

ORIGINAL

IN THE SUPREME COURT OF OHIO

HON. MICHAEL J. SAGE, et al., : Case No. 2013-0945
 :
 Appellants/Cross-Appellees :
 :
 v. :
 :
 STATE OF OHIO ex rel. THE :
 CINCINNATI ENQUIRER, :
 :
 Appellee/Cross-Appellant. :

On Appeal from the Court of Appeals for the Twelfth District
Case No. CA2012-06-0122

APPELLANTS/CROSS-APPELLEES' MOTION FOR ORAL ARGUMENT

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**MOTION FOR ORAL ARGUMENT BY APPELLANTS/CROSS-APPELLEES HON.
MICHAEL J. SAGE, et al.**

Now come Appellants/Cross-Appellees Hon. Michael J. Sage, et al., and pursuant to S.Ct.Prac.R. 17.02, respectfully request this Court to order oral argument on the merits in the above-captioned appeal of right.

This appeal involves complex issues of law and fact, a substantial constitutional issue, and matters of great importance. This appeal is centered around a 9-1-1 dispatcher acting as an agent of a county's sheriff's office who initiated an outbound call to a residence in response to an incoming 9-1-1 hang-up call. The outbound call, which was requested by the Appellees/Cross-Appellants under the Ohio Public Records statute, was answered by a person different from who originally called 9-1-1 and who happened to confess to the dispatcher that he murdered his step-father. The characteristics of this call has been determined by the Twelfth District Court of Appeals to be a "continuation" of the 9-1-1 call, and thus a public record. However, such a determination is in contravention to both Ohio's statutory definitions of a 9-1-1 call and to this Court's definitional parameters established in *State ex. rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 1996-Ohio-214, 662 N.E.2d 334.

What further complicates this issue is that even if it is determined that the outbound call is a 9-1-1 call, the United States Supreme Court in *Davis v. Washington*, 547 U.S. 813, 126 S.Ct. 2266 (2006) has acknowledged that 9-1-1 calls can constitute a police interrogation. *Davis*, which was decided after this Court's *Hamilton County* decision, appears to eviscerate this Court's underpinnings as to why 9-1-1 calls are *per se* public records that do not contain investigatory qualities for purposes of being a public record under the Ohio Public Records Act.

Oral argument would be beneficial to address the complex issues of law and fact as to what constitutes a 9-1-1 call, whether this “continuation” theory survives logical scrutiny in law and fact, and whether this Court’s *Hamilton County* rule established 17 years ago that all 9-1-1 calls are *per se* public records should be modified in light of *Davis*, all of which has yet to be addressed by this Court. Oral argument would create an open dialogue to further address these complex issues.

Moreover, this appeal involves an important constitutional issue involving the tension between a criminal defendant’s Sixth Amendment right to a fair trial and the media’s First Amendment right of access. This Court has yet to address the balancing of these two constitutional rights in a public records dispute where it involves the interplay between the newly amended Criminal Rule of Procedure 16(C) and (D) and R.C. 149.43. As it stands now, and as Judge Piper stated in his concurrence, “neither R.C. 143.43 or the holding in [*Hamilton County*] permit room for deliberation or the weighing of competing interests.” *State ex. rel. The Cincinnati Enquirer v. Hon. Michael J. Sage, et al.*, 12th Dist. No. CA2012-06-122, 2013-Ohio-2270, ¶ 64. Yet, this inflexibility has created an undeniable and continuous tension between the prosecutor’s duty of complying with public records requests and his responsibility to ensure that the criminal defendant receives a fair trial, issues worthy of having oral argument in order to delve deeper into how this tension can truly frustrate the preservation of justice.

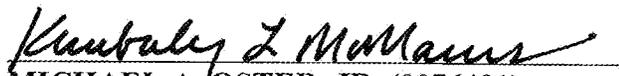
What is more, this record sought by the media contains not only statements made by the criminal defendant, but statements by the victim’s wife, thereby involving privacy concerns as well. Oral argument would be beneficial to address the above-mentioned matters as they are ones of great importance that affect not only the State, but also the media, criminal defendants, and society at large.

CONCLUSION

For the foregoing reasons, the Appellants/Cross-Appellees Hon. Michael J. Sage, et al., respectfully request this Court to grant oral argument on the merits in this case.

Respectfully submitted,

MICHAEL T. GMOSE (0002132)
Butler County Prosecuting Attorney

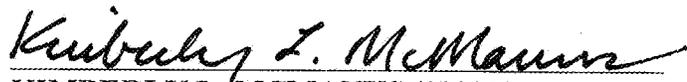

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PROOF OF SERVICE

This is to certify that a copy of the foregoing Motion for Oral Argument was served upon the following by ordinary US mail, postage prepaid, this July 26, 2013:

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