

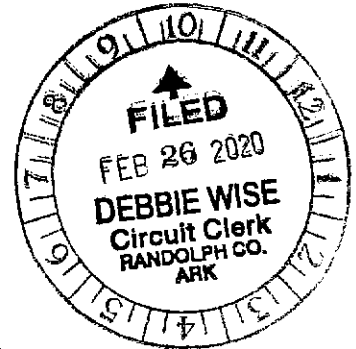
IN THE CIRCUIT COURT OF RANDOLPH COUNTY, ARKANSAS

**STATE OF ARKANSAS
PLAINTIFF**

V.

CR 2019-124

**REBECCA O'DONNELL
DEFENDANT**



ORDER REGARDING DISCLOSURE

This Court, having carefully considered ABC, Inc. and the Arkansas Press Association's (herein "Intervenors") Motion for Reconsideration Regarding Their Motion for Intervention, Access to Sealed Court Filings, and Related Relief makes the following ruling:

1. On June 5, 2019, this Court granted the State's motion to seal all materials and statements concerning this matter.
2. On July 30, 2019, this Court granted an unopposed Motion to Bar Disclosure by O'Donnell, which outlined reasons for limiting disclosure.
3. On October 15, 2019, the Intervenors moved for intervention.
4. On November 18, 2019, the Intervenors motion was denied.

5. On December 12, 2019, the Intervenors filed a motion and brief in support requesting reconsideration, which is the subject of this order.
6. The State filed a motion and brief in support opposing intervention and the requested relief.
7. Defendant filed a motion and brief in support opposing intervention and the requested relief.
8. On January 29, 2020, this Court held a hearing where all parties were present and had an opportunity to be heard on the request to intervene as well as the request for specific relief with regards to the non-disclosure order.
9. This Court grants intervention to the Intervenors for the limited purpose of contesting the non-disclosure order previously entered on July 30, 2019.
10. This Court considers the July 30, 2019, order to have superseded the prior non-disclosure order in all respects; thus, the July 30, 2019, order is the only order at issue.
11. This Court and all parties recognized there exists an absence of mandatory authority on whether intervention is appropriate in this circumstance.

12. To ensure all interests are protected, including the press and public and to assure that Intervenorors have an opportunity to be heard, Intervenorors are granted intervention.
13. The Intervenorors challenge the non-disclosure order on the lack of public availability of documents and the inability for attorneys, law enforcement agencies, or Arkansas State Crime Lab to publicly comment about the case.
14. On the issue of specific relief requested, Intervenorors made it clear that the request for documents was for the disclosure of the unredacted affidavit for warrant of arrest, search warrants, search warrant affidavits, search warrant returns and documents attached to pleadings and motions filed in this case.
15. The Intervenorors contend that the unredacted affidavit for warrant of arrest, search warrants, search warrant affidavits, search warrant returns, and documents attached to pleadings and motions filed in this case should be public, and the absence of their public availability offends the First Amendment.
16. This Court recognizes that sealing of search warrants, search warrant affidavits, and search warrant returns is guided by Arkansas Rule of Criminal Procedure 13.4 (c), which requires the affidavit, warrant, and

return be publicly accessible “unless the court for good cause based upon reasonably specific facts orders that any of them should be closed or sealed.”

17. In determining whether good cause exists, this Court is mindful of the press and public’s interest in the documents.
18. However, this Court determines that good cause exists for the documents requested to remained sealed.
19. This decision is based upon the court’s experiences through years of service in the criminal justice system as both a trial lawyer and judge as well as taking judicial notice of unarguable facts.
20. This Court notes that this case has attracted substantial local and national attention due to the public status of Linda Collins-Smith, the victim, and Phil Smith (a retired Circuit Judge), Linda Collins-Smith’s ex-husband.
21. This Court has presided over and witnessed a number of cases in which jurors have been influenced by outside factors.
22. This Court has had cases in which jurors were unable to timely recall their relationships to witnesses, provide accurate accounts of their potential biases, and had difficulty assessing the possible impact of information learned though the media upon the individual juror.

23. The impact of not just pretrial publicity, but particularly the release of law enforcement documentation, has the real possibility to consciously or subconsciously impact potential jurors in ways that cannot be remedied and will harm this Court's ability to provide a fair and just trial for all parties and the public.
24. This Court is also mindful of the small population of Randolph County.
25. The small population makes it already more difficult to find unbiased jurors because it is likely the jurors know and have developed relationships with many of the witnesses.
26. The small population also exacerbates this Court's concern that much of the public will take an active role in learning about the documents if they were to be released. Many of those documents will turn out to be irrelevant to the trial and engender speculation and prejudice that will be difficult to uncover and render many potential jurors ineligible to serve.
27. This Court has also considered alternatives to sealing the documents.
28. Specifically, this Court has considered whether voir dire, jury instructions, sequestering the jury, and/or changing the venue would be viable potential alternatives to protect the interests of this Court,

the State, the Defendant, and others prejudiced by the release of this information.

29. Voir dire would not be a suitable alternative in this Court's experience. Potential jurors frequently have difficulty recalling knowledge of a person or event until the trial has started. Potential jurors often fail to acknowledge or recognize their own bias or prejudice until they have been seated and are no longer under the spotlight of questioning. Occasionally potential jurors have difficulty in responding directly to questions designed to discover bias or attorneys have difficulty in asking questions that would uncover the bias or prejudice. Further, this Court is concerned that with a limited population base it would be much more difficult to find enough jurors that were unbiased and open minded if the documents were released.
30. Jury instructions would not be suitable to limit the prejudicial impact because the instructions would not eliminate bias or prejudice that has already affected the juror. Additionally, jury instructions would not ensure there were enough potential jurors that were unbiased and open minded to begin a trial.
31. Sequestering the jury during the trial would not be suitable to limit the prejudicial impact. Sequestering the jury would not eliminate bias or

prejudice from pretrial publicity that has already affected the juror.

Sequestering the jury would eliminate the jury from exposure to publicity during the trial, which is not the current concern.

32. Changing the venue of the trial would not work to limit the prejudicial impact from pretrial publicity of the requested documents. First, changing the venue must be requested by the Defendant. No such request has been made. Second, the venue would ordinarily have to be changed to another county within the judicial district. Those counties are all nearly as likely to have the same exposure to the media coverage and do possess the same limited population at issue in Randolph County.
33. The Intervenor's request to reduce the parties subject to the gag order or eliminate the gag order is granted in part.
34. The attorneys for the State and Defendant will remain subject to the gag order. In addition to the order previously imposed by this Court, the Arkansas Rule of Professional Conduct 3.6 provides that attorneys "shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." The gag order

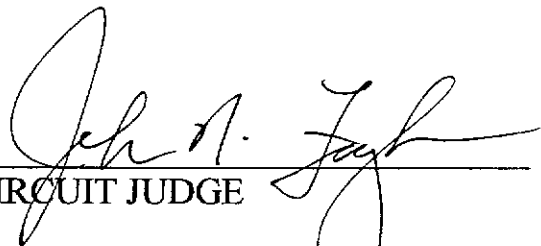
imposed in this case is in line with the Rule and merely notes that any statement made to the press by the attorneys is going to be disseminated and has a substantial likelihood of prejudicing the matter.

35. This Court would ordinarily release the Arkansas law enforcement agencies from the gag order and instead place them under the responsibility of the prosecuting attorney who would ordinarily have an established working relationship with them. However, this case is unique because Special Prosecuting Attorney Robert Dittrich does not regularly work with the law enforcement agencies responsible for the investigation of this matter and has no pre-existing relationship with them. Therefore, this Court will maintain the gag order as it applies to the Arkansas law enforcement agencies involved in this case to ensure their expected compliance with non-disclosure of factual, investigative matters in this case.
36. This Court grants the Intervenor's request with respect to the Arkansas State Crime Lab. In this Court's experience, the Arkansas State Crime Lab does not make public statements regarding on-going cases.

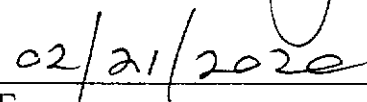
37. This Court grants the Intervenor's request with respect to any federal agencies, including, but not limited to, the Federal Bureau of Investigation. This Court does not have jurisdiction to limit their disclosures.
38. Regarding motions and pleadings filed in this case and attachments thereto, all documents filed after January 28, 2020 are public documents subject to inspection. If either the State or Defendant contends that a document or document should be filed under seal, those documents should first be submitted to the court with copies to opposing counsel for an in-camera review. A decision would then be made whether the filing would be sealed.
39. This Court grants the Intervenor's request with respect to the Randolph County Circuit Clerk. This Court notes that the Randolph County Circuit Clerk has made all pleadings publicly available, except those that are sealed by order of this Court. The Clerk's Office may provide all publicly filed documents to the public and may inform the public of the time, date, and location of any hearings or trials in this matter. As the normal practice of the Clerk's Office, it may not disclose the existence or contents of any sealed documents to anyone other than the specified parties and this Court.

40. This Court does note and thank the Clerk's Office for providing the filings in this case online.
41. This Court also notes that a gag order was approved by the Arkansas Supreme Court in *Orsini v. State*, 281 Ark. 348, 665 S.W.2d 245 (1984).

IT IS SO ORDERED.



CIRCUIT JUDGE



DATE