

FILED

MAY 30 2023

TIME

Case No 23CY-CR00894

Clay County Circuit Court

DIVISION VII

STATE OF MISSOURI,

Plaintiff,

v

ANDREW D LESTER,

Defendant

ORDER ON MOTION FOR PROTECTIVE ORDER

On the 22nd day of May, 2023, the Defendant’s Motion for Protective Order came on for evidentiary hearing. The State appeared through Prosecuting Attorney Zachary Thompson. Defendant appeared through his Counsel Steven B. Salmon. Defendant Andrew Lester was excused by the Court from the hearing due to health issues. (The State of Missouri and the Defendant shall be hereafter be referred to as “The Party” or “The Parties”)

The Motion for Protective Order requests this Court to enter an order sealing the discovery answers and discovery documents, with access only to the Parties hereto. Evidence was adduced and the matter submitted. The Court took the matter under advisement to review all of the documents contained in Exhibits 1-4 submitted by Defendant’s attorney and to do its own research.

The Court, now being fully advised, makes the following findings:

1. Defendant is charged with the Class A felony of Assault in the First Degree and the unclassified felony of Armed Criminal Action.

2. This case has generated wide-ranging publicity - locally, nationally, and internationally, in print and broadcast media. The media attention, beyond extensive local coverage, has included, but is not limited to, the national affiliates of NBC, ABC, NPR, Fox News, the BBC, 60 Minutes, Inside Edition, The New York Times and The Washington Post. Beyond traditional newsprint and

news show media, the publicity extends to news magazine programs and social media. The show Inside Edition recently broadcast a story about Defendant's ex-wife (from whom he was divorced over fifty years ago) with allegations that Defendant abused her. A grandson, in an interview with CNN, opined on national television that Defendant held "racist tendencies" All this information in the public domain casts Defendant in a negative light and continues to erode the Defendant's ability empanel a fair and impartial venire in his future jury trial, a fundamental right guaranteed to Defendant by the Missouri and United States Constitutions

3. The information thus far made public by the State has led to a significant amount of speculation and reporting especially about racial motivation Such conjecture of a racial motive in the reporting of this case negatively affects Defendant's fundamental right to a fair trial on the merits For example, one possible defense available to the Defendant is that of the reasonable nature of the alleged acts of Defendant The overwhelming majority of the reporting continues to assert that the alleged actions of Defendant were racially motivated, which if believed, virtually eliminates the defense available to the Defendant related to the reasonableness of his actions

4 In a legal context, this ongoing reporting continually reinforces an account of the occurrence which Defendant disputes, and which will taint the possibility of empaneling an unbiased venire Additionally, statements about "getting justice" in this matter have been made from celebrities such as Gwyneth Paltrow, Halle Berry, Chrissy Teigen, Kim Kardashian, and Viola Davis Political figures from President Biden calling for "justice," to Kansas City Mayor Lucas stating, "If Stand Your Ground really lets somebody just shoot somebody that rings a doorbell, that puts the life of every postal worker, every campaigner, every Amazon delivery person at risk in this country " These statements implicitly communicate to the public that the alleged actions of the Defendant are indefensible. Defendant also claims he will be jeopardized in

his ability to effectively utilize the Missouri Supreme Court Rules of Criminal Procedure, including, but not limited to a change of venue, to remove the ongoing taint of pre-trial publicity

5 Additionally, based on the pre-trial publicity, the Defendant is personally experiencing ongoing danger, threats and harassment To date, Defendant has had to relocate his residence on three (3) different occasions Defendant's home has been defaced by being "egged" and vandalized with spray paint Defendant's disabled wife recently had to be relocated from a nursing home facility in the Kansas City metropolitan area, to another nursing home facility outside of the Kansas City area, because of unfavorable publicity generated against Defendant in this case.

6 Following this occurrence, someone has published Defendant's private cell phone number for the general public In Exhibit 4, Defendant attached numerous text messages of a threatening or harassing nature. For purposes of this Order, the Court has edited many of the expletives contained in the text messages by inserting the letter "X".

The text messages include. Defendant being nominated as a "murderer," "Peace (sp) of shXt," "You should burn in hell," "you are a sick human being," "just sick," "fXXk you and ur husband bXtch," "wack aXX mf," "Y'all are bogus asl," "Answer the phone coward! The grave you meant to out (sp) that child in is the one you will rot in! Hopefully sooner than later!;" "Hey bXtch I hope y'all burn in fXXking hell I hope somebody rips y'all aXXholes so raw you can't even sit on your couch to eat your bs TV dinners," "you dirty bXtch! I hope you rot in hell 100 100 racist white man! When you go to jail they are going to kill yo old aXX!!!," "your (sp) a killer," "Lesstteerrrr Daniel Danielllll Oh you turned your phone off Lesterrrrrrrrrr Lmaooo scary aXX mf!! Where was this same energy when you shot a kid in the mf head!!!! Huh Lester!!!! Heeeeyyyyyy Lester you turned your phone back on!!!," "I wonder if u Changed number yet whole internet got it lol," "How do it feel knowing you almost took a child life because of

racism your (sp) gonna get what's coming to you and when you do I hope you die;" "BXtch I should come shoot your shxt up huh FXXk your family you sick son of a bXtch " These text messages illustrate ongoing threats and harassments to which defendant is targeted, and has forced Defendant to get a new phone number. Further, Defendant has experienced demonstrations in front of his home, involving unfounded accusations of being a racist

7 Defendant has resided at the same residence for over forty (40) years Defendant's neighbors and acquaintances are potential witnesses If Defendant is required to publicly identify and disclose contact information of any such potential witnesses into the public domain, the publicity generated thus far by such publication could alarm or chill any such witnesses' desire to make a statement, come forward, or become involved in any way in the case.

8. The State's response to the Motion for Protective Order correctly sets out the open records law in Missouri. Section 109 180 Revised Statutes of Missouri (hereinafter RSMo), states in part "Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen "

The State points to many civil cases, and the judicial weighing of competing interests, whenever a party sought closure of public records in those cases. However, this Court is well aware the stakes in criminal cases are different than in civil cases Defendant in a criminal case has a liberty interest at stake and is entitled to a empanel a fair and impartial jury for the trial of his case. This constitutional right does not stand alone Other Constitutional rights such as the right of freedom of expression, freedom of the press and Defendant's right to due process are competing rights. In criminal cases, a defendant's rights are even more important given the peril which the defendant is subject

9 This Court finds the evidence adduced, and supporting exhibits admitted into evidence, not only compels closure, but also for good cause requires it. The threats and harassment demonstrate Defendant's life and physical safety are in jeopardy. Some in the media have demonstrated a willingness to contact anyone who could lend any information (whether relevant or not) to this matter. The foregoing examples by the grandson and the ex-wife of Defendant provide proof. If Defendant's discovery responses reveal the identity of favorable or unbiased witnesses, it logically follows that these individuals would be contacted by media for comment and subjected to unwarranted pretrial scrutiny and publicity. Such circumstances would pressure, or even eliminate, witnesses' desire to come forward or provide accurate information to assist Defendant. Such identification would undoubtedly subject any potential witness to the same intimidation tactics to which the defendant has been subjected. This would likely render Defendant's right to a fair trial and impartial jury unattainable and could jeopardize any ongoing criminal investigation.

10 The Missouri Supreme Court is empowered to promulgate rules relating to "practice, procedure and pleadings" by the Missouri Constitution at Article V, §5. In those cases where the Missouri Supreme Court adopts a rule in accordance with the above constitutional provision, and such rule is "inconsistent with a statute and has not been annulled or amended by later enactment of the legislature, the rule supersedes the statute." *State ex rel. McCulloch v Lasky*, 867 S.W.2d 697, 699 (Mo. App. E.D. 1993). Furthermore, "a statute must specifically refer to a rule in order to amend or annul it." *State v. Conklin*, 767 S.W.2d 112, 118 (Mo. App. S.D. 1989). In this case Missouri Supreme Court Rule 25.11 is procedural in nature, and supersedes Section 109.180 RSMo.

Rule 25.11 provides in part: *“The court may at any time, on motion and for good cause shown:*

(a) Order specified disclosures be denied or restricted, or make an order it determines appropriate, provided that all material which a party is entitled to receive is disclosed in time for counsel to make use of it; and

(b) Order non-discoverable material or information contained within discoverable material be removed or redacted and the remaining material or information be disclosed. The removed or redacted material or information shall be preserved by the party or in the records of the court and be made available to a reviewing court in the event of an appeal...

In determining a motion for protective order, the court may consider the following: the risk of endangering the life or physical safety of an individual; the risk of intimidation of potential witnesses; the risk of flight from prosecution; the risk of destruction or tampering with evidence; the risk of economic reprisals; the risk that disclosure may seriously jeopardize a criminal investigation; or any other relevant consideration”.

11 Finally, Article I, §10 of the Missouri Constitution provides “That no person shall be deprived of life, liberty or property without due process of law” The Court finds, based upon the evidence supporting Defendant’s Motion for a Protective Order, that good cause is shown for this Court to enter an order sealing disclosure of the discoverable materials, documents, investigative reports, including photographic, video, or electronic evidence, of any kind, generated in this case (hereinafter referred to as “Covered Materials”) This Court finds that redaction of the Covered Materials is an insufficient remedy given the circumstances of this case.

12 In sustaining Defendant’s Motion for Protective Order, the Court has carefully considered the prejudice to the State if the Motion is granted. The Court finds there is no conceivable prejudice to the State by sustaining the Motion. The Court does find Defendant will be prejudiced if the Motion is not granted based on the aforesaid findings

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that any and all Covered Materials in possession of the Clay County Prosecutor’s Office provided to defense

counsel in accordance with State's discovery obligations, as well as any and all other Covered Materials to be provided to or to be exchanged with defense counsel, in any form or component part, shall not be disclosed beyond the Party's obligation under Rule of Criminal Procedure 25. Additionally, any and all Covered Materials in possession of the Defense Counsel provided to the State prosecutor's office in accordance with Defendant's discovery obligations as well as Covered Materials provided to or exchanged as well as any and all other documents, materials, or correspondence to be provided to or to be exchanged with the prosecutor's office, in any form or component part, shall not be disclosed beyond the Defendant's obligation under Rule 25

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Party who gives or receives the Covered Materials shall not copy, disseminate, or disclose the Covered Materials, in any form or by any means, to any third party (except to those employed by either Party to assist in the prosecution or defense in the case) including but not limited to, by disseminating or posting the Covered Materials to any news organization or social media platforms; and to include, but not limited to: news organizations, Facebook, Instagram, WhatsApp, Twitter, Snapchat, Twitter, Tik Tok, YouTube, or any similar social media or news media site

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that disclosure of the names and identifying information of any witnesses, other than sworn members of law enforcement, is strictly prohibited

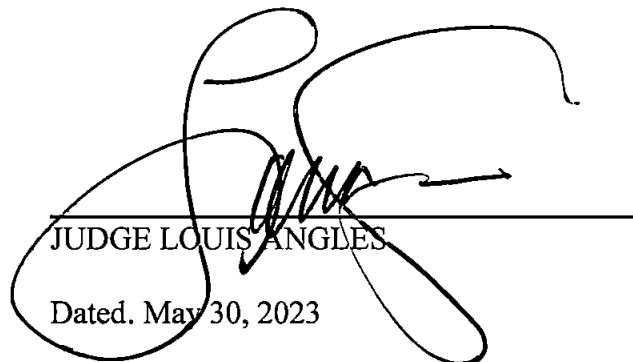
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Covered Materials, whether in electronic or paper form, shall be kept in the sole possession and exclusive control of the prosecuting attorney and the defense counsel and shall not be copied (except to the extent needed internally), disseminated, or disclosed in any form, or by any means, by either the

prosecuting attorney or defense counsel, except to those employed by the prosecutor to prosecute or defense counsel to assist in the defense of the case.

IT IS FUTHER ORDERED, ADJUDGED AND DECREED that any exhibits, documents, attachments or transcripts of Defendant's Motion in Support of this Protective Order (filed on May 1, 2023), and any accompanying documents, exhibits, or transcripts, are sealed pursuant to Rule 25.11 of the Rules of Criminal Procedure

IT IS FUTHER ORDERED, ADJUDGED AND DECREED that all Covered Materials shall remain under seal indefinitely pending further order of this Court

IT IS SO ORDERED



JUDGE LOUIS ANGLES
Dated. May 30, 2023