

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
ADAMS COUNTY, ILLINOIS

FILED

MAY 12 2023

Eleri G. Hochwender
Clerk Circuit Court 8th Judicial Circuit
ILLINOIS, ADAMS CO.

People

Plaintiff,

vs.

Timothy Bliefnick

Defendant,

CASE NO. 23 CF 170

ORDER SEALING DOCUMENTS AND CLOSING HEARINGS

Cause comes before the Court on the Petition to Vacate filed by the Intervenors.

The Court entered an Order on Mar. 16, 2023, which stated “Due to the extensive publicity in this case, all motions and/or pleadings shall be filed under seal.” The Court also closed the courtroom during the hearings on evidentiary motions. Certain media organizations (hereinafter “media”) filed a Petition to Intervene which was granted by the Court. The media filed a petition to vacate the Court’s Order asking that all pleadings be unsealed, and all hearings be open to the public. The petition was argued in open court. The Court took the petition under advisement and gave the parties 7 days to present any authority. Only the State presented any authority.

The Court in making its decision in this case relies heavily on the Illinois Supreme Court case of *People v. Zimmerman*, 2018 IL 122261. The public’s right of access to court records is embodied in the first amendment to the United States Constitution. The determination of whether a first amendment right access attaches to a particular record requires a two-step process under what is typically known as the

“experience and logic test”. First, a court must consider whether the document is one that has historically been open to the press and public. Second, the court must consider whether public access to the document plays a significant positive role in the functioning of the judicial process in question. Even when a first amendment right of public access attaches to a document, it is not absolute. Although open criminal proceedings give assurances of fairness to both the public and the accused, there are some limited circumstances in which the right of the accused to a fair trial might be undermined by publicity. In such cases, the trial court must determine whether the situation is such that the rights of the accused override the qualified first amendment right of access to the proceedings or material.

The Court’s Order in this case seals all documents upon filing. However, the court then reviews the documents to determine if they contain evidentiary matters and unseals those documents that do not contain evidentiary matters. The Court uses this procedure for several reasons. First, so the parties do not have to file a motion to seal with every document they want sealed. Next, so that documents that should be sealed are not disseminated to the public before they can be sealed. Next, so that the circuit clerk is not required to determine which documents contain evidentiary matters and which do not. The clerk is not qualified to make that determination and does not want to make it. Finally, so that documents that should not be sealed are unsealed in a timely manner.

The evidentiary motions, documents, and hearings concern information that is disclosed pursuant to the pretrial discovery process. It is information which may or may not be introduced at trial. Some of the information is sensitive, private, irrelevant, unreliable, and/or inflammatory. Some of the evidence will not be admitted at trial.

Public dissemination of this type of information would be prejudicial to the defendant and could taint the jury pool. The public will get to hear the information that is admitted at trial. However, they will hear that information at the trial, not pretrial. The Court is not withholding this information from the public, but merely delaying the release of the information so as to not taint the jury pool and cause a change of venue from Adams County.

There is no tradition of access to discovery material not yet admitted at trial. Information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the alleged crime. Discovery in a criminal case is essentially a private process because the litigants and the court assume the sole purpose of the discovery is to assist in trial preparation. Generally, the documents themselves contain no evidentiary value until admitted into evidence at trial. Public access to such material would therefore not play a significant role in the administration of justice. Nor does public access to pretrial discovery play a significant role in the judicial process. A substantial amount of the information referred to in the sealed documents may not be admitted into evidence. Some of that information is irrelevant and unreliable and inflammatory. Such information generally does not become public. The public has limited interest in that information. The Court having applied the “experience and logic test” finds no first amendment presumption of right of access to pretrial evidentiary documents or hearings.

The Court also recognizes a common law right of access. The Illinois legislature has codified this common law right of access in section 16 of the Clerks of the Courts Act. However, the Illinois Supreme Court has held that the common law right of access is not absolute. They stated that every court has supervisory power over its own records

and files, and access may be denied where court files become a vehicle for improper purposes. Consequently, whether a court in a particular case is open to public scrutiny rests with the trial court's discretion.

The Illinois legislature has, also, limited public access to certain public information in other areas. Pursuant to the Open Meetings Act certain portions of public meetings may be closed to the public for discussions about pending litigation. Pursuant to the Freedom of Information Act police reports are exempt from release to the public while an investigation is ongoing. Virtually all the information contained in the evidentiary documents comes directly from police reports. The investigation of this case is ongoing and will continue until a verdict is reached. Since the public cannot get this information from law enforcement, there is no reason why they should be able to get it from the court.

The pretrial release of the evidence could jeopardize the defendant's right to a fair trial. Adams County is a smaller county. This Court has allowed cameras in the courtroom for pretrial proceedings. This case has received substantial pretrial publicity. These proceedings have been reported on by local TV and radio stations, in the local papers, and online. The news has saturated the entire county. If the Court would allow the publication of evidence pretrial, the jury pool could very possibly be tainted, and a fair and impartial jury could not be selected in Adams County and would cause a change of venue from Adams County.

A change of venue from Adams County in this case would cause great hardship for all parties. The defendant is being held without bond. As such, he is entitled to an expedited trial. He must be tried within 90 days. A change of venue would cause a

significant delay in the trial, the defendant would not be able to be tried in the 90-day period, which by its very nature is detrimental to the defendant. Defense counsel would need to relocate their base of operations for the trial which would cause extra costs and problems in the defense. A change of venue would cause hardship for the People. They would have to change their base of operations also. A large majority of the witnesses reside in or close to Adams County. Coordinating witnesses for a new county would be a major problem. Adams County itself would be harmed by a change of venue. It would cost the County 10s of thousands of dollars to hold this trial in another county. All court personnel would have to be moved to a new county. Adams County would have to pay travel and lodging expenses for all court personnel. Adams County would have to pay for the housing or travel of the defendant. Adams County may have to pay rental for the courtroom and facilities of the county where the trial is moved. A change of venue would make it difficult, if not impossible, for citizens of Adams County to attend the trial.

For all the above reasons the Court denies the media's Petition to Vacate. The Court, however, recognizes that its previous Order does not state in detail the procedure the Court is using. Therefore, the Court modifies its previous Order to state as follows:

Due to the extensive media coverage in this case, and to insure.

the defendant can receive a fair and impartial trial in Adams County,

It Is Hereby Ordered As Follows;

1. All documents shall be filed under seal.
2. The Court shall review all documents to determine whether the documents contain evidentiary matters. Those documents which contain evidentiary

matters shall remain sealed. All documents that do not contain evidentiary matters shall be unsealed.

3. All documents shall be unsealed after a verdict has been reached.
4. The Court shall close all pretrial hearings concerning evidentiary matters.
5. All pretrial hearings that do not concern evidentiary matters shall be open.

Entered: 5-12-23



Judge

CC: SAO
Def.
Cravens

I hereby certify that a copy hereof was:
Mailed, postage prepaid Faxed
Personally delivered Emailed
SAO PO Counsel
Plaintiff Defendant Cravens
5-12-23 _____
Date Deputy Clerk