Case No. 2024-0675

Supreme Court of the State of Ohio

STATE OF OHIO *ex rel.* CRAIG A. SHUBERT,

Relator,

v.

ALISON M. BREAUX,
Judge, Summit County Common Pleas Court,

Respondent.

Original Action in Mandamus and Prohibition
State of Ohio v. Jeremiah E. Stoehr
Summit County Common Pleas Court, Case No. CR-2024-02-0419

RELATOR'S MERIT BRIEF

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INTRODUCTION

This original action for the issuance of a writ of mandamus and a writ of prohibition arises from Judge ALISON BREAUX of the Summit County Common Pleas Court issuing an order restricting and prohibiting public access to case documents in a case pending in that Court. With no evidentiary materials and no effort to comply with the mandates of Ohio Sup. R. 45(E)(2) and 45(E)(3), Judge BREAUX has failed to comply with the well-established precedent of this Court concerning trial courts restricting public access to case documents, including *State ex rel. Cincinnati Enquirer v. Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580, and *State ex rel. Cincinnati Enquirer v. Shanahan*, 166 Ohio St.3d 382, 185 N.E.3d 1089, 2022-Ohio-448.

I. STATEMENT OF FACTS

On February 7, 2024, the Summit County Grand Jury return a five-count indictment against Jeremiah Earl Stoehr, charging him with one count of rape (F1), two counts of kidnapping (F1), a count of gross sexual imposition (F3) and a count of disseminating content harmful to a juvenile (F5), thus commencing the *Underlying Criminal Case*. *Verified Supp. & Amended Complaint ¶¶8-9 & Exhibit A* (the *Indictment*).[1] The *Underlying Criminal Case* is pending in the Summit County Common Pleas Court with Case No. CR-2024-02-0419 and Judge

[1] In her affidavit, Judge BREAUX describes the *Underlying Criminal Case* as involving "five felonies and involving a minor victim under the age of 10." *Respondent's Evidence, Exhibit E* (*Breaux Affidavit ¶1*). However, a review of the *Indictment* in the *Underlying Criminal Case* indicates that Count Two specifically alleges that "the victim of the offense is eighteen years of age or older." *Verified Supp. & Amended Complaint*, *Exhibit A* (*Indictment*)*; Respondent's Evidence, Exhibit A* (*Indictment*). Concededly, though, Counts One and Four of the *Indictment* do allege the victim of those offenses as being a minor, *i.e.*, less than ten years of age and less than thirteen years of age, respectively.

ALISON BREAUX is the judge assigned to the *Underlying Criminal Case*. *Verified Supp. & Amended Complaint ¶10.*

Three months later, *i.e.*, on May 9, 2024, Judge BREAUX met in chambers with the attorney for Jeremiah Stoehr in the *Underlying Criminal Case*, with an assistant prosecuting attorney attending by telephone. *Verified Supp. & Amended Complaint ¶20 & Exhibit E* (the *Amended Order*); *Respondent's Evidence, Exhibit D* (the *Amended Order*); *see Respondent's Evidence, Exhibit E* (*Breaux Affidavit ¶1*). This in-chambers conference occurred off the record, *i.e.*, no court reporter was present transcribing the discussions. *Verified Supp. & Amended Complaint ¶21*. Generally speaking, this off-the-record discussion concerned restricting public access to the docket and filings of the *Underlying Criminal Case. Verified Supp. & Amended Complaint, Exhibit E* (the *Amended Order*); *Respondent's Evidence, Exhibit D* (the *Amended Order*); *see Respondent's Evidence, Exhibit E* (*Breaux Affidavit ¶1*).

As described by Judge BREAUX in the *Amended Order*, the following is what occurred in this off-the-record conference held in chambers on May 9, 2024:

> it was brought to the attention of the Court that threats, intimidation and confrontations had occurred against Defendant Stoehr at his residence and other establishments he frequents substantiated by police reports. Furthermore, information regarding similar acts toward counsel and his family were disclosed. The State of Ohio also voiced a concern regarding the prosecuting witness, a minor, and the potential threat of discovering the witness' identity and/or other private information. The State of Ohio did not oppose restricting access to the docket.

Verified Supp. & Amended Complaint, Exhibit E (the *Amended Order*); *Respondent's Evidence, Exhibit D* (the *Amended Order*).

Following the off-the-record conference held in chambers on May 9, 2024, counsel for Jeremiah Stoehr then filed a *Motion to Seal* at 2:02 *p.m.* on that day seeking, *inter alia*, to "seal the docket [of the *Underlying Criminal Case*] until the conclusion of the trial." *Verified Supp. &*

Amended Complaint, Exhibit B (*Motion to Seal*)*; Respondent's Evidence, Exhibit B* (*Motion to Seal*). Within the *Motion to Seal*, certain assertions of adverse conduct directed towards Jeremiah Stoehr were asserted, though no evidentiary materials, *e.g.*, affidavits, police reports, *etc.*, were tendered. Four minutes later, *i.e.*, at 2:06 *p.m.* on May 9, 2024, an *Order* signed by Judge BREAUX was filed, directing the Summit County Clerk of Courts to "remove any public access to the docket or images for the [*Underlying Criminal Case*]." *Verified Supp. & Amended Complaint, Exhibit C* (*Order*)*; Respondent's Evidence, Exhibit C* (*Order*).

On May 13, 2024, CRAIG SHUBERT commenced this original action in mandamus and prohibition challenging the legitimacy of the *Order* due to the failure of Judge BREAUX to comply with the requirements and to satisfy the legal standards of Ohio R. Sup. 45(E) before any restricted access could be ordered with respect to information in a case document or, if necessary, the entire document. *See generally Verified Complaint.*

Following the commencement of this original action, *i.e.*, on May 16, 2024, Judge BREAUX *sua sponte* issued an *Amended Order* in the *Underlying Criminal Case*. Within the *Amended Order*, Judge BREAUX directed the Summit County Clerk of Courts: (i) to remove any online public access to the docket or any case documents in the *Underlying Criminal Case*; and (ii) in a prospective and prophylactic directive, to remove all public access to the docket and to case documents in the *Underlying Criminal Case* "regarding subpoenas, summons returns, search warrants, service returns, any court filing containing information protected under Marcy's Law, and any court filing containing private information of the Defendant or other records as provided by state, federal or common law."[2]

[2] Two matters are of note with respect to what is directed by the *Amended Order*. Firstly, the *Amended Order* is internally inconsistent, initially prohibiting online public access to the docket but, then, directing the removal of all public access to the docket. Secondly, as Judge

In issuing and through the *Amended Order*, Judge BREAUX implicitly acknowledged that she failed to comply with Ohio R. Sup. 45(E) in issuing the *Order*. However, Judge BREAUX now claims that, through the *Amended Order*, she fully complied with the requirements of Ohio R. Sup. 45(E)(2) and Ohio R. Sup. 45(E)(3) to justify the continued restriction on public access to case documents in the *Underlying Criminal Case*. *See Respondent's Evidence, Exhibit E* (*Breaux Affidavit* ¶3). This notwithstanding, Mr. SHUBERT pursues this original action in mandamus and prohibition as Judge BREAUX has not comply with nor satisfied the legal standards to overcome the presumption in favor of court records and case documents being open to public access, consistent with the Ohio Rules of Superintendence and the First Amendment.

II. ARGUMENT

PROPOSITION OF LAW No. 1:
A writ of mandamus is the proper remedy for the improper restriction of public access to court records issued in violation of Rules 44 to 47 of the Ohio Rules of Superintendence and in violation of the First Amendment.

PROPOSITION OF LAW No. 2:
A writ of prohibition is the proper remedy to bar enforcement of an order restricting access to case documents and entered in violation of Rules 44 to 47 of the Ohio Rules of Superintendence and in violation of the First Amendment.

This case implicates whether, in the first instance through issuance of the *Order* (or now, the second instance through issuance of the *Amended Order*), Judge BREAUX *properly* sealed or restricted access to case documents in the *Underlying Criminal Case*. As Ohio Sup. R. 45

BREAUX imposed a prospective and prophylactic prohibition on all public access to certain categories of case documents (even if such case documents do not presently exist), Judge BREAUX has impermissibly delegated to the clerk the power to make the determination of which specific and individual case documents are subject to such prohibition, *i.e.*, which case documents (or future case documents) contain information protected by Marcy's Law or private information of Jeremiah Stoehr, or whether state, federal or common law preclude the disclosure of such documents in their entirety.

does not provide a mechanism by which a person may challenge an order improperly restricting access to court records, the appropriate remedy under the Superintendence Rules is a mandamus action under Ohio Sup. R. 47(B): "[a] person aggrieved by the failure of a court…to comply with the requirements of Sup. R. 44 through 47 may pursue an action in mandamus pursuant to Chapter 2731of the Revised Code."

Additionally, in *Forsthoefel*, this Court expressly confirmed and held mandamus is appropriate to redress improperly restricted case documents: "because [Ohio] Sup. R. 47(B) allows a mandamus action as a remedy for a person aggrieved by a court's failure to comply with [Ohio] Sup. R. 44 through 47, the [relator] need show only a clear legal right to relief and a clear duty on the part of the respondent to provide it and does not need to also show the lack of an adequate remedy in the ordinary course of law." *Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶10; *see State ex rel. Cincinnati Enquirer v. Lyons*, 140 Ohio St. 3d 7, 14 N.E.3d 989, 2014-Ohio-2354 ¶13 (granting writ of mandamus under superintendence rules to invalidate expungement order). And as for that legal standard, this Court also in *Forsthoefel* explained that the "clear-legal-right and clear-legal-duty analyses" involves "review[ing] the correctness of [the] [judge's] order[]." *Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶11 (quoting *Shanahan*, 166 Ohio St.3d 382, 185 N.E.3d 1089, 2022-Ohio-448 ¶19).

As for the claim for prohibition, the *Order* and the *Amended Order* do not comply with the requirements of Ohio Sup. R. 45(E) because there was no evidence (let alone clear and convincing evidence) to support such actions by Judge BREAUX to restrict access to case documents in the *Underlying Criminal Case* and she clearly did not use the least restrictive means to advance whatever higher interest was supposedly being served and advanced. As such, the *Order* and *Amended Order* are not valid and, thus, consistent with this Court's precedent in

Shanahan and *Forsthoefel*, as well as in *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 974 N.E.2d 89, 2012-Ohio-3328, prohibition lies against Judge BREAUX barring her from enforcing the *Order* or the *Amended* Order directing the Summit County Clerk of Courts with respect to any aspect of the public access to case documents from the *Underlying Criminal Case*.

PROPOSITION OF LAW No. 3:
The action of a trial court in restricting or prohibiting access to case documents is subject to *de novo* review in an original action reviewing the correctness of the trial court's order.

All aspects of an original action challenging an order restricting public access to a case document is subject to *de novo* review. *See Shanahan*, 166 Ohio St.3d 382, 185 N.E.3d 1089, 2022-Ohio-448 ¶19 ("in cases like these – when a court has shielded documents under Sup. R. 45(E) and a nonparty seeks mandamus relief – we have reviewed the trial-court order de novo…. We need not defer to [a judge's] factual finding" on restricting access); *accord Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶11 ("[o]ur review of the order is de novo"). And such *de novo* review is to the correctness of the order restricting or prohibiting public access, as well as assessing whatever evidence was before the trial court in support of such an order; such review by this Court, however, is not a review of any after-the-fact effort by a judge to justify such an order. *See Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶18 ("Judge Forsthoefel's affidavit is beside the point. This court is reviewing the correctness of Judge Forsthoefel's order, not his after-the-fact descriptions of that order").

PROPOSITION OF LAW No. 4:
A court order restricting or prohibiting public access to case documents issued without any evidentiary materials in support is invalid.

PROPOSITION OF LAW No. 5:
A court order restricting or prohibiting public access to case documents issued without evidentiary materials establishing by clear and convincing evidence that the presumption of allowing public access to court records is outweighed by a higher interest that justifies restricting or prohibiting public access to court records.

PROPOSITION OF LAW No. 6:
A court order restricting or prohibiting public access to case documents is invalid unless the restrictions or prohibitions imposed actually utilize the least restrictive means to advance whatever higher interest outweighs the presumption of allow public access to court records.

Issuance of a writ of mandamus, as well as the associated writ of prohibition, is warranted in this case for two separate and distinct reasons: (i) Judge BREAUX lacked clear and convincing evidence to support restricting public access to the docket and case documents in the *Underlying Criminal Case*; and (ii) the *Order* and the *Amended Order* departed from the requirement that any order restricting or prohibiting public access to case documents utilized the least restrictive means to advance whatever higher interest was supposedly being advanced by such restrictions or prohibitions.

Ohio Sup. R. 45(A) sets forth the foundational and overriding principle concerning filings and entries made in cases pending in any court in this state: "[c]ourt records are presumed open to public access." However, pursuant to Ohio Sup. R. 45(E), a court may restrict public access to court records, which include a case document in any particular case. *See* Ohio Sup. R. 44(B)("court record" includes a "case document"); Ohio Sup. R. 44(C)(1)("case document" includes "a document and information in a document submitted to a court or filed with a clerk of court in a judicial action or proceeding, including exhibits, pleadings, motions, order, and judgment, and any documentation prepared by the court or clerk in the judicial action or

proceeding, such as journals, dockets, and indices"). In fact, Ohio Sup. R. 44(C)(2)(c) expressly excludes from the definition of "case document" a document or information to which public access has been restricted pursuant to Ohio Sup. R. 45(E), but this presupposes that the restriction or prohibition on public access was imposed in conformity with the requirements and standards of Ohio Sup. R. 45(E).

Ohio Sup. R. 45(E)(1) provides that:

> Any party to a judicial action or proceeding or other person who is the subject of information in a case document may, by written motion to the court, request that the court restrict public access to the information or, if necessary, the entire document. Additionally, the court may restrict public access to the information in the case document or, if necessary, the entire document upon its own order. The court shall give notice of the motion or order to all parties in the case. The court may schedule a hearing on the motion.

However, Ohio Sup. R. 45(E)(2) and Ohio Sup. R. 45(E)(3) imposes specific criteria that must be satisfied before a court may impose any restriction or prohibition on access to any court record (which includes a case document in a particular judicial action or proceeding).

Ohio Sup. R. 45(E)(2) sets forth the requirements in order for a court to impose a restriction on public access to information in a case document or, if necessary, the entire document:

> A court shall restrict public access to information in a case document or, if necessary, the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following:
>
> (a) Whether public policy is served by restricting public access;
>
> (b) Whether any state, federal, or common law exempts the document or information from public access;
>
> (c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

And if and only if such clear and convincing evidence actually establishes that the presumption of allowing public access is outweighed by a higher interest, then Ohio Sup. R. 45(E)(3) still limits and constrains the scope of any such restriction or prohibition on public access to information in a case document or, if necessary, the entire document:

> When restricting public access to a case document or information in a case document pursuant to this division, the court shall use the least restrictive means available, including but not limited to the following:
>
> (a) Redacting the information rather than limiting public access to the entire document;
>
> (b) Restricting remote access to either the document or the information while maintaining its direct access;
>
> (c) Restricting public access to either the document or the information for a specific period of time;
>
> (d) Using a generic title or description for the document or the information in a case management system or register of actions;
>
> (e) Using initials or other identifier for the parties' proper names.

These requirements are not discretionary, and an order issued by a court that does not comply with and satisfy these requirements is invalid. *See Wolff*, 132 Ohio St.3d 481, 974 N.E.2d 89, 2012-Ohio-3328 ¶37 (an order sealing bill of particulars was invalid because evidence cited in trial court's order did not support conclusion that the presumption of public access was overcome by a higher interest).

The record establishes that Judge BREAUXX failed to comply with the requirements of Ohio Sup. R. 45(E)(2) or Ohio Sup. R. 45(E)(3) in issuing the *Order* and the *Amended Order*. Firstly, the standard of proof to restrict or prohibit public access under Ohio Sup. R. 45(E)(2) is "clear and convincing evidence." Clear and convincing evidence "consists of evidence 'which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.'" *Youngstown City Sch. Dist. Bd. of Ed. v. State*, 104 N.E.3d 1060, 2018-Ohio-2532 ¶9 (10th Dist.)(quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118

(1954)(syllabus ¶3)). In filing the *Motion to Seal*, counsel for Jeremiah Stoehr did not submit any affidavits or other evidence, nor did they argue the *Motion* within the framework of Ohio Sup. R. 45(E). Instead, the *Motion to Seal* made certain representations supposedly supporting the imposition of restrictions upon public access to case documents, but none that is evidence. *See State v. Wood*, 141 Ohio App. 3d 634, 638, 752 N.E.2d 990 (2d Dist. 2001)("a representation by counsel does not constitute evidence"); *State ex rel. Horsley v. Conrad*, 2002-Ohio-5790 (10th Dist.)("[t]he mere assertion of counsel is not evidence"); *State v. Miller*, 2010-Ohio-3710 ¶9 (4th Dist.)("arguments of counsel are not evidence").

Furthermore, the *Amended Order* itself confirms the complete lack of actual evidence in support thereof. As expressly stated in the *Amended Order*, Judge BREAUX conferred with counsel in the *Underlying Criminal Case* (characterizing it as a "meeting") but such "meeting" occurred "[p]rior to [the] filing [of] the Motion [to Seal]." *Amended Order*. Furthermore, Judge BREAUX acknowledged that this "meeting" occurred behind closed doors, *i.e.*, in chambers and not on the record in open court. Nonetheless, Judge BREAUX declares that, while conducting this Star Chamber, certain matters were "brought to the attention of the Court" or otherwise "disclosed", as well as the fact that other concerns were "voiced". *Amended Order*. But none of what Judge BREAUX described as being presented during the "meeting" behind closed doors is evidence. Evidence is present under oath at a hearing in open court or by affidavit; none of what Judge BREAUX describes in the *Amended Order* as the basis for the *Order* or the *Amended Order* even remotely constitutes evidence, let alone evidence presented under oath, in open court, and on the record. Thus, the *Order* and *Amended Order* were issued without any evidentiary materials and, therefore, *a fortiori*, the *Order* and *Amended Order* could not be supported by clear and convincing evidence.

Additionally, Ohio Sup. R. 45(E)(2) imposes a presumption in favor of restricting access only to information within a case document, not restricting the entire case document. *See* Ohio Sup. R. 45(E)(2)("[a] court shall restrict public access to information in a case document or, *if necessary*, the entire document . . ." (emphasis added)). Thus, even if *arguendo* there is clear and convincing evidence sufficient to support imposing some restriction on public access to case documents, such restriction must be limited only to "information" within such document by which the presumption in favor of public access was outweighed so as to support such restriction or prohibition. However, in the *Order* and the *Amended Order*, Judge BREAUX not only imposed the restriction or prohibition premised upon no evidence, but she undertook no effort to considering limiting such restriction or prohibition to information within any particular case document notwithstanding such requirement in Ohio Sup. R. 45(E)(2).

Finally, even with what Judge BREAUX admits in the *Amended Order* that she considered in support of her decision to restrict and prohibit access to case documents in the *Underlying Criminal Case* (though it was not evidence), there was no effort on the part of Judge BREAUX to tie such matters to the actual access of the public to such case documents. Even accepting *arguendo* the non-evidentiary materials to which she cited to in the *Amended Order*, Judge BREAUX provides no explanation or effort to tie the referenced threats or intimidation to the availability of case documents, and why restricting or prohibiting the continued availability of case documents is necessary "to protect the parties and counsel." *Amended Order*. It is readily more likely that such threats, *etc.*, arose from the fact of criminal charges being returned by the grand jury and the nature of the criminal charges involved. But nothing presented to Judge BREAUX (through such non-evidence) actually tied the availability of case documents in the *Underlying Criminal Case* to such threats, *etc.* Similarly, any expression by the State of

Ohio in the *Underlying Criminal Case* to concerns relating to "the potential threat of discovering the witness' identity and/or private information," *see Amended Order*, is pure speculation void of any evidentiary support thereof.

Ohio Sup. R. 45(E)(3) also requires a court to consider the "least restrictive means available" whenever it imposes restrictions or prohibitions on public access to case documents. This alone forecloses blanket sealing orders. This is especially true with respect to the prospective and prophylactic directive within the *Amended Order* that seeks to restrict public access to case documents yet to be created or filed, and then empowers the clerk of courts to make a determination whether a yet-to-be-filed documents falls within the ambit thereof. But as is self-evident from the *Amended Order*, Judge BREAUX undertook no effort, let alone a meaningful effort, to assess whether the restrictions and prohibitions therein were the least restrictive means necessary to advance whatever interest was outweighing the presumption in favor of public access.

Instead, being called out in this original action for the failure to comply with Ohio Sup. R. 45(E)(2) and Ohio Sup. R. 45(E)(3), Judge BREAUX offers an affidavit wherein she now offers nothing more than a conclusory assertion that she "applied the least restrictive means". *See Respondent's Evidence, Exhibit E* (*Breaux Affidavit* ¶*3*). But in *Forsthoefel*, this Court rejected a similar effort by a judge to rationalize after-the-fact the improper restriction on public access to case documents. *See Forsthoefel*, 170 Ohio St. 3d 292, 212 N.E.3d 859, 2022-Ohio-3580 ¶18 ("Judge Forsthoefel's affidavit is beside the point. This court is reviewing the correctness of Judge Forsthoefel's order, not his after-the-fact descriptions of that order"). As "[i]t is axiomatic that a court speaks through its docket and journals," *Oney v. Allen*, 39 Ohio St.3d 103, 107, 529 N.E.2d 471 (1988), Judge BREAUX cannot correct her errors through her

affidavit. Thus, as in *Forsthoefel*, this Court must reject the similar effort by Judge BREAUX in this case and simply consider the *Amended Order* and the record that was before Judge BREAUX when she issued the *Amended Order*. And furthermore, such a conclusory statement – in a court order or in an affidavit – does not actually establish that the least restrictive means were actually implemented. Thus, not only does the *Amended Order* not meet the requirements of Ohio Sup. R. 45(E)(2), but it also does not meet the standards of Ohio Sup. R. 45(E)(3).

In addition to the Ohio Rules of Superintendence, relief in mandamus and prohibition is also warranted premised upon the First Amendment. "[T]he 'Free Speech and Free Press Clauses of the First Amendment to the United States Constitution, the analogous provisions of Section 1, Article I of the Ohio Constitution, and the "open courts" provision of section 16, Article I of the Ohio Constitution create a qualified right of public access to court proceedings that have historically been open to the public and in which public access plays a significantly positive role.'" *State ex rel. Toledo Blade Co. v. Henry Cty. Court of Common Pleas*, 125 Ohio St.3d 149, 926 N.E.2d 634, 2010-Ohio-1533 ¶22 (quoting *State ex rel. Plain Dealer Publishing Co. v. Geauga Cty. Court of Common Pleas, Juvenile Div*., 90 Ohio St.3d 79, 82, 734 N.E.2d 1214 (2000); *see also State ex rel. Beacon Journal Publ'g Co. v. Bond*, 98 Ohio St. 3d 146, 2002-Ohio-7117, 781 N.E.2d 180 (recognizing First Amendment right of access to documents filed in criminal proceedings).

To determine whether a document was properly sealed under the First Amendment, a court should consider "among other things, the competing interests of the defendant's right to a fair trial, the privacy rights of participants or third parties, trade secrets, and national security." *Rudd Equip. Co., Inc. v. John Deere Constr. & Forestry Co*., 834 F.3d 589, 593 (6th Cir. 2016). The Sixth Circuit has explained that "[t]he public's focus is not only on the litigation's result, but

also on the conduct giving rise to the case, and in both circumstances, the public is entitled to assess for itself the merits of judicial decisions." *Id.* (internal quotations omitted).

As addressed above, Judge BREAUX did not have sufficient evidence to find that the presumption of public access to the court records in the *Underlying Criminal Case* was outweighed by competing interests of the privacy rights or security issues of the parties or counsel. This is especially true with respect to the breadth of the *Amended Order* and its one-size-fits-all perspective to every case document in the *Underlying Criminal Case*. Simply stated, the evidence (or, more accurately, lack of evidence) did not support a finding that "compelling reasons" existed to overcome the First Amendment so as to justify restricting or prohibiting public access to the case documents in the *Underlying Criminal Case* or the extent or scope of such restrictions which Judge BREAUX imposed through the *Amended Order*. Thus, the *Amended Order* is invalid under the First Amendment, and, for that separate basis, CRAIG SHUBERT is entitled to issuance mandamus and prohibition**.**

III. CONCLUSION

For the foregoing reasons, the STATE OF OHIO, by and on relation to CRAIG SHUBERT respectfully requests that the Court direct the issuance of a writ of mandamus and writ of prohibition consistent with that set forth in the *Verified Supplemental and Amended Complaint*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon the following via e-mail on the 7th day of June 2024:

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/s/ Curt C. Hartman

APPENDIX

Ohio Rules of Superintendence, Rule 44 to 47

Motion to Seal

Order [Granting *Motion to Seal*]

Amended Order [Granting *Motion to Seal*]

RULE 44. Court Records - Definitions.

In addition to the applicability of these rules as described in Sup. R. 1, Sup. R. 44 through 47 apply to the Supreme Court.

As used in Sup. R. 44 through 47:

(A) "Actual cost" means the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs, or other transmitting costs; and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(B) "Court record" means both a case document and an administrative document, regardless of physical form or characteristic, manner of creation, or method of storage.

(C)(1) "Case document" means a document and information in a document submitted to a court or filed with a clerk of court in a judicial action or proceeding, including exhibits, pleadings, motions, orders, and judgments, and any documentation prepared by the court or clerk in the judicial action or proceeding, such as journals, dockets, and indices, subject to the exclusions in division (C)(2) of this rule.

(2) The term "case document" does not include the following:

(a) A document or information in a document exempt from disclosure under state, federal, or the common law;

(b) Personal identifiers, as defined in division (H) of this rule;

(c) A document or information in a document to which public access has been restricted pursuant to division (E) of Sup. R. 45;

(d) Except as relevant to the juvenile's prosecution later as an adult, a juvenile's previous disposition in abuse, neglect, and dependency cases, juvenile civil commitment files, post-adjudicatory residential treatment facility reports, and post-adjudicatory releases of a juvenile's social history;

(e) Notes, drafts, recommendations, advice, and research of judicial officers and court staff;

(f) Forms containing personal identifiers, as defined in division (H) of this rule, submitted or filed pursuant to division (D)(2) of Sup. R. 45;

(g) Information on or obtained from the Ohio Courts Network, except that the information shall be available at the originating source if not otherwise exempt from public access;

(h) In a court of common pleas or a division thereof with domestic relations or juvenile jurisdiction, the following documents, including but not limited to those prepared pursuant to R.C. 2151.281, 3105.171(E)(3), and 3109.04 and Sup.R. 48:

(i) Health care documents, including but not limited to physical health, psychological health, psychiatric health, mental health, and counseling documents;

(ii) Drug and alcohol use assessments and pre-disposition treatment facility reports;

(iii) Guardian ad litem reports, including collateral source documents attached to or filed with the reports;

(iv) Home investigation reports, including collateral source documents attached to or filed with the reports;

(v) Child custody evaluations and reports, including collateral source documents attached to or filed with the reports;

(vi) Domestic violence risk assessments;

(vii) Supervised parenting time or companionship or visitation records and reports, including exchange records and reports;

(viii) Financial disclosure statements regarding property, debt, taxes, income, and expenses, including collateral source documents attached to or filed with records and statements;

(ix) Asset appraisals and evaluations.

(D) "Case file" means the compendium of case documents in a judicial action or proceeding.

(E) "File" means to deposit a document with a clerk of court, upon the occurrence of which the clerk time or date stamps and dockets the document.

(F) "Submit" means to deliver a document to the custody of a court for consideration by the court.

(G)(1) "Administrative document" means a document and information in a document created, received, or maintained by a court that serves to record the administrative, fiscal, personnel, or management functions, policies, decisions, procedures, operations,

organization, or other activities of the court, subject to the exclusions in division (G)(2) of this rule.

(2) The term "administrative document" does not include the following:

(a) A document or information in a document exempt from disclosure under state, federal, or the common law, or as set forth in the Rules for the Government of the Bar;

(b) Personal identifiers, as defined in division (H) of this rule;

(c) A document or information in a document describing the type or level of security in a court facility, including a court security plan and a court security review conducted by a local court, the local court's designee, or the Supreme Court;

(d) An administrative or technical security record-keeping document or information;

(e) Test questions, scoring keys, and licensing, certification, or court-employment examination documents before the examination is administered or if the same examination is to be administered again;

(f) Computer programs, computer codes, computer filing systems, and other software owned by a court or entrusted to it;

(g) Information on or obtained from the Ohio Courts Network, except that the information shall be available at the originating source if not otherwise exempt from public access;

(h) Data feeds by and between courts when using the Ohio Courts Network.

(H) "Personal identifiers" means social security numbers, except for the last four digits; financial account numbers, including but not limited to debit card, charge card, and credit card numbers; employer and employee identification numbers; and a juvenile's name in an abuse, neglect, or dependency case, except for the juvenile's initials or a generic abbreviation such as "CV" for "child victim."

(I) "Public access" means both direct access and remote access.

(J) "Direct access" means the ability of any person to inspect and obtain a copy of a court record at all reasonable times during regular business hours at the place where the record is made available.

(K) “Remote access” means the ability of any person to electronically search, inspect, and copy a court record at a location other than the place where the record is made available.

(L) “Bulk distribution” means the distribution of a compilation of information from more than one court record.

(M)(1) “New compilation” means a collection of information obtained through the selection, aggregation, or reformulation of information from more than one court record.

(2) The term “new compilation” does not include a collection of information produced by a computer system that is already programmed to provide the requested output.

RULE 45. Court Records – Public Access.

(A) Presumption of public access

Court records are presumed open to public access.

(B) Direct access

(1) A court or clerk of court shall make a court record available by direct access, promptly acknowledge any person's request for direct access, and respond to the request within a reasonable amount of time.

(2) Except for a request for bulk distribution pursuant to Sup. R. 46, a court or clerk of court shall permit a requestor to have a court record duplicated upon paper, upon the same medium upon which the court or clerk keeps it, or upon any other medium the court or clerk determines it can be reasonably duplicated as an integral part of its normal operations.

(3) A court or clerk of court shall mail, transmit, or deliver copies of a requested court record to the requestor within a reasonable time from the request, provided the court or clerk may adopt a policy allowing it to limit the number of court records it will mail, transmit, or deliver per month, unless the requestor certifies in writing that the requestor does not intend to use or forward the records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include news reporting, the gathering of information to assist citizens in the understanding of court activities, or nonprofit educational research.

(4) A court or clerk of court may charge its actual costs incurred in responding to a request for direct access to a court record. The court or clerk may require a deposit of the estimated actual costs.

(C) Remote access

(1) A court or clerk of court may offer remote access to a court record. If a court or clerk offers remote access to a court record and the record is also available by direct access, the version of the record available through remote access shall be identical to the version of the record available by direct access, provided the court or clerk may exclude an exhibit or attachment that is part of the record if the court or clerk includes notice that the exhibit or attachment exists and is available by direct access.

(2) Nothing in division (C)(1) of this rule shall be interpreted as requiring a court or clerk of court offering remote access to a case document in a case file to offer remote access to other case documents in that case file.

(3) Nothing in division (C)(1) of this rule shall be interpreted as prohibiting a court or clerk of court from making available on a website any court record that exists only in electronic form, including an on-line journal or register of actions.

(D) Omission of personal identifiers prior to submission or filing

(1) When submitting a case document to a court or filing a case document with a clerk of court, a party to a judicial action or proceeding shall omit personal identifiers from the document.

(2) When personal identifiers are omitted from a case document submitted to a court or filed with a clerk of court pursuant to division (D)(1) of this rule, the party shall submit or file that information on a separate form. The court or clerk may provide a standard form for parties to use. Redacted or omitted personal identifiers shall be provided to the court or clerk upon request or a party to the judicial action or proceeding upon motion.

(3) The responsibility for omitting personal identifiers from a case document submitted to a court or filed with a clerk of court pursuant to division (D)(1) of this rule shall rest solely with the party. The court or clerk is not required to review the case document to confirm that the party has omitted personal identifiers, and shall not refuse to accept or file the document on that basis.

(E) Restricting public access to a case document

(1) Any party to a judicial action or proceeding or other person who is the subject of information in a case document may, by written motion to the court, request that the court restrict public access to the information or, if necessary, the entire document. Additionally, the court may restrict public access to the information in the case document or, if necessary, the entire document upon its own order. The court shall give notice of the motion or order to all parties in the case. The court may schedule a hearing on the motion.

(2) A court shall restrict public access to information in a case document or, if necessary, the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following:

(a) Whether public policy is served by restricting public access;

(b) Whether any state, federal, or common law exempts the document or information from public access;

(c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

(3) When restricting public access to a case document or information in a case document pursuant to this division, the court shall use the least restrictive means available, including but not limited to the following:

(a) Redacting the information rather than limiting public access to the entire document;

(b) Restricting remote access to either the document or the information while maintaining its direct access;

(c) Restricting public access to either the document or the information for a specific period of time;

(d) Using a generic title or description for the document or the information in a case management system or register of actions;

(e) Using initials or other identifier for the parties' proper names.

(4) If a court orders the redaction of information in a case document pursuant to this division, a redacted version of the document shall be filed in the case file along with a copy of the court's order. If a court orders that the entire case document be restricted from public access, a copy of the court's order shall be filed in the case file. A journal entry shall reflect the court's order. Case documents ordered restricted from public access or information in documents ordered redacted shall not be available for public access and shall be maintained separately in the case file.

(F) Obtaining access to a case document that has been granted restricted public access

(1) Any person, by written motion to the court, may request access to a case document or information in a case document that has been granted restricted public access pursuant to division (E) of this rule. The court shall give notice of the motion to all parties in the case and, where possible, to the non-party person who requested that public access be restricted. The court may schedule a hearing on the motion.

(2) A court may permit public access to a case document or information in a case document if it finds by clear and convincing evidence that the presumption of allowing public access is no longer outweighed by a higher interest. When making this determination, the court shall consider whether the original reason for the restriction of public access to the case document or information in the case document pursuant to division (E) of this rule no longer exists or is no longer applicable and whether any new circumstances, as set forth in that division, have arisen which would require the restriction of public access.

RULE 46. Court Records - Bulk Distribution.

(A) Requests for bulk distribution and new compilations

(1) Bulk distribution

(a) Any person, upon request, shall receive bulk distribution of information in court records, provided that the bulk distribution does not require creation of a new compilation. The court or clerk of court shall permit the requestor to choose that the bulk distribution be provided upon paper, upon the same medium upon which the court or clerk keeps the information, or upon any other medium the court or clerk determines it can be reasonably duplicated as an integral part of its normal operations, unless the choice requires a new compilation.

(b) The bulk distribution shall include a time or date stamp indicating the compilation date. A person who receives a bulk distribution of information in court records for redistribution shall keep the information current and delete inaccurate, sealed, or expunged information in accordance with Sup. R. 26.

(2) New compilation

(a) A court or clerk of court may create a new compilation customized for the convenience of a person who requests a bulk distribution of information in court records.

(b) In determining whether to create a new compilation, a court or clerk of court may consider if creating the new compilation is an appropriate use of its available resources and is consistent with the principles of public access.

(c) If a court or clerk of court chooses to create a new compilation, it may require personnel costs in addition to actual costs. The court or the clerk may require a deposit of the estimated actual and personnel costs to create the new compilation.

(d) A court or clerk of court shall maintain a copy and provide public access to any new compilation. After recouping the personnel costs to create the new compilation from the original requestor, the court or clerk may later assess only actual costs.

(B) Contracts with providers of information technology support

A court or clerk of court that contracts with a provider of information technology support to gather, store, or make accessible court records shall require the provider to comply with requirements of Sup. R. 44 through 47, agree to protect the confidentiality of the records, notify the court or clerk of court of all bulk distribution and new compilation requests, including its own, and acknowledge that it has no ownership or proprietary rights to the records.

RULE 47. Court Records – Application, Remedies, and Liability.

(A) Application

(1) The provisions of Sup.R. 44 through 47 requiring redaction or omission of information in case documents or restricting public access to case documents shall apply only to case documents in actions commenced on or after July 1, 2009. Access to case documents in actions commenced prior to July 1, 2009, shall be governed by federal and state law.

(2) The provisions of Sup.R. 44 through 47 restricting public access to administrative documents shall apply to all documents regardless of when created.

(3) The provisions of Sup.R. 44(C)(2)(h) restricting public access to certain case documents of a court of common pleas or a division thereof with domestic relations or juvenile jurisdiction shall apply only to case documents in actions commenced on or after January 1, 2016.

(B) Denial of public access - remedy

A person aggrieved by the failure of a court or clerk of court to comply with the requirements of Sup. R. 44 through 47 may pursue an action in mandamus pursuant to Chapter 2731. of the Revised Code.

(C) Liability and immunity

Sup. R. 44 through 47 do not affect any immunity or defense to which a court, court agency, clerk of court, or their employees may be entitled under section 9.86 or Chapter 2744. of the Revised Code.

(D) Review

Sup. R. 44 through 47 shall be subject to periodic review by the Commission on the Rules of Superintendence.

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO	*	CASE NO. CR-2024-02-0419
Plaintiff	*	
-vs-	*	JUDGE ALISON M. BREAUX
JEREMIAH E. STOEHR	*	
Defendant	*	DEFENDANT'S MOTION TO SEAL CLERK OF COURT'S DOCKET DURING PENDENCY OF CASE
	*	

* * *

Now comes the Defendant, Jeremiah E. Stoehr, and respectfully moves this Court for an Order directing the Summit County Clerk of Courts to remove any information regarding the Defendant Jeremiah E. Stoehr's current criminal case from its website, and seal the docket until the conclusion of the trial in this matter. The State has indicated it has no objection to this motion.

The basis for this motion is as follows:

Mr. Stoehr is charged with multiple felonies: Rape, Kidnapping, Gross Sexual Imposition, and Disseminating Matter Harmful to Juveniles.

Primarily, undersigned counsel has concerns for the privacy and safety of all parties involved in this case. Just in the last week, since this matter became sensationalized in the news media, the community, and on social media websies, the following has occurred:

1. Defendant was assaulted at school;
2. Another student threatened to a mandatory reporter that he/she was bringing a lead pipe to school to beat the Defendant which resulted in a police investigation, report, and welfare check on the Defendant (Hudson Police Department Report 2024-0768);

3. Other crimes attributed to the Defendant have been falsely called into a safe school hotline which have since been unsubstantiated by Hudson Police and the Hudson City School District (Report 2024-0775);
4. Defendant's address has been published online, and as recently as this morning the Defendant's parents (who are trained law enforcement) have reported vehicles sitting outside their cul-de-sac home and following them, also resulting in a police report.

Counsel also has concerns that potential witnesses and/or alleged potential jurors could access information that would taint the trial and prejudice the Defendant.

Perspective jurors in this matter will be reporting to the Summit County Jury Commissioner. During the voir dire process, jurors will learn about the nature of the charges and the identity of Mr. Stoehr. Despite the admonishments which will be given by this Court, counsel is also concerned about prospective jurors accessing prejudicial information about Mr. Stoehr which would otherwise be inadmissible at his trial. Due to the increase in technology, details of his pending case are now accessible in a matter of seconds through smartphones and laptops, which most jurors will have in their possession during jury selection and trial, and such information, both accurate and inaccurate, can be spread across social media.

Counsel submits that in an ordinary case, admonishment from the Court to prospective jurors to refrain from independently gathering information and to set aside prior knowledge may suffice. However, in a case that has generated pretrial publicity, discussion, and controversy, such as this, more due process and protections are due, not less.

Furthermore, it is important and necessary to protect the privacy rights and safety of all parties involved in this case, including the defendant and his family.

Undersigned counsel has spoken to the prosecuting attorney, who does not oppose this

motion.

WHEREFORE, counsel respectfully requests that this Court order the Summit County Clerk of Courts to seal the docket and remove any public access to the docket or images, for the pending case involving the Defendant, Jeremiah E. Stoehr.

Respectfully Submitted,

/S/ MAXWELL R. HILTNER
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PROOF OF SERVICE

I hereby certify that on May 9, 2024, a copy of the foregoing *Defendant's Motion to Seal Docket During Pendency of Case* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/S/ MAXWELL R. HILTNER
MAXWELL R. HILTNER, 0090524
ANDREW W. STEIN, 0102489
Attorneys for Defendant

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO	*	CASE NO. CR-2024-02-0419
Plaintiff	*	
-vs-	*	JUDGE ALISON M. BREAUX
JEREMIAH E. STOEHR	*	
		ORDER
Defendant	*	
	* * *	

This matter comes before the Court on Defendant's Motion to Seal Clerk of Court's Docket During Pendency of Case. Defendant's motion has been carefully considered. After such consideration, and with no objection from the State, the Court finds that Counsel has shown good cause for the sealing of the docket. As such, it is hereby ORDERED as follows:

The Summit County Clerk of Courts shall remove any public access to the docket or images for the pending case involving the Defendant, Jeremiah E. Stoehr.

Defendant's Motion to Seal Docket During Pendency of Case is hereby GRANTED.

A. Breaux
JUDGE ALISON M. BREAUX

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

TAVIA GALONSKI

THE STATE OF OHIO **CASE NO.** CR-2024-02-0419

vs.

2024 MAY 16 PM 3:51

JEREMIAH EARL STOEHR, Defendant **JUDGE ALISON BREAUX**

SUMMIT COUNTY
CLERK OF COURTS

ORDER

Upon its own motion, this Court **AMENDS** its Order dated May 9, 2024.

The matter came before the Court on Defendant's Motion to Seal Clerk of Court's Docket During Pendency of Case, filed May 9, 2024. Prior to filing the Motion, the Court held a meeting in chambers with counsel for the State of Ohio appearing by telephone and counsel for Defendant appearing in person. During the meeting, it was brought to the attention of the Court that threats, intimidation and confrontations had occurred against Defendant Stoehr at his residence and other establishments he frequents substantiated by police reports. Furthermore, information regarding similar acts toward counsel and his family were disclosed. The State of Ohio also voiced a concern regarding the prosecuting witness, a minor, and the potential threat of discovering the witness' identity and/or other private information. The State of Ohio did not oppose restricting access to the docket.

The Court weighs the risk of injury to persons, public safety and fairness of the adjudicatory process against the presumption of allowing public access to the docket and finds, by clear and convincing evidence, that the restricting access to information in this case is warranted to protect the parties and counsel.

Accordingly, this Court hereby AMENDS the May 9, 2024 ORDER as follows:

1. The Summit County Clerk of Courts shall remove <u>any online public access</u> to the docket or images of the present case, State of Ohio v. Jeremiah Stoehr CR 2024-02-0419.

2. The Summit County Clerk of Courts shall remove <u>any public access</u> to the docket or images regarding subpoenas, summons returns, search warrants, service returns, any court filing containing information protected under Marcy's Law, and any court filing containing private information of the Defendant or other records as provided by state, federal or common law.

Pursuant to Ohio Sup. R. 45(F), any person, by written motion to the court, may request access to a case document or information. In the event of such filing, notice shall be given to all parties and a hearing may be granted.

IT IS SO ORDERED.

ALISON BREAUX, Judge
Court of Common Pleas
Summit County, Ohio

/amh
cc: Assistant Prosecutor Dan Sallerson
Attorney Maxwell R. Hiltner