STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiffs,

V

ALEX JAY ADAMOWICZ,

Defendant.



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OPINION AND ORDER DENYING MOTION TO FILE UNDER SEAL

At a session of said Court, held in the
County of Oakland, State of Michigan
October 18, 2019.

PRESENT: HON. MICHAEL WARREN



I

Introduction

Before the Court is the Defendant-Appellant Alex Adamowicz's Motion To File Under Seal. At the request of the parties, having reviewed the Response and otherwise being fully informed in the premises, the Court dispensed with oral argument. MCR 2.119(E)(3).

At stake in this Motion is whether the medical records, psychological reports and data, and the transcripts of the instant *Ginther* proceedings should be sealed when (1) the Defendant's Motion is fatally defective due to its cursory analysis, failure to include a brief, and failure to adequately address the interests in sealing the records as required by MCR 8.119(I); (2) the Defendant has waived any privilege by asserting the defense at issue and admitting the evidence in a

public proceeding; and (3) the core principles and values of the First Amendment clearly outweigh the Defendant's interest in any privacy of evidence at issue? Because the answer is "no," the Motion is denied.

## II
## Procedural History

The Defendant has been convicted by a jury of his peers of First Degree Premeditated Murder. Pursuant to orders of the Michigan Supreme Court and the Court of Appeals, the case has been remanded to this Court to hold an evidentiary hearing about whether the Defendant received the ineffective assistance of counsel. In particular, among other things, the Court was ordered "to conduct an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436 (1973), and determine whether the defendant was deprived of his right to the effective assistance of counsel with respect to the failure to call an expert witness . . . . ."

The gravamen of the Defendant's argument is that because his counsel did not comprehend the Defendant's psychological state and history, counsel failed to retain "[a]n expert witness [who] would have explained how Alex's post-offense conduct aligns with this mental health history (see PSRI, 1-2, 8) psychologically traumatic experience, and lack of social support; more 'appropriate' signs of remorse would not be expected." Thus, the Court has presided over an exhaustive evidentiary hearing in which one of the key issues addressed was the Defendant's mental health history, psychological traumatic experience, lack of social support, and related factors.

Casually citing MCR 8.119(I), the Defendant argues that the transcripts, documents, and records at issue should be sealed because "[t]hese exhibits did

not appear in the trial court file and were not intended for public access. These exhibits have only been requested and obtained as a result of Mr. Adamowicz's appeal in the course of this remand." The People object only to the sealing of the transcripts.

## III

## The First Amendment

In the seminal case of *Richmond Newspapers, Inc v Virginia,* 448 US 555 (1980), the United States Supreme Court explained that core First Amendment values are furthered by ensuring that criminal trials are conducted in public. In an opinion by Chief Justice Warren Burger, the Court explained open trials ensure that proceedings are conducted fairly to all concerned, discourage perjury, discourage misconduct by the participants, discourage secret bias or prejudice, provides a significant therapeutic value (i.e., an open process of justice serves an important prophylactic purpose, including an outlet for community concern, hostility and concern and provides a community catharsis that cannot be obtained in the dark), and ensures the appearance of justice. *Id.* at 570-577. Chief Justice Burger also explained that the First Amendment guarantees the common purpose of freedom of communication on matters relating to the functioning of government, and that there is nothing of higher concern and importance than the manner in which criminal trials are conducted. *Id.* at 575. The freedom of association is also undermined by closed courtrooms. *Id.* at 577-578. Justice Brennan's concurring opinion echoed and elaborated these themes. *Id.* at 593-598 (Brennan, J., concurring). Like the instant case, the *Richmond Newspapers* case involved press access to criminal proceedings involving a murder charge.

While addressing whether a criminal voir dire may be closed, the United States Supreme Court explained that closure of any portion of a criminal trial must meet an exacting standard:

> "[T]he right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information." *Waller* [*v Georgia*], 467 US [39,] 45 [(1984)]. "Such circumstances will be rare, however, and the balance of interests must be struck with special care." *Ibid. Waller* provided standards for courts to apply before excluding the public from any stage of a criminal trial:
>
> > "[T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Id.*, at 48.

[*Presley v Georgia*, 558 US 209, 213-214 (2010) (per curiam).]

See also *People v Vaughn*, 491 Mich 642, 653 (2012) (to close the courtroom a defendant must "advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure").

In fact, closure of trial from the public is structural error that, if objected to, would normally result in the automatic reversal of a defendant's criminal conviction. *Weaver v Massachusetts*, ___ US ___; 137 SCt 1899, 1910 (2017) (per curiam).

Although this *Ginther* proceeding is not a criminal trial per se, these holdings apply here. The result of this proceeding will either allow the Defendant's conviction for First Degree Premeditated Murder to stand or be reversed. If the conviction is reversed, the evidence at issue introduced in this *Ginther* hearing will undoubtedly be introduced at the second trial of this case, as it will form the basis of his defense.

## IV

## Any privacy interest has been waived

The Court has conducted the evidentiary hearing at issue because the Defendant claims his lawyer's assistance was ineffective since the Defendant's mental health and history was not properly raised to the jury. The Defendant's evidence at this hearing has involved exhaustive medical records and expert testimony displaying for the entire world to see his psychological history and mental health. The Defendant is also asking this Court to reverse his conviction for First Degree Premeditated Murder based on this argument. He has waived any privilege relating to his mental health, psychological history, and any other documentation of his mental status. *People v Hunter,* 374 Mich 129, 135-136 (1965); *People v Toma,* 462 Mich 281, 319-3209 (2000).

## V

## The Motion is Flawed

"Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell,* 481 Mich 377, 388 (2008). The Defendant's cursory citation to authority constitutes abandonment of the argument. *Houghton v Keller,* 256 Mich App 336, 339-340 (2003) ("failure to properly address the merits of [one's]

assertion of error constitutes abandonment of the issue"; a party "may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority" (citations omitted)); *People v Bennett*, unpublished per curiam opinion of the Court of Appeals, issued April 8, 2008 (Docket No. 274390), p. 3 ("We similarly decline to address whether the application of MCL 768.27a in this case violated defendant's right to due process. . . . [H]e devotes a single, short paragraph to this issue with no analysis and little citation to relevant authority. A party cannot assert a position and then leave it to this Court to search for authority to sustain or reject that position, or to unravel and elaborate for him his arguments" (citations omitted)).

The Defendant's two page Motion also has no brief and therefore should be denied for this reason alone. MCR 2.119(A)(2) ("A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based").

Furthermore, MCR 8.119(I)(2) specifically provides that in determining whether there is good cause to seal a record, the Court is to evaluate the interests of the parties and the public. The Defendant's Motion does not identify the interests of the Defendant in sealing the record other than a conclusory argument that the records could be evaluated by any member of the public. Why that is a problem, especially since the reports and testimony have all been introduced into evidence, is not explained. The Motion also fails to explore the vital public interest under the First Amendment in not sealing the records as addressed in *Richmond Newspapers* and *Presley*. The Motion's cursory nature is fatal.

## VI

**The Defendant has failed to meet his burden to override the First Amendment**

Even if the Defendant did not waive his privilege and had filed a proper Motion and Brief (none of which he did), he has failed to meet his burden that the First Amendment should be overridden. Again, the Court conducted a comprehensive trial, in full view, in which the jury convicted the Defendant of First Degree Premeditated Murder. Now the Defendant seeks to reverse that conviction and hide the very reasons why. This is not a case where medical records, history, and opinions are of tangential value – it is the very heart of the argument. To conceal the facts on which the argument is made flies in the face of the First Amendment values and principles articulated by Chief Justice Burger and Justice Brennan in *Richmond Newspapers*. For example, if this Court were to reverse the conviction with the basis of the decision being masked from the public, press, and family of the victim, one could rightly be concerned whether the proceedings were conducted fairly to all involved, whether the decision was based on perjury or misconduct by the participants, or was the result of secret bias or prejudice. Likewise, such a decision could only destroy any therapeutic value, could very well engender hostility, and subvert the appearance of justice. Instead of ensuring that criminal proceedings had the highest level of integrity, it would be akin to a new Star Chamber.

**ORDER**

In light of the foregoing, the Court DENIES THE MOTION TO SEAL.

**HON. MICHAEL WARREN**
**CIRCUIT COURT JUDGE**

**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon the attorneys for record or the parties not represented by counsel in the above case by mailing it to their addresses as disclosed by the pleadings of record on
October 18, 2019