-Jaquez's trial counsel failed to provide effective assistance.

¶6 After the parties briefed the supplemented motion, the postconviction court set the matter for an evidentiary hearing. Before the hearing, the prosecution filed a request to compel disclosures related to the defense's expert witness. Silva-Jaquez objected.

¶7 The postconviction court granted the prosecution's request in a written order. In its analysis, the court relied largely on *People v. Owens*, 2014 CO 58M, ¶ 16, 330 P.3d 1027, 1032, where we stated in passing that, in order to avoid surprise and any resulting delay at a postconviction evidentiary hearing, trial courts possess "the inherent authority to manage their dockets through scheduling orders" addressing the endorsement of witnesses and other timely disclosures. The postconviction court acknowledged that *Owens* dealt specifically with the

prosecution's discovery obligations in a postconviction proceeding and was not necessarily dispositive, but it nevertheless ruled that the above-referenced observation applied more generally and supported the prosecution's request to compel. Thus, the court found that it could require postconviction discovery pursuant to its inherent case-management authority.

¶8 Beyond the aforementioned comment from *Owens*, the postconviction court leaned on the purpose behind Crim. P. 16(II)(b), which, subject to constitutional limitations, permits trial courts to require defendants to make pretrial expert disclosures "to allow the prosecution sufficient meaningful information to conduct effective cross-examination under CRE 705." Crim. P. 16(II)(b)(2). In the court's view, this goal applies with equal force in postconviction proceedings.

¶9 After a status hearing, the court issued another order clarifying its ruling. The court conceded that, by its own terms, Crim. P. 16 is inapplicable in the postconviction context. But it reiterated that a court's inherent authority, along with the rationale for discretionary pretrial disclosures regarding defense experts under Crim. P. 16(II)(b), justified the discovery order:

> As noted in the *Owens* case, the court has the inherent authority to manage its cases through scheduling orders requiring the endorsement of witnesses and other timely disclosures, as deemed necessary to avoid delay-causing surprise at evidentiary hearings on post-conviction claims. To that end, the court has ordered the defense to provide expert disclosures consistent with the discretionary disclosure provisions of Crim. P. 16, Part II(b). . . . The court recognizes that Rule 16 does not, by its terms, apply to post-

> conviction proceedings but concludes, as noted above, that it has authority to order disclosures consistent with the provisions of Rule 16, Part II(b).

¶10 Silva-Jaquez sought our intervention pursuant to C.A.R. 21, and we issued an order to show cause.[1] We now explain why the exercise of our original jurisdiction is warranted.

II. Jurisdiction Under C.A.R. 21

¶11 "The exercise of our original jurisdiction under C.A.R. 21 rests within our sole discretion." *People v. Tafoya*, 2019 CO 13, ¶ 13, 434 P.3d 1193, 1195. An original proceeding pursuant to C.A.R. 21 is "an extraordinary remedy that is limited in both purpose and availability." *Kilgore*, ¶ 8, 455 P.3d at 748 (quoting *People in Int. of T.T.*, 2019 CO 54, ¶ 16, 442 P.3d 851, 855–56). We have exercised our original jurisdiction before "when an appellate remedy would be inadequate, when a party may otherwise suffer irreparable harm, and when a petition raises 'issues of significant public importance that we have not yet considered.'" *Id.* (citations omitted) (quoting *Wesp v. Everson*, 33 P.3d 191, 194 (Colo. 2001)).

¶12 Silva-Jaquez contends that relief under C.A.R. 21 is appropriate because (1) he is facing irreparable harm and no other appellate remedy is adequate, (2) the

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[1] Here's the sole issue raised in Silva-Jaquez's petition:

> 1. Did the Adams County District Court err in ordering the defense to provide discovery disclosures mirroring those required by Crim. P. 16 in a postconviction proceeding?

issue he raises is one of first impression, and (3) our resolution of the parties' dispute is of significant public importance. We agree on all three scores.

¶13 First, Silva-Jaquez possesses no other adequate appellate remedy to avert irreparable harm because, as the saying goes, you can't put the genie back in the bottle. That is, once Silva-Jaquez complies with the discovery order, his disclosures cannot be unseen, unheard, or unknown, and he cannot be returned to his original position. Of particular concern, a portion of the disclosures is allegedly protected by the attorney-client and work-product privileges.

¶14 Immediate review is appropriate where, as here, "the damage that could result from disclosure would occur regardless of the ultimate outcome of an appeal from a final judgment." *Kilgore*, ¶ 11, 455 P.3d at 749 (quoting *Ortega v. Colo. Permanente Med. Grp., P.C.*, 265 P.3d 444, 447 (Colo. 2011)). We have recognized that discovery orders implicating issues of privilege can cause irreparable harm. *Id.*; *Hoffman v. Brookfield Republic, Inc.*, 87 P.3d 858, 861 (Colo. 2004).

¶15 Second, this issue is one of first impression. As Silva-Jaquez notes in his petition, this court has considered issues relating to a defendant's discovery obligations in *pretrial* proceedings but has not yet passed judgment on whether a defendant has any discovery obligations in *postconviction* proceedings.

¶16 Third, Silva-Jaquez's petition raises a matter of significant public importance. Trial courts handling criminal dockets throughout the state regularly hold postconviction proceedings. According to Silva-Jaquez, it is not uncommon for the prosecution to request discovery in those proceedings. And, asserts Silva-Jaquez, there is no uniformity in how trial courts are currently resolving such requests.

¶17 Having explained our decision to accept Silva-Jaquez's C.A.R. 21 petition, we are ready to address the merits of the contentions advanced by the postconviction court and the parties. Before we set sail, however, we consider the standard of review that guides our voyage.

III. Standard of Review

¶18 Typically, discovery orders in criminal cases are reviewed for an abuse of discretion. *People in Int. of E.G.*, 2016 CO 19, ¶ 6, 368 P.3d 946, 948. The question we are faced with today, however, is a legal one: Whether the postconviction court improperly relied on its inherent authority in ordering Silva-Jaquez to provide discovery mirroring that permitted by Crim. P. 16(II)(b). *See Kilgore*, ¶ 13, 455 P.3d at 749. Thus, our review is de novo. *Id.* With that matter settled, we cast off.

IV. Analysis

¶19 "'The right of discovery in criminal cases is not recognized at common law,'" and thus, "district courts have 'no freestanding authority to grant criminal

discovery beyond what is authorized by the Constitution, the rules, or by statute.'" *Id.* at ¶ 15, 455 P.3d at 749 (quoting *E.G.*, ¶¶ 11, 13, 368 P.3d at 949–50). Accordingly, we must look to these three (and only these three) sources to determine whether any of them authorizes the discovery order. We take up each source in turn.

¶20 Neither the postconviction court nor the prosecution contends that the disclosures were authorized by a constitutional provision. Rightly so. After all, "it is well established that '[t]here is no general constitutional right to discovery in a criminal case.'" *E.G.*, ¶ 23, 368 P.3d at 952 (alteration in original) (quoting *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977)). And while a *defendant's* constitutional rights may nevertheless require *the prosecution* to disclose certain information in a postconviction proceeding, *see Owens*, ¶ 2, 330 P.3d at 1029 (explaining in a unitary postconviction review of a death penalty case that due process required the prosecution to disclose material information favorable to the defense), in this postconviction proceeding, we deal with information *a defendant* was ordered to disclose.

¶21 Likewise, neither the postconviction court nor the prosecution cites any statute that could have supported the disclosures. And we're aware of no such statute.[2] Thus, we do not linger on this possible source of authority.

¶22 Finally, the postconviction court and the prosecution agree that no rule of criminal procedure *expressly* authorized the disclosures.[3] Here, again, we are on the same page. Still, the rules warrant a more detailed discussion because both the postconviction court and the prosecution draw guidance from them.

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[2] Section 18-1-410, C.R.S. (2024), which addresses postconviction remedies, does not provide for discovery.

[3] The prosecution argues that Crim. P. 57(b) *impliedly* authorized the disclosures. That rule states that:

> If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these Rules of Criminal Procedure or with any directive of the Supreme Court regarding the conduct of formal judicial proceedings in the criminal courts, and shall look to the Rules of Civil Procedure and to the applicable law if no Rule of Criminal Procedure exists.

Id. However, the prosecution did not advance this contention below, so it is not properly before us. *See Lambdin v. Dist. Ct.*, 903 P.2d 1126, 1132 (Colo. 1995) (refusing, in an original proceeding, to address arguments not presented to the trial court). Besides, we have never interpreted Crim. P. 57(b) as permitting discovery when there is no constitutional provision, statute, or rule expressly authorizing it. Were we to read Crim. P. 57(b) as the prosecution proposes, it would risk eviscerating the parameters currently in place regarding discovery in criminal cases in Colorado. What's more, the approach championed by the prosecution would foster disparate discovery practices throughout the state—and not just in postconviction proceedings.

¶23 The first logical port of call is Crim. P. 16, "Discovery and Procedure Before Trial," which controls discovery in criminal cases. *Kilgore*, ¶ 16, 455 P.3d at 750. But Crim. P. 16 is altogether inapplicable here because, as its title reflects, it authorizes and outlines discovery *before or during* trial. Indeed, we have confirmed that "the requirements of Crim. P. 16 have not been extended beyond the facial applicability of that rule to information and material acquired prior to and during trial." *Owens*, ¶ 22, 330 P.3d at 1034. The postconviction court realized as much. While it modeled the discovery order after Crim. P. 16, it correctly acknowledged that the rule had no application here. *Cf. Kilgore*, ¶ 26, 455 P.3d at 751 (cautioning that a trial court's "inherent discretion to manage cases" may not "expand the contours" of Crim. P. 16).

¶24 Crim. P. 35 is the next intermediate port on our itinerary. This rule, which controls procedures in the postconviction context, affords no safe harbor for the discovery order either. As the prosecution admits, Crim. P. 35 nowhere mentions discovery. Since Crim. P. 35 does not grant authority to order discovery in postconviction proceedings, it cannot sanction the disclosures.

¶25 There are no other ports for us to explore. That is, we are aware of no other relevant rule, and the postconviction court and the prosecution have been unable to dredge one up.

¶26 The rules' silence on postconviction discovery is deafening. Such silence creates a limitation, not an opportunity. *See Kilgore*, ¶ 26, 455 P.3d at 751 ("Thus, an omission from Rule 16 signifies something a district court *lacks* authority to order, not something it *has* authority to order.").

¶27 Despite the lack of constitutional, statutory, or rule-based authority for postconviction discovery, the court nevertheless ordered the disclosures based on its inherent authority. And that brings us to the question front and center here: Does a postconviction court possess inherent authority to grant the prosecution's request for discovery? The answer is a simple "no."

¶28 Of course, a trial court has inherent authority to carry out its duties, including as reasonably required to allow it to efficiently perform its judicial functions; to protect its dignity, independence, and integrity; and to effectuate its lawful actions. *Laleh v. Johnson*, 2017 CO 93, ¶ 21, 403 P.3d 207, 211–12 (relying on *Pena v. Dist. Ct.*, 681 P.2d 953, 956 (Colo. 1984)). "These powers are inherent in the sense that they exist because the court exists; the court *is*, therefore it has the powers reasonably required to act as an efficient court." *Id.*, 403 P.3d at 212 (quoting *Pena*, 681 P.2d at 956).

¶29 But inherent powers are not unlimited, and a trial court must proceed "cautiously" when invoking them. *Id.* (quoting *Pena*, 681 P.2d at 957). "Because of their very potency, inherent powers must be exercised with restraint and

discretion." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). Certainly, in no instance may a trial court exercise its inherent authority to contradict statutes or court rules. *People v. Justice*, 2023 CO 9, ¶ 40, 524 P.3d 1178, 1186; *see also Carlisle v. United States*, 517 U.S. 416, 426 (1996) ("Whatever the scope of this 'inherent power,' . . . it does not include the power to develop rules that circumvent or conflict with the Federal Rules of Criminal Procedure.").

¶30 Importantly, although we have endorsed a trial court's invocation of its inherent authority based on a wide range of rationales—from determining and compelling the payment of funds reasonably necessary to discharge its responsibilities, *see Smith v. Miller*, 384 P.2d 738, 741–42 (Colo. 1963), to setting pretrial deadlines, *see People v. Jasper*, 17 P.3d 807, 815 (Colo. 2001)—we have never done so unless it is "necessary for its proper functioning." *Pena*, 681 P.2d at 957. Compelling expert disclosures (particularly from a defendant) in the context of a postconviction proceeding is simply not the sort of function necessary for the effective operation of a court. Thus, in addition to failing to comport with our longstanding jurisprudence on the availability of criminal discovery, the postconviction court's invocation of its inherent authority lacked the necessary function-related foundation.

¶31 In fairness, the postconviction court is not the first trial court to improperly rely on its inherent authority to support a pretrial order. By our count, this is the

third time in the last five years that we disavow a trial court's exercise of its inherent authority.

¶32 In 2020, in *Kilgore*, we rejected the prosecution's contention that the trial court's inherent authority to manage cases supported an order requiring the defendant to disclose his exhibits before trial. ¶¶ 25–26, 455 P.3d at 751. Two terms ago, in *Justice*, the shoe was on the other foot: It was the defendant urging us to uphold an order predicated on the trial court's inherent authority. ¶ 41, 524 P.3d at 1186. We reversed, concluding that, whatever a trial court's inherent authority in a criminal case, it did not include ordering compulsory mediation. *Id.* We reasoned that such authority could not contravene the statutes granting sole discretion to the prosecution over plea bargaining. *Id.*

¶33 Here, the postconviction court justified the exercise of its inherent authority with a comment we made in *Owens*, ¶ 16, 330 P.3d at 1032. We said there that "it is undisputed that district courts have the inherent authority to manage their dockets through scheduling orders requiring the endorsement of witnesses and other timely disclosures, as they deem necessary to avoid delay-causing surprise at evidentiary hearings on post-conviction claims, just as at criminal trials." *Id.* For several reasons, we are not persuaded that this statement can bear the extreme weight the postconviction court rested on its slender shoulders.

¶34 For starters, the remark in question is *obiter dictum* (Latin for "something said in passing"), i.e., "[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive)." *Dictum*, Black's Law Dictionary (12th ed. 2024) (defining "obiter dictum"). Colorfully characterized in 1617 by Sir Francis Bacon as the "vapours and fumes of law," Francis Bacon, *The Lord Keeper's Speech in the Exchequer*, *in* 2 *The Works of Francis Bacon* 478 (Basil Montagu ed., 1887), dictum has been recognized for centuries as nonbinding. *See, e.g.*, *Carroll v. Lessee of Carroll*, 57 U.S. (16 How.) 275, 287 (1853) ("[T]his court . . . has never held itself bound by any part of an opinion, in any case, which was not needful to the ascertainment of the right or title in question between the parties."). Our passing reference to a trial court's inherent authority in *Owens* is textbook dictum. Inherent authority played no part in our ultimate holding. Rather, we determined that Owens's constitutional right to due process required the prosecution to disclose constitutionally material information favorable to him. *Owens*, ¶ 23, 330 P.3d at 1034.

¶35 *Owens* is also distinguishable. There, it was the *defense* seeking information in the possession of the prosecution. Here, it's the *prosecution* seeking information in the possession of the defense. Of course, the prosecution doesn't have the

constitutional rights a criminal defendant enjoys. In fact, the prosecution does not (and cannot) cite any constitutional provision in support of the discovery order.

¶36 Further, *Owens* involved a postconviction motion filed in a death penalty unitary proceeding. *Id.* at ¶ 1, 330 P.3d at 1028–29. The unique circumstances of death penalty litigation are plainly not present here.

¶37 In any event, the excerpt in *Owens* to which the postconviction court anchored its ruling was an unremarkable observation: A trial court may issue scheduling orders pursuant to its inherent case-management authority. In support, we cited *Jasper*, 17 P.3d at 812. *Owens*, ¶ 16, 330 P.3d at 1032. There, we noted that "the setting of deadlines for pretrial matters constitutes an integral part of a trial court's case management authority." *Jasper*, 17 P.3d at 812. We wholeheartedly stand by that proposition today, just as we did in *Owens*, but it falls woefully short of permitting the discovery order.

¶38 True, in *Owens*, we didn't simply refer to "scheduling orders"; we referred to "scheduling orders requiring the endorsement of witnesses and other timely disclosures." ¶ 16, 330 P.3d at 1032. But we meant nothing more than orders setting timeframes for disclosures that are already authorized by a constitutional provision, statute, or rule. The postconviction court, instead, thought we meant orders requiring disclosures not otherwise authorized. Hence, the postconviction court misunderstood the passage in *Owens* to which it moored its decision.

¶39 We now reaffirm that a trial court may not rely on its inherent authority to order discovery in a postconviction proceeding. Rather, a court's authority to order discovery *must* be rooted in a constitutional provision, statute, or rule. *Kilgore*, ¶ 15, 455 P.3d at 749 (relying on *E.G.*, ¶ 13, 368 P.3d at 950).

¶40 Still, the postconviction court urges that, since Crim. P. 35(c) contemplates the introduction of new evidence without providing guidelines for the management of discovery, trial courts must necessarily possess the inherent power to manage discovery, including by compelling expert disclosures. The postconviction court and the prosecution further contend that such power would vindicate the court's truth-finding function and promote judicial efficiency by eliminating surprise. We are unmoved.

¶41 As a preliminary matter, the fact that Crim. P. 35(c) is silent on discovery does not reinforce the discovery order; it undermines it. As a division of the court of appeals recently pointed out, had our court "intended to allow such discovery in connection with a Crim. P. 35(c) motion, it easily could have said so. It did not." *People v. Thompson*, 2020 COA 117, ¶ 32, 485 P.3d 566, 572; *see also Kilgore*, ¶ 26, 455 P.3d at 751 (explaining, in the context of Crim. P. 16, that the absence of a provision authorizing a particular pretrial disclosure didn't mean the district court was free to order it; rather, it signified a restriction on what the court could order).

¶42 Moreover, the practical consequences of having no discovery in a postconviction proceeding do not register on our concern barometer. Before a postconviction court may hold an evidentiary hearing, the defense must first show that the claim has colorable merit. *See, e.g.*, *People v. Segura*, 2024 CO 70, ¶¶ 7, 26 n.8, 558 P.3d 234, 237, 240 n.8; Crim. P. 35(c)(3)(V) (stating that a postconviction court may dispose of a Crim. P. 35(c) claim without a hearing if appropriate, and that if the court holds a hearing, it must take only that evidence necessary to dispose of the motion). Consequently, prior to any postconviction evidentiary hearing, the prosecution will necessarily have advance notice of the contentions supporting the claim. There is little risk of surprise.

¶43 At any rate, in the unlikely event the prosecution is genuinely surprised at a postconviction evidentiary hearing, it may ask the court to pause the proceedings for a reasonable period of time. As the postconviction court recognized, if a "defense expert [were] to testify to matters that the prosecution was surprised by, the court, in the interests of justice, [could] continue the hearing to allow the prosecution time to reasonably respond." Nobody disputes that a postconviction court has the inherent authority to take this type of action.

¶44 We are not unsympathetic to the postconviction court's efforts to avoid potential delay. But asking us to bless the discovery order based on that court's inherent authority seems a bit like asking Pandora to open her box. Disregarding

the legal boundaries of discovery in criminal cases in the name of expediency via a trial court's inherent authority at once invites chaos and undermines the Judicial Branch's interest in the uniform administration of justice. *Cf. Dietz v. Bouldin*, 579 U.S. 40, 48 (2016) ("Because the exercise of an inherent power in the interest of promoting efficiency may risk undermining other vital interests related to the fair administration of justice, a district court's inherent powers must be exercised with restraint."). If discovery were left to the unguided and rudderless exercise of a trial court's inherent authority, what mechanism would we employ to ensure that defendants seeking postconviction relief are treated equally in different judicial districts or even among different judges within the same judicial district?

¶45 This is to say nothing of the discovery litigation that would ensue as a matter of course in many postconviction proceedings. Hearings would abound, not only on the entitlement to discovery in the first instance, but on its proper scope as well, vitiating the very virtue—expediency—that the postconviction court sought to redeem. We decline to follow the prosecution into such uncharted waters.

V. Conclusion

¶46 In sum, trial courts have no freestanding authority to order discovery in criminal proceedings; such authority must stem from a constitutional provision, statute, or rule. When, as here, those sources do not provide for discovery, their silence is a limitation that may not be circumvented through a trial court's inherent

authority. Because the postconviction court relied on its inherent authority in requiring the disclosures, it erred. Accordingly, we make absolute the order to show cause and remand the case to the postconviction court for further proceedings consistent with this opinion.