

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE, *ex rel.* THE CINCINNATI
ENQUIRER, a Division of Gannett
Satellite Information Network, Inc.

Case No. 2011-1643

Petitioner,

vs.

HONORABLE NADINE ALLEN, Judge
Hamilton County Court of Common Pleas

Respondent.

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

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Memorandum in Opposition to Motion to Dismiss

I. INTRODUCTION

This is the second motion to dismiss filed on behalf of the respondent Judge Nadine Allen (“Judge Allen”). Her first motion, which contends that relator, The Cincinnati Enquirer (“The Enquirer”) is not “aggrieved,” is still pending. This motion contends that the case is moot. Despite Judge Allen’s best efforts to avoid addressing the substance of this case – her utter disregard for the Constitution and the Rules of Superintendence – this motion should be denied. The action, which is capable of repetition free from meaningful review, is not moot.

II. FACTS

The underlying facts are not in serious dispute. On August 25, 2011, in the case of *State v. Morris*, Judge Allen issued a blanket order sealing all records in the case.¹ Judge Allen’s order caused any reference to the case to disappear from the electronic docket of the Hamilton County Common Pleas Court. Judge Allen issued the order despite not hearing any evidence as to the need for the order, nor did she make any effort to consider less restrictive means to the blanket order.²

On September 30, 2011, Judge Allen presided over a hearing in which she stated on the record that on August 25 she had considered evidence from the victim’s attorney establishing that the blanket sealing order was appropriate.³ Virtually every word the judge uttered at the September 30 session was contradicted by the August 25 transcript. Nonetheless, Judge Allen ordered that records filed before August 25 would be open to public inspection, but the victim’s

¹ See transcript of August 25 proceedings, attached as Exhibit A.

² *Id.*

³ See transcript of September 30 proceedings, attached as Exhibit B.

name would be redacted.⁴ The judge ordered, however, that all records filed after August 25 would remain sealed in their entirety.⁵

Finally, on October 26, Judge Allen issued an order unsealing the records. While Judge Allen's decision is welcome, the October 26 entry is equal parts delusion and revisionist history. The entry states that at the August 25, 2011 hearing, the court found "clear and convincing evidence that the presumption of allowing public access was outweighed by a higher interest." But in fact, **no** evidence was presented on that point at the August 25 hearing. The October 26 entry goes on to say that "[t]he Court, based on information provided by the parties, now finds that the presumption of allowing public access is no longer outweighed by a higher interest." Of course, Judge Allen never says what "information" was actually "provided by the parties." And there is no record of any such information being provided. Moreover, given that there was never any "higher interest" in sealing the records in the first place, it is simply inaccurate to state that the presumption of public access is **no longer** outweighed.

III. ARGUMENT

A. THE ENTRY UNSEALING RECORDS DOES NOT RENDER THE MANDAMUS ACTION MOOT.

This court has recognized that: "[A] claim is not moot if it is capable of repetition, yet evading review." *State ex rel. Dispatch Printing Co. v. Geer*, 114 Ohio St.3d 511, 2007-Ohio-4643, 873 N.E.2d 314, ¶ 10. This exception 'applies only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that

⁴ *Id.*

⁵ *Id.*

the same complaining party will be subject to the same action again.’ *State ex rel. Calvary v. Upper Arlington* (2000), 89 Ohio St.3d 229, 231, 727 N.E.2d 1182.”⁶

This court has recognized that the concept of “capable of repetition” applies particularly to courtroom closure cases. As this court noted in the *Heath* case:

“We have recognized that ‘[c]ourtroom closure cases often evade review, since a closure order usually expires before an appellate court can consider it.’ *State ex rel. Beacon Journal Publishing Co. v. Donaldson* (1992), 63 Ohio St.3d 173, 175, 586 N.E.2d 101. ... [T]he United States Supreme Court had held that similar orders refusing the release of a transcript of a preliminary hearing in a criminal case are not rendered moot by the subsequent release of the transcript, because ‘[i]t can reasonably be assumed that [members of the news media] will be subjected to a similar closure order and, because criminal proceedings are typically of short duration, such an order will likely evade review.’ *Press-Ent. Co. v. Superior Court of California for Riverside Cty.* (1986), 478 U.S. 1, 6, 106 S.Ct. 2735, 92 L.Ed.2d 1; see also *Gannett Co., Inc. v. DePasquale* (1979), 443 U.S. 368, 377, 99 S.Ct. 2898, 61 L.Ed.2d 608 (newspaper owner’s subsequent access to transcript of suppression hearing that was previously closed did not render action challenging order moot, because “to the extent the order has the effect of denying access to the transcript, termination of the underlying criminal proceeding * * * nearly always will lead to a lifting of the order before appellate review is completed”).”⁷

This case presents a scenario that demonstrates why the “capable of repetition” doctrine applies. The record discloses beyond question that Judge Allen imposed a blanket sealing order without complying in any way with the Ohio Rules of Superintendence or the Constitution. When challenged initially on this, Judge Allen defiantly kept the order in place. Only when

⁶ *State ex rel. Cincinnati Enquirer v. Heath*, 121 Ohio St.3d 165, 2009–Ohio–590, ¶ 11.

⁷ *Id.* at ¶¶ 12, 13.

her unstated ends were served did she unseal the records. And the entry she filed unsealing the records completely misstates the record. If this mandamus action is dismissed, Judge Allen will face **no** consequences for her disregard for the law, and the only official entry will inaccurately declare that she fully complied with the law.

Given this prospect, what would stop any judge from issuing sealing orders and then simply unsealing the records when it suited the judge's purpose? As this court noted in *Heath*, the typical criminal case concludes before a mandamus action can be litigated. Thus, absent a pronouncement from this court, Judge Allen offers a blueprint for how to render the Rules of Superintendence meaningless.

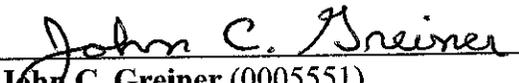
IV. CONCLUSION

This court must enforce the Rules of Superintendence and the Constitution to the fullest extent possible. Justice demands that this court not dismiss this action.

Respectfully submitted,

Of Counsel:

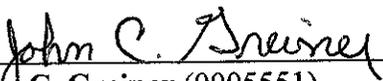
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS* was served by regular U.S. Mail, postage prepaid, this 2nd day of November, 2011, upon the following:

Christian J. Schaefer, Esq.
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, OH 45202-2174



John C. Greiner (0005551)

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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

- - -

THE STATE OF OHIO, :
Plaintiff. :

vs. :Case Number B1001826

MARTIN MORRIS, :
Defendant. :

- - -

TRANSCRIPT OF PROCEEDINGS

- - -

APPEARANCES:

Andrew Berghausen, Esq.
On behalf of the State of Ohio.

Amy Higgins, Esq.
On behalf of the Martin Morris.

Also present: Amy Schott-Ferguson, Esq.
On behalf of the victim, (name redacted).

BE IT REMEMBERED that upon the hearing
of this cause, on August 25, 2011, before the
Honorable Nadine L. Allen, a judge of the said
court, the following proceedings were had, to
wit:

1 PROCEEDINGS, August 25, 2011

2 THE COURT: I would like to start
3 with State vs. Martin Morris. This is on
4 B1001826. Counsel, state your name.

5 MS. HIGGINS: Amy Higgins for
6 Martin Morris.

7 THE COURT: Uh-huh.

8 MR. BERGHAUSEN: Andrew Berghausen
9 on behalf of the prosecutor's office.

10 THE COURT: And you want to put
11 your name on the record?

12 MS. SCHOTT-FERGUSON: Sure. Amy
13 Ferguson on behalf of (name redacted).

14 THE COURT: Okay. And so, sir, you
15 want to start with the restraining order?

16 MS. HIGGINS: No. Restricting
17 order. Your Honor, restricting public
18 access to the docket in this case for up
19 to 180 days pursuant to the Rules of
20 Superintendence 45 for good cause.

21 THE COURT: Yes. Very good. And,
22 Scott, we need to make a copy of that,
23 because you got the order and found out
24 the particulars for 180 days.

25 MS. HIGGINS: Well, Your Honor, the

1 rule actually gives you a lot more
2 flexibility than just 180 days. It
3 really doesn't put a time limit on it at
4 all, but per our discussion on Monday --

5 THE COURT: That's your agreement.

6 MS. HIGGINS: -- I think 180 days
7 should do the trick. If there is cause
8 to request a continued restriction at the
9 end of that time period, we can come back
10 in and talk to you about it again.

11 THE COURT: Yes, you can. Okay.
12 Counsel, about did you want to say
13 regarding the plea in this matter?

14 MS. HIGGINS: Your Honor, I do have
15 a signed plea agreement here between the
16 State and Martin Morris, wherein he does
17 agree to plead to two of the indicted
18 counts.

19 THE COURT: Okay. So, sir, at this
20 time you have signed off. Now, did he
21 sign this agreement?

22 MS. HIGGINS: Yes, ma'am.

23 THE COURT: Okay. Let me get the
24 last page here.

25 MS. HIGGINS: You want these two?

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THE COURT: which you have agreed to plead guilty today -- to withdraw your plea of not guilty to all the charges, first of all. You're withdrawing the plea of not guilty and you're entering pleas of guilty to Count 1, aggravated theft, a felony of the third degree; and Count 5, telecommunications fraud, a felony of the third degree.

what you're facing on each of those is a potential sentence of one or two or three -- count to five, one to five years on each. There is a possible fine of \$10,000 on each, so the maximum that you could possibly get from this Court is ten years and a \$20,000 fine as a possible worst case scenario.

So, is this your signature giving up your right to have a not guilty plea and enter pleas of guilty on those two counts?

THE DEFENDANT: Yes, it is.

THE COURT: And this is your signature giving up your right to have a trial by jury?

1 THE DEFENDANT: Yes, it is.

2 THE COURT: And also there is a
3 plea agreement that the parties entered
4 into, and I'm sure there will be more
5 stated about this. That you have agreed
6 to this plea agreement, and you are --
7 this is your signature to the plea
8 agreement you signed?

9 THE DEFENDANT: Yes, it is.

10 THE COURT: And who else -- affirm
11 your signature?

12 MS. HIGGINS: That is my signature,
13 Your Honor. Amy Higgins, counsel for
14 defendant.

15 MR. BERGHAUSEN: It is my
16 signature, Your Honor, Andrew Berghausen
17 on behalf of the State.

18 THE COURT: Well, there is one
19 thing I'll mention about it, is that the
20 State is going to dismiss counts 2, 3, 4,
21 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the
22 indictment. You know, at this point
23 we're going to be getting into the facts,
24 I'm going to explain to you what guilty
25 means. It does mean that you're

1 admitting that the facts are true on the
2 two counts you're pleading guilty on, and
3 there is nothing to dispute. There is no
4 reason to have a trial and that you'll be
5 found guilty based on your plea.

6 But there is two reasons that it
7 won't happen. One is you don't
8 understand. If you don't understand what
9 post-release control means, and I have to
10 explain that to you, or if you hear your
11 seven constitutional rights, you have to
12 waive every one of them individually and
13 you could withdraw your plea. You're not
14 stuck with the guilty plea. I haven't
15 found you guilty yet, so you can withdraw
16 your plea. But you would then be facing
17 all the charges if this plea unravels,
18 that's what you do need to know.

19 Let's hear the facts. Are the
20 facts going to be what's in here or are
21 you going to read something specific?

22 MR. BERGHAUSEN: Your Honor, the
23 facts are not in the plea agreement. I
24 will provide the Court with a statement

25 --

1 THE COURT: Okay.

2 MR. BERGHAUSEN: -- of the charges
3 and the facts to which Mr. Morris will be
4 entering a plea of guilty today.

5 THE COURT: Read the facts on the
6 charges he's pleading to.

7 MR. BERGHAUSEN: Count 1 of the
8 indictment charges that Martin Morris
9 from the 1st day of December 2003 to the
10 25th day of May, 2005, in Hamilton
11 County, in the State of Ohio, with
12 purpose to deprive the owner of certain
13 property or services worth \$100,000 or
14 more, to wit: United States currency
15 and/or securities belonging to (name
16 redacted), knowingly obtained or exerted
17 control over the property or services
18 without consent of the owner or person
19 authorized to give consent, in violation
20 of section 2913.02(A)(1) of the Ohio
21 Revised Code, charging aggravated theft,
22 a felony offense of the third degree.

23 Count 5 of the indictment charges
24 that Martin Morris from the 1st day of
25 December, 2003 to the 25th day of May,

1 2005, in Hamilton County, in the State of
2 Ohio, having devised a scheme to defraud,
3 knowingly disseminated, transmitted or
4 caused to be disseminated or transmitted
5 by means of a wire, radio, satellite,
6 telecommunication, telecommunications
7 device or telecommunications service any
8 writing, data, sign, signal, picture,
9 sound or image, to wit: Scott Trade
10 Distribution request forms with the
11 purpose to execute or otherwise further
12 the scheme to defraud, and the value of
13 the benefit obtained by the said
14 defendant or to the detriment to the
15 victim of the fraud, in this case which
16 would be (name redacted), is \$100,000 or
17 more, in violation of Section 2913.05 of
18 the Ohio Revised Code, charging
19 telecommunications fraud, a felony
20 offense of the third degree.

21 The short version of the facts are,
22 Your Honor, that Mr. Morris began a
23 relationship with a woman named (name
24 redacted). The basis of that -- one of
25 the bases of that relationship was that

1 she entrusted him to invest money for her
2 and manage her investments. In the
3 course of doing so, Mr. Morris stole from
4 her, subject to Count 1, an amount that
5 we have fixed for purposes of the plea
6 agreement at \$400,000.

7 And, secondly, the
8 telecommunicatio n charge is based on the
9 fact that in the course of his
10 relationship with her, he made, he faxed
11 or e-mailed or transmitted by phone
12 request forms to take money out of her
13 accounts with Scott Trade, money that he
14 was stealing, in the process he used the
15 telecommunicatio n systems to do that, and
16 that would be the basis of the
17 telecommunicatio ns fraud charge.

18 Waive further reading of the facts?

19 THE COURT: Counsel, do you agree
20 with those facts?

21 MS. HIGGINS: Yes, agree with those
22 facts and waive further reading, please.

23 THE COURT: So I need to tell you a
24 couple things. One is that, first of
25 all, if you're found guilty today, you do

1 have to submit to a DNA test, which is --
2 you know what a DNA sample would be? And
3 if you refuse to do that, it's grounds
4 for arrest and punishment separately.

5 Also, I'm going to explain now what
6 post-release control means. Any prison
7 sentence you get, if you should get one,
8 you might get community control here, I
9 know we discussed a lot of things, is
10 that included in this plea agreement?

11 MR. BERGHAUSEN: It is, Your Honor.

12 THE COURT: Okay then. So there is
13 a possibility of community control. Even
14 if you do get that and violate it, then
15 you still are facing that possible prison
16 term. So any prison sentence that you do
17 get, it will be served without any
18 good-time reduction whatsoever; do you
19 understand that, sir?

20 THE DEFENDANT: I do.

21 THE COURT: And then after you are
22 released, the Parole Board might decide
23 to keep you on what used to be called
24 parole but now it's called something --
25 much more long-winded, post-release

1 control, we call that PRC. And if they
2 do that, it's either for no period of
3 time at all or for three years, so it's
4 zero or three years.

5 During that three-year period, if
6 you violate their terms, the Parole Board
7 has the power to send you back to prison
8 after you have served your entire
9 sentence that a Judge gives you and they
10 have the power to act like a Judge. You
11 won't have a jury, a trial, a lawyer or a
12 judge present. It's you and the Parole
13 Board. So they can send you back to
14 prison for nine months for each violation
15 up to half of your prison term if it's
16 repeated violations.

17 And if you commit a new felony
18 while you are on this three-year period
19 of post-release control, the Parole Board
20 can send you back to prison for either
21 twelve months or whatever years are left
22 on that PRC time, and it must be served
23 consecutively to the new felony time. So
24 what questions do you have on that?

25 THE DEFENDANT: I don't have any

1 questions.

2 THE COURT: I want to explain your
3 seven constitutional rights. Did you go
4 over these with your lawyer? Of course
5 you did, right? And I forgot to ask you
6 something I must ask everyone. Can you
7 read and write?

8 THE DEFENDANT: I can.

9 THE COURT: And are you a US
10 citizen?

11 THE DEFENDANT: Yes, I am.

12 THE COURT: And are you satisfied
13 with your lawyer's representation?

14 THE DEFENDANT: Absolutely.

15 THE COURT: Okay. Now, I'm gonna
16 explain your seven constitutional rights.
17 You have the right to a speedy trial and
18 to have your lawyer represent you
19 throughout that trial. Your right to a
20 trial by jury that you signed off on
21 means that 12 people all have to agree
22 unanimously that you're guilty of each
23 count; do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: You're giving up your

1 right to a bench trial without a jury and
2 to have a judge decide whether you're
3 guilty or not. You're giving up your
4 right to confront all your accusers on
5 all these charges, and they are subject
6 to cross-examination by your lawyer.
7 Your right to compel people to come
8 forward and testify for you by way of a
9 subpoena. The right to make the State
10 prove their case against you by proof
11 beyond a reasonable doubt. And, lastly,
12 your right to remain silent throughout
13 the trial. No one can comment on your
14 silence and it cannot be used against
15 you.

16 what questions do you have about
17 your seven constitutional rights?

18 THE DEFENDANT: No questions.

19 THE COURT: So knowing all that, do
20 you still want to go forward with your
21 plea of guilty?

22 THE DEFENDANT: Yes.

23 THE COURT: Counsel, is your client
24 proceeding today knowingly, intelligently
25 and voluntarily?

1 MS. HIGGINS: Yes, he is, Your
2 Honor.

3 THE COURT: Based upon that then
4 the findings are guilty to Counts 1 and
5 5. Did you want a presentence
6 investigation?

7 MS. HIGGINS: I believe there will
8 be a pre-sentence investigation, Your
9 Honor. I would also ask that the terms
10 of his bond be extended pending sentence.

11 THE COURT: Same bond.

12 MS. HIGGINS: Same bond, same
13 terms?

14 THE COURT: Yes. You have a date?

15 MS. HIGGINS: I do not have a date.

16 THE COURT: Get a date then today?

17 MS. HIGGINS: Yes.

18 THE COURT: And that is the end of
19 that phase of it. See you next time for
20 presentence investigation or after
21 presentence investigation.

22 MS. HIGGINS: Can we talk to the
23 probation department, how they're going
24 to proceed with that? Because if they're
25 gonna need to go interview then,

1 obviously, this is going to cause a bump
2 in the road.

3 MR. BERGHAUSEN: We can talk --

4 THE COURT: There is also --

5 MR. BERGHAUSEN: -- with them. I
6 don't --

7 THE COURT: what they do is they
8 just --

9 MR. BERGHAUSEN: I don't believe
10 based on my -- I'm sorry, Judge, I didn't
11 mean to interrupt you. Go ahead

12 THE COURT: You go ahead. You're
13 probably going to say something similar.

14 MR. BERGHAUSEN: what I was gonna
15 say, I don't believe they would. I mean
16 based on the way my knowledge of how they
17 process this --

18 MS. HIGGINS: Okay.

19 MR. BERGHAUSEN: -- basically all
20 they're gonna do is they're gonna talk to
21 (name redacted).

22 MS. HIGGINS: Uh-huh.

23 MR. BERGHAUSEN: Talk to the
24 police.

25 THE COURT: Yes.

1 MR. BERGHAUSEN: Detectives.
2 MS. HIGGINS: Uh-huh.
3 THE COURT: Yes.
4 MR. BERGHAUSEN: who were involved
5 in the case.
6 MS. HIGGINS: Uh-huh.
7 MR. BERGHAUSEN: They're going to
8 talk -- they probably will talk to you.
9 MS. HIGGINS: Uh-huh.
10 MR. BERGHAUSEN: Or you.
11 THE COURT: Yes.
12 MR. BERGHAUSEN: And talk to me.
13 MS. HIGGINS: Okay.
14 THE COURT: They only talk to
15 prosecuting witnesses --
16 MR. BERGHAUSEN: Not going to be
17 talking to --
18 THE COURT: -- ex-wives, children.
19 MS. HIGGINS: The PSIs that I was
20 involved with have all been in federal
21 court, in that case they do home visits
22 and go talk to spouses. Now I don't know
23 what a soon-to-be ex-spouse may or may
24 not --
25 THE COURT: No.

1 MS. HIGGINS: But, again, that's in
2 the federal system where I've practiced
3 mostly.

4 THE COURT: Normally we don't. It
5 would be unusual if that happened. Okay.

6 MS. HIGGINS: Okay. Very good.
7 Thank you.

8 THE COURT: We'll see you on that
9 date. Thank you all.

10 THE DEFENDANT: Thank you.

11 MS. HIGGINS: Thank you.

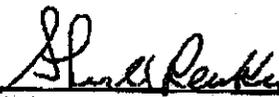
12 (Proceedings concluded.)
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CERTIFICATE

I, SHERI D. RENKEN, RMR, the undersigned, an official Court Reporter for the Hamilton County Court of Common Pleas, do hereby certify that at the same time and place stated herein, I recorded in stenotype and thereafter transcribed the within 17, and that the foregoing Transcript of Proceedings is a true, complete, and accurate transcript of my said stenotype notes.

IN WITNESS WHEREOF, I hereunto set my hand this 5th day of October, 2011.



SHERI D. RENKEN, RMR
Official Court Reporter
Court of Common Pleas
Hamilton County, Ohio

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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

- - -

THE STATE OF OHIO, :
Plaintiff. :
vs. :Case Number B1001826
MARTIN MORRIS, :
Defendant. :

- - -

TRANSCRIPT OF PROCEEDINGS

- - -

APPEARANCES:

Andrew Berghausen, Esq.
On behalf of the State of Ohio.
Amy Higgins, Esq.
On behalf of the Martin Morris.
Also present: Amy Schott-Ferguson, Esq.
On behalf of the victim, (name redacted.)

BE IT REMEMBERED that upon the hearing
of this cause, on September 30, 2011, before the
Honorable Nadine L. Allen, a judge of the said
court, the following proceedings were had, to
wit:

1 PROCEEDINGS, September 30, 2011

2 THE COURT: Are we ready to proceed

3 now on the matter of State vs. Martin

4 Morris? It's on B1001826. This matter

5 is proceeding on the Court's motion to

6 review its own August 25, 2011 order

7 sealing the entire case documents from

8 public access for a period of 180 days.

9 Appearing today is Assistant Prosecuting

10 Attorney Andy Berghausen.

11 MR. BERGHAUSEN: Yes, Your Honor.

12 THE COURT: And the attorney pro

13 bono, stressing the pro bono for the

14 victim, Mrs. Amy Schott-Ferguson.

15 MS. SCHOTT-FERGUSON: Yes, Your

16 Honor.

17 THE COURT: Amy Higgins is here for

18 the defendant, Martin Morris, by

19 teleconference. Can she hear us?

20 MS. HIGGINS: Yes.

21 THE COURT: Thank you. And she's

22 here by teleconferenc e. Also note in

23 attendance attorney for The Enquirer

24 newspaper. Is he here? Jack Greiner?

25 MR. GREINER: I'm here, Your Honor.

1 THE COURT: And also the Hamilton
2 County Clerk's Office, I think there is a
3 representative here from there, is there?

4 MR. BRENNER: I don't think so.

5 THE COURT: Well, that's regarding
6 the continued or whatever we do with the
7 sealing of this record. I'm going to
8 give counsel an opportunity to speak
9 after I make a statement that, one, the
10 public access to court records is of
11 grave importance to this Court, and Ohio
12 law favors public access to court
13 records.

14 Rule 45 of the Ohio Supreme Court
15 Rules of Superintendence establish when a
16 judge may restrict public access to
17 information or the entire document, and
18 the court may hold a hearing on that
19 motion. A court shall, under the rule --
20 I'm going to say in pertinent part what
21 it says -- a court shall restrict public
22 access to the entire case if it finds
23 that allowing public access is outweighed
24 by higher interests when factors
25 supporting restriction exist such as the

1 risk of injury to persons.

2 Now, let me correct this. Was the
3 hearing held on August 25th or 22nd?

4 MR. BRENNER: I believe it was the
5 25th. All the parties who are present
6 here were there.

7 THE COURT: Anyway, at the
8 August 25th hearing, the attorney for the
9 victim, that would be Ms. Ferguson, and
10 the defense's attorney expressed concern
11 that public disclosure of certain
12 documents would cause a risk of injury to
13 the victim. So at this time did you want
14 to speak and say anything about that?
15 Any of the parties? Ms. Ferguson?

16 MS. SCHOTT-FERGUSON: Yes, Your
17 Honor. As the attorney for the victim
18 for the past year and watching what she's
19 been through, knowing very well her
20 circumstances, I can absolutely state
21 that that decision was in the best
22 interest of protecting the victim. We
23 fully support -- in fact, we encourage
24 that decision and we are pleased that you
25 weighed the circumstances and reached the

1 conclusion that the potential harm and
2 consequence to my client outweighed the
3 public's right to view every pleading in
4 this case.

5 THE COURT: Okay. Any other
6 statements? Okay. Having considered all
7 that, this Court ordered a temporary
8 sealing of the record. I determined,
9 with the agreement of the defense
10 attorney and the attorney for the victim,
11 that the right to public access is
12 outweighed by the risk of injury to the
13 elderly victim. None of the factors
14 regarding the defendant's public
15 embarrassment or any other factor about
16 the defendant were raised or even
17 considered at that time.

18 I'm aware that this was not
19 disclosed until now, but that's why we
20 are doing so at this time. And no one
21 cares more about victims of crime than
22 this Court. So today I am going to amend
23 my order, however, so that information
24 which does not pose a risk of injury to
25 the victim shall be accessible to the

1 public. This order pertains to documents
2 issued prior to August the 22nd or 25th,
3 in that range. The victim's name shall
4 be redacted from these documents.

5 Ms. Ferguson, that is at your request; is
6 that correct?

7 MS. SCHOTT-FERGUSON: Yes, that's
8 correct, Your Honor.

9 THE COURT: Okay. Did you want to
10 say anything else about why her name
11 should be restricted?

12 MS. SCHOTT-FERGUSON: Your Honor,
13 you know, I believe it goes hand-in-hand
14 with the decision you've already reached,
15 and that is that it's for her protection,
16 and that is my job to protect my client.

17 THE COURT: And she is an elderly
18 person?

19 MS. SCHOTT-FERGUSON: That is
20 correct.

21 THE COURT: These are documents --
22 actually the other documents that will be
23 released to anyone who wants them --
24 these are documents which were already
25 made available to the public, most of

1 them. So this Court will continue to
2 review this restriction, and if it's
3 determined in the future that the
4 original reason for this restriction no
5 longer exists then I will be releasing
6 additional records at that time, and much
7 of it would depend on what you have to
8 say, Ms. Ferguson, about the injury to
9 the victim.

10 So that being said, that is -- it
11 is so ordered. That's what we're going
12 to be doing. Yes, prosecution?

13 MR. BERGHAUSEN: Your Honor.

14 THE COURT: Mr. Berghausen?

15 MR. BERGHAUSEN: I may have -- I
16 may have missed it, but in terms of the
17 documents after that date, what would be
18 the Court's position?

19 THE COURT: Those remain sealed.

20 MR. BERGHAUSEN: Okay.

21 THE COURT: Just records prior to
22 that time shall be accessible to the
23 public. As of today, we have to get them
24 to the clerk's office and redact the name
25 of the victim as best as we can from any

1 existing documents. Okay. It is so
2 ordered. Thank you.

3 MS. SCHOTT-FERGUSON: Thank you.

4 MR. BERGHAUSEN: Thank you, Your
5 Honor.

6 MS. HIGGINS: Thank you, Your
7 Honor.

8 THE COURT: Thank you. Thank you,
9 Ms. Higgins.

10 MS. HIGGINS: Thank you for
11 allowing me to be on cell phone.

12 THE COURT: And happy birthday to
13 your mother.

14 MS. HIGGINS: I'll tell her you
15 said so.

16 THE COURT: We know that's why
17 you're not here. Okay.

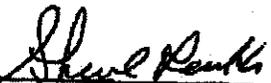
18 (Proceedings concluded.)
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CERTIFICATE

I, SHERI D. RENKEN, RMR, the undersigned, an Official Court Reporter for the Hamilton County Court of Common Pleas, do hereby certify that at the same time and place stated herein, I recorded in stenotype and thereafter transcribed the within 8, and that the foregoing Transcript of proceedings is a true, complete, and accurate transcript of my said stenotype notes.

IN WITNESS WHEREOF, I hereunto set my hand this 5th day of October, 2011.



SHERI D. RENKEN, RMR
Official Court Reporter
Court of Common Pleas
Hamilton County, Ohio