IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

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| STATE OF TENNESSEE,<br><br>v.<br><br>DEMETRIUS HALEY,<br><br>Defendant,<br>and<br><br>TADARRIUS BEAN,<br><br>Defendant,<br>and<br><br>EMMITT MARTIN III,<br><br>Defendant,<br>and<br><br>DESMOND MILLS, JR.,<br><br>Defendant,<br>and<br><br>JUSTIN SMITH,<br><br>Defendant. | Nos. C2300401, C2300402, C2300403, C2300404, C2300405 |

**MEDIA COALITION MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF SEEKING TO LIFT PRIOR ORDER BARRING RELEASE OF PUBLIC RECORDS, TO UNSEAL ALL SEALED ORDERS, AND TO ACCESS JUROR INFORMATION**

By this Motion, a coalition of Tennessee and national news organizations and reporters—namely, the Associated Press, The Daily Memphian, Memphis Publishing Co. d/b/a the *Commercial Appeal*, MLK50: Justice Through Journalism, Marc Perrusquia, The New York Times Company, WREG-TV, Cable News Network,

Inc., and WATN-TV/WLMT-TV (collectively, "the Media Coalition")—by and through undersigned counsel, respectfully moves to intervene in the above-captioned cases for the limited purpose of seeking an order (1) lifting the Court's prior order barring release of specific public records in the possession of the City of Memphis (the "City") and Shelby County (the "County") entered on November 2, 2023;[1] (2) unsealing all sealed orders in theses cases, including any order sealing juror information; and (3) granting public access to juror information pursuant to the U.S. and Tennessee Constitutions in the cases of the three Defendants who were tried and found not guilty.[2] The Media Coalition also respectfully requests that the Court set this Motion to be heard with the October 3, 2025 sentencing hearing for Defendants Martin and Mills or on a date prior to that hearing.

## INTRODUCTION

"The value of openness in judicial proceedings can hardly be overestimated." *United States v. Moussaoui*, 65 F. App'x 881, 885 (4th Cir. 2003). Here, Defendants were indicted for second degree murder, aggravated assault, aggravated kidnapping, official misconduct, and official oppression for their part in the death of

[1] A copy of the Court's November 2, 2023 Order is attached as Exhibit A.

[2] Counsel for the Media Coalition reached out to counsel for the parties to ask for their position on the requested relief in this Motion. Counsel for Mr. Smith "objects to the release of any information regarding the sequestered jury. [A]s it relates to [G]arrity [I] don't want to consent and get on a slippery slope. [I] consider it inadmissible and who knows [I] may try the federal case again so I'm not waiving an [G]arrity protection for my client." Counsel for Mr. Bean responded "Because the Garrity statements reflect the true impression of officers involved prior to federal agents bending and twisting the truth with threats of prosecution or promises of leniency, I have no objection to the release of whatever protected statements or material, Garrity or otherwise." Counsel for Mr. Mills said that "Mr. Mills takes no position regarding your requests of the court." Counsel for Mr. Haley indicated that "Haley will state his position once I have reviewed your motion and the specific material/orders it seeks."

Tyre Nichols. On May 7, 2025, Defendants Haley, Bean, and Smith were found not guilty on all counts by a jury from Hamilton County. It is the Media Coalition's understanding that Defendants Martin and Mills have a plea agreement in their cases and are awaiting sentencing. Despite the verdict being issued and plea agreements being in place, there is much of this case that remains shrouded in secrecy.

The Media Coalition previously moved to intervene to challenge a prior order of the Court prohibiting the City and County from disclosing certain public records in their possession that had also been provided to the District Attorney General. On November 2, 2023, the Court partially granted the relief sought by the Media Coalition by holding that "information in the possession of the City and County Governments not categorized as *Garrity* information may be released to the public in accordance with the Tennessee Public Records Act." Ex. A at 1–2. The public records that were categorized as *Garrity* material are still subject to the Court's prior orders on March 8, 2023 and October 2, 2023,[3] which prohibit release of that material by the City and County.

It has also come to the attention of the Media Coalition that there is at least one sealed order, if not more, in this case, including a sealed order sealing other

[3] Those orders are attached as Exhibits B and C, respectively.

records, including juror[4] information.[5] Thus, the Media Coalition now seeks to intervene again in this case in an effort to lift the veil of secrecy that remains.

## ARGUMENT

### I. Intervention by the Media Coalition is proper to challenge closure orders.

Under Tennessee law, members of the public, including members of the media, have the right to intervene to oppose closure orders, including sealing orders. *Ballard v. Herzke*, 924 S.W.2d 652, 657 (Tenn. 1996) ("[W]e agree with those federal and state courts in other jurisdictions which have routinely found that third parties, including media entities, should be allowed to intervene to seek modification of protective orders to obtain access to judicial proceedings or records."); *State v. Drake*, 701 S.W.2d 604, 608 (Tenn. 1985) (holding that "[i]nterested members of the public and the media may intervene and be heard in opposition to [a closure] motion"); *see also State v. Montgomery*, 929 S.W.2d 409, 411 (Tenn. Crim. App. 1996) (affirming intervention by media in criminal case to challenge gag order on the press). As such, the Media Coalition has standing to intervene to seek the relief sought by this Motion.

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[4] The Media Coalition seeks all juror information, including for jurors from the trial, any alternate jurors, and prospective jurors. This would include, but not be limited to, completed juror questionnaires, jury pool lists pursuant to Tenn. Code Ann. § 22-2-308, and the list of prospective jurors pursuant to Tenn. R. Crim. P. 24(h).

[5] An email string, attached as Exhibit D, between the Criminal Court Clerk's Office's Public Information Officer, Kesha Whitaker, and Proposed Intervenor Marc Perrusquia confirms that "[a]ll juror information has been sealed" and that the order sealing juror information is itself sealed.

## II. The orders prohibiting release of public records held by the City and County should be lifted in their entirety.

In its November 2, 2023 Order, the Court explained that its prior closure orders on March 8, 2023 and October 2, 2023 were based on a determination "that a delay in the public production of [reports and personnel files in the possession of the City and the County concerning Defendants] would not only advance the Defendants' right to a fair trial, but also help ensure a fair trial for all parties involved in this case." Ex. A at 1. Now, the trial is over, with the three Defendants who stood trial being found not guilty on all counts on May 7, 2025. For the two Defendants with plea agreements, all that remains is their sentencing. As such, there is no further reason for maintaining the closure the Court previously found necessary.[6]

It is a basic premise of the constitutional rights of access that "[t]he presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Drake*, 701 S.W.2d at 607 (quoting *Press-Enter. Co. v. Superior Court* ("*Press-Enterprise I*"), 464 U.S. 501, 510 (1984)). Even when such "overriding interest" in closure is found, "once [the] overriding interest initially necessitating closure has passed, the restrictions *must* be lifted." *United States v. Antar*, 38 F.3d 1348, 1362 (3d Cir. 1994) (emphasis added); *see also FTC v. AbbVie Prods. LLC*, 713 F.3d 54, 71 (11th Cir. 2013) (holding under common law right of

[6] The Media Coalition had previously argued for a similar modification of the prior closure orders. Media Coalition's Suppl. Reply in Supp. of Mot. to Intervene at 9–10 (served on Aug. 1, 2023).

access that district court did not abuse its discretion when "[i]t found that the passage of time had altered the balance enough so that the value of public access to [the sought records] exceeded the value of confidentiality"); *Larry Pitt & Assocs. v. Lundy Law, LLP*, 346 F. Supp. 3d 761, 769 (E.D. Pa. 2018) (explaining that the passage of time had made the sealed information "clearly stale information which removes any claim of protection"); *United States v. ISS Marine Servs., Inc.*, 905 F. Supp. 2d 121, 141 (D.D.C. 2012) ("[T]he mere fact that a case was, at one time, placed under seal is not a reason, in and of itself, to indefinitely maintain that seal and thus negate the public's access to judicial records….").

Here, the stated overriding interest was the fair trial rights of the parties. The trial is now over with three of the Defendants having been acquitted and the other two awaiting sentencing after entering into plea agreements. Because the asserted compelling interest is no longer a concern, the orders prohibiting the City and the County from releasing public records should be lifted.

## III. The Court should unseal all sealed orders in this case.

Based on communications between members of the Media Coalition and the Court's Public Information Officer, there is at least one sealed order in this case, if not more. The one sealed order that the Media Coalition is aware of, ironically, is an order that seals something else: juror information. While there may be very rare circumstances under which an order sealing a court record is itself sealed, this is not that case.

"Judicial records belong to the American people; they are public, not private, documents." *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 417 (5th Cir. 2021). The Tennessee Supreme Court has explained that court closure and other restrictive orders must overcome a presumption of openness and be no broader than necessary to protect an overriding interest that is likely to be prejudiced while also considering reasonable alternatives to closure and making findings adequate to support closure. *Drake*, 701 S.W.2d at 608 (citations omitted). The Tennessee Court of Appeals has repeatedly held that the *Drake* standard applies to access to court records. *See, e.g.*, *In re Estate of Thompson*, 636 S.W.3d 1, 20 (Tenn. Ct. App. 2021) (holding that "[t]he presumption of openness regarding [filed court] records is 'strong[,]' and 'may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest'" (citations omitted)); *In re NHC-Nashville Fire Litig.*, 293 S.W.3d 547, 560 (Tenn. Ct. App. 2008) (noting *Drake* standard applied to both judicial proceedings and judicial records).

While *Drake* is grounded in the First Amendment, Tennessee courts have recognized that Article I, Sections 17 and 19 of the Tennessee Constitution also provides an independent basis for a qualified right of access to court records. *E.g.*, *In re Estate of Thompson*, 636 S.W.3d at 11 ("The Constitutional mandate for open courts [in Tenn. Const. art. I, § 17] extends to a court's judicial records." (citing *Kocher v. Bearden*, 546 S.W.3d 78, 85 (Tenn. Ct. App. 2017))); *Knoxville News-Sentinel v. Huskey*, 982 S.W.2d 359, 362–64 & n.3 (Tenn. Crim. App. 1998) (holding

that "Article I, Sec. 19 of the Constitution of Tennessee presumably extends a similar qualified right to the public" as the First Amendment in regard to access to court records); *see also* Op. Tenn. Att'y Gen. 81-158, at 4 (May 5, 1981), https://perma.cc/5BRD-A6XD (explaining that Article I, Section 17 of the Tennessee Constitution confers "an independent right on the part of the public, press included, to attend court proceedings").

Since the order itself is sealed without a sealing order, the Media Coalition is unaware of the purported overriding interest that was asserted, how the closure is necessary and narrowly tailored to protect that interest, and whether there are reasonable alternatives to closure. In any event, it is hard to fathom how the closure of court orders in most cases is proper and even harder to comprehend how those orders must remain sealed after a case has already been tried or when all that remains is sentencing. Whatever concerns there may have been regarding fair trial rights have ceased. And there are no national security or trade secret concerns in this case. As such, whatever court orders have been sealed should be unsealed.

Further, the blanket sealing of a court's order is itself likely overbroad and not narrowly tailored. There is no expiration date on the seals and no mechanism for the public to learn even the breadth of what was sealed. The Tennessee Court of Appeals previously rejected a trial court's effort to seal wide swaths of estate documents on narrow tailoring grounds, warning that such a heavy-handed approach "caused prejudice not only to the complaining party but also the public at large." *In re Estate of Thompson*, 636 S.W.3d at 24. In this case, the public,

including the Media Coalition, similarly suffers from secrecy of sealed court orders, which should now be unsealed. 000000000

## IV. The Court should lift its order sealing juror information.

### A. There is a qualified First Amendment right of access to juror information.

While the issue is one of first impression in Tennessee, courts across the country have repeatedly found that there is a qualified First Amendment right of access to juror information by applying the U.S. Supreme Court's "experience and logic" test from *Press-Enterprise Co. v. Superior Court* ("*Press-Enterprise II*"), 478 U.S. 1, 9 (1986). *E.g.*, *In re Globe Newspaper Co.*, 920 F.2d 88 (1st Cir. 1990) (recognizing qualified First Amendment right of access to juror names and addresses); *Stephens Media, LLC v. Eighth Judicial District Court*, 221 P.3d 1240 (Nev. 2009) (extending the qualified right of access to completed juror questionnaires); *Forum Commc'ns Co. v. Paulson*, 752 N.W.2d 177 (N.D. 2008) (same). This Court should align with this precedent, and order the release of juror information in this case.

#### i. There exists a centuries-long tradition across the country of public access to juror information.

The "experience" prong for deciding whether there is a qualified First Amendment right of access to juror information looks to whether the requested court records "have historically been open to the press and general public." *Press-Enterprise II*, 478 U.S. at 8; *see also Ballard*, 924 S.W.2d at 661 (explaining that "the First Amendment to the Constitution presumes that there is a right of access

to proceedings and documents which have 'historically been open to the public'" (citing *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897–98 (7th Cir. 1994))). The relevant history to consider is not "the particular practice of any one jurisdiction, but instead [ ] the experience in that *type* or *kind* of hearing throughout the United States." *El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147, 150 (1993) (citation and internal quotation marks omitted) (emphasis in original).

"When the jury system grew up with juries of the vicinage, everybody knew everybody on the jury," the identities of jurors were not—and could not be—hidden. *In re Balt. Sun Co.*, 841 F.2d 74, 75 (4th Cir. 1988) (footnote omitted). Revolutionary-era American criminal trials, such as those following the Boston Massacre, also featured publicly known juries. *Press-Enterprise I*, 464 U.S. at 508. And as the Fourth Circuit has recognized, "the anonymity of life in the cities" and changes in "the complexion of this country" have not dimmed the trend of access. *In re Balt. Sun Co.*, 841 F.2d at 75. To the contrary, the Fourth Circuit ruled that requiring courts to disclose juror identities is "no more than an application of what has always been the law." *Id.*

The Fourth Circuit is not alone. In *United States v. Wecht*, after surveying case law and legal history, the Third Circuit independently came to the same conclusion: Public knowledge of juror information "is a well-established part of American judicial tradition." 537 F.3d 222, 236 (3d Cir. 2008). Further, the court found it "significant" that court orders withholding juror information "appear to be

very rare before the 1970s." *Id.* And even if some courts have occasionally kept juror identities private, the court reasoned, "this would not by itself prove that no tradition of openness exists." *Id.* at 236 n.27. In fact, the Third Circuit ruled, "anonymous juries have been the rare exception rather than the norm." *Id.* at 237; *see also United States v. Doherty*, 675 F. Supp. 719, 722 (D. Mass. 1987) (recognizing historical tradition of access to juror information post-verdict).

Other courts across the country agree. In Pennsylvania, juror names "have commonly been disclosed during trial." *Commonwealth v. Long*, 922 A.2d 892, 903 (Pa. 2007). So, too, in Massachusetts. In *Commonwealth v. Fujita*, when the Supreme Judicial Court of Massachusetts mandated that a list of juror names be released for any criminal case by the end of the trial, it stated that "[t]his directive is consistent with the prior practice of the Superior Court, both historically and in more recent times." 23 N.E.3d 882, 887 (Mass. 2015); *see also id.* at 887 n.13 (explaining that this tradition dates back at least to 19th-century murder trials); *id.* at 887 n.16 (quoting from a 1983 letter from the Chief Justice of the Superior Court to the Massachusetts Newspaper Publishers Association which explains the contemporary availability of juror names to the public). And the Ohio Supreme Court reached the same conclusion. *State ex rel. Beacon J. Publ'g Co. v. Bond*, 781 N.E.2d 180, 187 (Ohio 2002) (recognizing that "[t]he policy underlying" a presumptive right of access to voir dire records, including juror questionnaires, "has endured over centuries of Anglo-American jurisprudence").

The longstanding national history of public access to juror information more than satisfies the experience prong of the *Press-Enterprise II* test.

### ii. Courts have found substantial benefits to public access to juror information for the criminal justice system.

Under the second prong of the *Press-Enterprise II* test, this Court must assess whether access to juror identities "plays a significant positive role in the functioning of the particular process in question." 478 U.S. at 8. Courts across the country have concluded that it does. In *In re Globe Newspaper Co.*, the First Circuit listed several substantial benefits of publicly disclosing juror-identifying information. 920 F.2d at 94. The First Circuit reasoned that "[k]nowledge of juror identities allows the public to verify the impartiality of key participants in the administration of justice, and thereby ensures fairness, the appearance of fairness and public confidence in that system." *Id.* Additionally, the court found that disclosing juror information could also uncover "[j]uror bias or confusion," help investigate "jurors' understanding and response to judicial proceedings" and "deter intentional misrepresentation at voir dire." *Id.* The Supreme Court of Ohio voiced similar benefits in *Beacon Journal Publishing Co.*, 781 N.E.2d at 194. There, the court reasoned, public access could also preserve "fairness when suspicions arise that jurors were improperly selected from a narrow social group or from a particular organization." *Id.* Further, the court found that public access to juror information would help facilitate post-verdict interviews, which also "may serve to uncover juror misconduct or provide insight on systemwide problems that may be the subject of judicial or legislative reform." *Id.*; *see also Wecht*, 537 F.3d at 239 (supporting

disclosure because access to juror identities can help deter "corruption and bias"); *United States v. Shkreli*, 264 F. Supp. 3d 417, 420 (E.D.N.Y. 2017) ("Whether members of the jury choose to grant or decline press interviews regarding their service, the identities of the jury members may still be important to inform the public about the jury selection process, the conduct of the trial, or the criminal justice system in general."); *Fujita*, 23 N.E.3d at 888–89 ("[W]e agree with the United States Court of Appeals for the First Circuit that 'where—as here—the trial judge points to no special reason for confidentiality other than the personal preferences of the jurors … the public's long-term interest in maintaining an open judicial process must prevail in the balance.'" (quoting *In re Globe Newspaper Co.*, 920 F.2d at 91)); *Doherty*, 675 F. Supp. at 723 (finding that public access to juror identities helps to educate the public about jury service).

Other courts have warned of the dangers that flow from excessive secrecy of juror information. In 1999, after the Michigan Court of Appeals held that the press enjoyed a qualified First Amendment right of access to the names and addresses of jurors after trial, the court dwelled on the real danger of holding otherwise: "[I]n an extreme case, a court could, with unlimited discretion, totally conceal the identity of jurors and thus create the impression of a secret process that *Press-Enterprise I* and *II* caution against." *In re Disclosure of Juror Names & Addresses*, 592 N.W.2d 798, 808–09 (Mich. Ct. App. 1999). The court there explained that closure of juror information risks rubber-stamping a "secret process" that "seriously undermine[s] the openness that has traditionally been the hallmark of our system of justice." *Id.*

at 808; *see also In re Balt. Sun Co.*, 841 F.2d at 76 ("[T]he risk of loss of confidence of the public in the judicial process is too great to permit a criminal defendant to be tried by a jury whose members may maintain anonymity.").

"'Transparency,' it has been said, 'is essential to maintaining public respect for the criminal justice system, ensuring its integrity, and protecting the rights of the accused.'" *State v. Schiefelbein*, 230 S.W.3d 88, 114 (Tenn. Crim. App. 2007) (quoting *Smith v. Doe*, 538 U.S. 84, 99 (2003)). This is no less true for juror information, including things like completed juror questionnaires, among other things. As such, the Court should find that the logic prong of the *Press-Enterprise II* test is satisfied and hold that there is a qualified First Amendment right of access to juror information.

### B. There is also an independent qualified right of access to juror information in the Tennessee Constitution.

Article I, Section 19 of the Tennessee Constitution provides, in relevant part, "That the printing presses shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof." The Tennessee Supreme Court has explained that this provision "is a substantially stronger provision than that contained in the First Amendment" and that "[t]his mandate of Tennessee's Constitution requires that any infringement upon the 'free communication of thoughts' and any stumbling block to the complete freedom of the press 'to examine (and publish) the proceedings … of any branch or officer of the government' is regarded as constitutionally suspect, and at the very threshold there is a

presumption against the validity of any such impediment." *Press, Inc. v. Verran*, 569 S.W.2d 435, 441–42 (Tenn. 1978); *see also H & L Messengers, Inc. v. City of Brentwood*, 577 S.W.2d 444 (Tenn. 1979) (rejecting a ban on distributing handbills in public on First Amendment and Tennessee constitutional grounds); *Knoxville News-Sentinel*, 982 S.W.2d at 362 & n.3 (finding that "the Tennessee Supreme Court has recognized a qualified right of the public, founded in common law and the First Amendment to the United States Constitution, to attend judicial proceedings and to examine the documents generated in those proceedings," and that "Article I, Sec. 19 of the Constitution of Tennessee presumably extends a similar qualified right to the public"). At a minimum, the First Amendment standard for assessing public access to court proceedings also governs the analysis under the Tennessee Constitution. Access to juror identities easily satisfies this test. Therefore, the Tennessee Constitution provides the public a qualified right of access to juror identities that is both independent of and at least coextensive with the First Amendment.

Article I, Section 17 of the Tennessee Constitution similarly provides an independent, compelling basis for recognizing public access to juror-identifying information. Tenn. Const. art. I, § 17 (guaranteeing that "all courts shall be open"). The Court of Appeals has already found that this provision "extends to a court's judicial records." *In re Estate of Thompson*, 636 S.W.3d at 11 ("The [Tennessee] Constitutional mandate for open courts extends to a court's judicial records."). And the Tennessee Attorney General has opined that "[t]he conclusion that the words

'all courts shall be open' or similar words confer an independent right to the public to attend court proceedings has been the conclusion drawn by virtually every state court that has considered the question." Op. Tenn. Att'y Gen. 81-158, *supra*, at 3 (citations omitted). Of course, "[t]he openness of judicial proceedings extends to judicial records." *In re NHC-Nashville Fire Litig.*, 293 S.W.3d at 560.

Combined with the First Amendment or assessed alongside it, the Tennessee Constitution makes clear that the public, including the press, enjoys a qualified right of access to juror information.

### C. The qualified constitutional rights of access to juror information have not been overcome so as to justify continued withholding.

Only in narrow circumstances can the presumptive right of access to juror information be overcome. In *Press-Enterprise I*, the Supreme Court held that a qualified First Amendment right of access "may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." 464 U.S. at 510; *see also Drake*, 701 S.W.2d at 607 (same). Here, none of these requirements have been met.

#### i. There is no compelling interest in sealing juror information.

Since the order sealing juror information is itself sealed, the Media Coalition does not know what the purported overriding interest was to try and justify sealing juror information, does not know if sealing was necessary to protect that overriding interest, and does not know how sealing all juror information is narrowly tailored to serve that compelling interest. All three of these elements must be satisfied to

justify a sealing of any portion of court records, including records that contain juror information. Moreover, the Tennessee Supreme Court in *Drake* explained that "[u]pon granting an order of closure the trial judge shall articulate the specific facts upon which he has based a finding that closure is essential to preserve the moving party's interest and his finding that no alternatives to closure will adequately protect that interest." *Drake*, 701 S.W.2d at 608.

Even if the Court made sufficient findings, courts in Tennessee and beyond have made clear that the bar for overcoming a qualified right of access to court records is an exceedingly high one. "[T]he 'compelling interest' standard demands more than broad, vague allusions to general privacy interests or potential harm." *In re Estate of Thompson*, 636 S.W.3d at 23. The risk of "excessive media harassment" does not meet this standard either. *Wecht*, 537 F.3d at 239. "The prospect that the press might publish background stories about the jurors is not a legally sufficient reason to withhold the jurors' names from the public." *Id.* at 240; *see also In re Globe Newspaper Co.*, 920 F.2d at 98 ("[Jurors'] participation in publicized trials may sometimes force them into the limelight against their wishes. We cannot accept the mere generalized privacy concerns of jurors, no matter how sincerely felt, as a sufficient reason for withholding their identities . . . ."). In fact, the Tennessee Supreme Court has rejected attempts to seal court proceedings in one of the state's most high-profile cases: In *King v. Jowers*, a case related to the assassination of Martin Luther King, Jr., the Court reversed the lower court's decision to close voir dire to the press, which the trial judge said was motivated by

protecting jurors "from public scrutiny." 12 S.W.3d 410, 411 (Tenn. 1999). Applying the *Drake* standard, the Court found "no justification for the closing of jury selection proceedings." *Id.* Similarly, in *Baugh v. United Parcel Service, Inc.*, the Tennessee Court of Appeals rejected a lower court's attempt to seal settlement documents because the record contained no sealing motion and because the trial court did not explain its reasons for doing so. No. M2012-00197-COA-R3-CV, 2012 WL 6697384, at *7 (Tenn. Ct. App. Dec. 21, 2012). "[A]s a consequence, we have no basis upon which to determine that the reason for sealing the records was compelling. Under the record before us, the trial court abused its discretion in ordering the documents sealed." *Id.*; *see also Kocher v. Bearden*, No. W2017-02519-COA-R3-CV, 2018 WL 6423030, at *10 (Tenn. Ct. App. Dec. 5, 2018) (reversing similar trial court order because "we are left to wonder about the reason for the trial court's decision"). Here, there is no public justification whatsoever for why juror information is sealed and, as other courts have held, broad privacy concerns are patently insufficient to justify such extensive closure. As such, the Media Coalition requests that the Court unseal all juror information in this case, including completed juror questionnaires, juror names and addresses, and venirepersons' names and addresses, among other things.

Courts across the country have released juror information in some of the most well-known cases in recent memory. For example, following the death of George Floyd in 2020, the District Court in Hennepin County, Minnesota, agreed to unseal juror names, completed questionnaires of 109 prospective jurors, and the list

of venirepersons, among other information, regarding Derek Chauvin's trial. Order & Mem. Op. on Media Coal. Mot. to Unseal Juror Names & Associated Juror Info., *State v. Chauvin*, No. 27-CR-20-12646 (Hennepin Cnty. Dist. Ct. Oct. 25, 2021), https://mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12646/27CR2012646_Order_10-25-2021.pdf. The court reasoned that six months after the jury declared Chauvin guilty, any threats to jurors' safety, should their information be publicized, were unfounded. *Id.* at 21. "Nor is there any basis for concluding there is a substantial likelihood that making the prospective and impaneled jurors' names public information will interfere with the fair and impartial administration of justice." *Id.* at 25.

Here, the trial following Nichols's death did not generate as much attention as Chauvin's. And, more than three months after the Defendants who did not reach a plea agreement were found not guilty in this case, threats to juror safety, if ever an issue in this case, are of significantly less concern. With the trial concluded with a not-guilty verdict, there is no compelling reason that can support continued closure of juror information, which should be released.

#### ii. A blanket sealing order closing all juror information is not narrowly tailored.

Even if there were a compelling interest in keeping *some* juror information confidential, a blanket order sealing *all* juror information in this case is very unlikely to be narrowly tailored. Tennessee courts require closure orders to be "no broader than necessary." *Drake*, 701 S.W.2d at 608; *see also In re NHC-Nashville Fire Litig.*, 293 S.W.3d at 560 ("Tennessee courts have long recognized that judicial

proceedings are presumptively open: 'The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'" (quoting *Drake*, 701 S.W.2d at 607–08)).

Tennessee appellate courts look skeptically on sealing orders if "minimal if any efforts were taken to ensure the seal on these documents was narrowly tailored as required." *In re Estate of Thompson*, 636 S.W.3d at 24. Given the limited information available to the Media Coalition, it appears the Court's sealing of juror information is not narrowly tailored, but instead is the most secretive measure possible—complete closure of all juror information. That is not narrowly tailored to serve any possible compelling interest. This also justifies lifting the seal on juror information in this closed case.

**WHEREFORE**, the Media Coalition respectfully requests that the Court set a hearing on this motion; lift its prior order prohibiting disclosure of *Garrity* materials by the City and the County; unseal all sealed orders, including its sealing order regarding juror information; unseal the juror information itself; and grant any other relief the Court deems just.

Dated: August 14, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on this 14th day of August, 2025, I caused a true and correct copy of the foregoing document to be sent by email (with permission from counsel) and/or United States Mail, addressed to the following:

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*Counsel for the Media Coalition*

# Exhibit A

**IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE**
**30TH JUDICIAL DISTRICT AT MEMPHIS**
**DIVISION III**

**STATE OF TENNESSEE,**

**vs.** **No. 23-00241**

**DEMETRIUS HALEY, TADARRIUS BEAN,**
**EMMITT MARTIN, III, DESMOND MILLS, JR.,**
**and JUSTIN SMITH,**
Defendants.

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**ORDER RESCINDING THE ORDER DELAYING THE RELEASE OF INFORMATION**

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On October 2, 2023, this Court entered a written order memorializing a verbal ruling made February 15, 2023 from the bench which delayed the release of any reports and personnel files in the possession of the Shelby County Government and its departments concerning defendants in this case. On March 8, 2023, this Court entered a similar order concerning the release of any reports and personnel files in the possession of the Memphis City Government and its departments concerning defendants in this case. This Court had determined that a delay in the public production of such information would not only advance the Defendants' right to a fair trial, but also help ensure a fair trial for all parties involved in this case. In balancing the interest of protecting the Constitutional Rights of the parties and the public interest in having access to information, the Court now finds that the parties have had ample time to review the all records and is appropriate to rescind the previous two orders delaying the release of information in the possession of the City and County Governments.

The information in the possession of the City and County Governments not categorized as *Garrity* information may be released to the public in accordance with the Tennessee Public

Records Act.

Therefore, all orders delaying the release of information are hereby **RESCINDED**.

**So ordered.**

JAMES JONES, JR., Judge
~~Criminal Court~~, Div. III
30th Judicial District at Memphis

Filed 11/2/23
Heidi Kulp, Clerk
BY _____ D.C.

# Exhibit B

**IN THE CRIMINAL COURT OF TENNESSEE**
**FOR THE 30th JUDICIAL DISTRICT**
**DIVISION 03**

STATE OF TENNESSEE

VS. NO. 23 00241

DESMOND MILLS et al

Tadarrius Bean Emmit Martin
Demetrius Haley Justin Smith **ORDER**

THE FOLLOWING ACTION OR CHANGE OF STATUS IS HEREBY ORDERED

UPON MOTION OF THE DEFENDANT, THE COURT ORDERS THAT THE RELEASE OF VIDEOS, AUDIO, REPORTS, AND PERSONNEL FILES OF CITY OF MEMPHIS EMPLOYEES RELATED TO THIS INDICTMENT AND INVESTIGATION (TO INCLUDE ADMINISTRATIVE HEARINGS, RECORDS AND ~~RELATED FILES) SHALL BE DELAYED UNTIL SUCH TIME AS THE STATE AND THE DEFENDANTS~~ HAVE REVIEWED THIS INFORMATION. THE RELEASE OF THIS INFORMATION SHALL BE SUBJECT TO FURTHER ORDERS OF THIS COURT AND, IN THE PUBLIC INTEREST, WILL BE ORDERED AS SOON AS PRACTICABLE.

JUDGE

DATED: 3/8/23

Filed: 3.8.23
Heidi Kuhn

By: LD

CC7-94

# Exhibit C

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
30TH JUDICIAL DISTRICT AT MEMPHIS
DIVISION III

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STATE OF TENNESSEE,

VS.

Ind. No: 23-00241
C2300401-05

DEMETRIUS HALEY, TADARRIUS BEAN,
EMMITT MARTIN, III, DESMOND MILLS, JR.,
and JUSTIN SMITH,
Defendants.

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ORDER

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This order is entered to memorialize, or otherwise put in writing, the verbal order entered in the 15th day of February, 2023 at the request of defense counsel. This written order reflecting the verbal order is hereby entered at this time per the request of counsel for the Media Coalition. The Order is as follows:

The Court hereby orders that the release of any reports and personnel files in possession of Shelby County Government, and its departments, concerning a defendant in this case shall hereby be delayed until such time as the state and defense attorneys have had an opportunity to review said materials and determine whether either side has objection to said material being released. The release of said material shall be subject to a future order.

So ordered.

Verbal order entered the 15th day of February, 2023.

Written order entered this the 2nd day of October, 2023.

JAMES JONES, JR., Judge
Criminal Court, Div. III
30th Judicial District at Memphis

10.02.23

# Exhibit D

**From:** Whitaker, Kesha
**To:** Marc Perrusquia (jmprrsqa)
**Subject:** Re: Tyre Nichols files
**Date:** Thursday, May 29, 2025 8:55:54 AM
**Attachments:** Bean-Haley-Smith_Order_Consent Order Change of Venue.pdf
Bean-Haley-Smith_Orders_Change of Venue.pdf
Bean-Haley-Smith_Orders_Special Venire.pdf

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Hi Marc,

As to your first question, yes, that information remains sealed.

Recently, Judge Jones did make some orders publicly available that were under seal. Please find attached the following:

- 4/1/25 - Order Granting Motion for Change of Venue
- 4/1/25 - Order for Special Venire from Hamilton County
- 4/1/25 - Consent Order for Change of Venue

Thanks,
Kesha

---

**From:** Marc Perrusquia (jmprrsqa) <Marc.Perrusquia@memphis.edu>
**Sent:** Thursday, May 29, 2025 8:48 AM
**To:** Whitaker, Kesha <Kesha.Whitaker@shelbycountytn.gov>
**Subject:** RE: Tyre Nichols files



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Kesha,

Any news on this? Have you been able to determine if a copy of the order is available or if it is sealed?

Also, can you please provide a copy of any other recent order by Judge Jones from this case? Thank you.

Marc

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**From:** Marc Perrusquia (jmprrsqa)
**Sent:** Friday, May 23, 2025 12:27 PM
**To:** Kesha Whitaker <Kesha.Whitaker@shelbycountytn.gov>
**Subject:** Re: Tyre Nichols files

Thank you, Kesha. I will follow up on this next week. Have a good holiday weekend.

Marc
Sent from my iPhone

> On May 23, 2025, at 1:12 PM, Whitaker, Kesha <Kesha.Whitaker@shelbycountytn.gov> wrote:
>
> Hey Marc,
>
> Just wanted to give you a quick update as we head into the holiday weekend. I'm pretty sure that the order is sealed also, but I reached out to Judge Jones to get clarification a few days ago and I'm waiting to hear back. I'll check back in with him today.
>
> Thanks,
> Kesha
>
> ---
>
> **From:** Marc Perrusquia (jmprrsqa) <Marc.Perrusquia@memphis.edu>
> **Sent:** Tuesday, May 20, 2025 11:26 AM
> **To:** Whitaker, Kesha <Kesha.Whitaker@shelbycountytn.gov>
> **Subject:** RE: Tyre Nichols files
>
> **[ This EMAIL was not sent from a Shelby County Government email address. Please use caution. ]**
>
> ---
>
> Kesha,
>
> Thank you for your response. Pursuant to the Tennessee Public Records Act, I would like to get a copy of that order by Judge Jones sealing the juror information. Feel free to reach out if you have any questions. Thanks again.
>
> Marc
>
> ---
>
> **From:** Whitaker, Kesha <Kesha.Whitaker@shelbycountytn.gov>
> **Sent:** Tuesday, May 20, 2025 8:57 AM
> **To:** Marc Perrusquia (jmprrsqa) <Marc.Perrusquia@memphis.edu>
> **Subject:** Re: Tyre Nichols files

Hi Marc,

All juror information has been sealed by Judge Jones.

Thanks,
Kesha

---

**From:** Marc Perrusquia (jmprrsqa) <Marc.Perrusquia@memphis.edu>
**Sent:** Monday, May 19, 2025 3:18 PM
**To:** Whitaker, Kesha <Kesha.Whitaker@shelbycountytn.gov>
**Subject:** Tyre Nichols files



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Kesha,

Hi. Nice talking with you last week.

Following up on my visit, I need to make a formal request: Pursuant to the Tennessee Public Records Act and the U.S. and Tennessee constitutions guaranteeing the right of access to public courts, I would like a copy of any and all records listing the names and contact information for the jurors in the recently completed trial of former Memphis Police Department officers Justin Smith, Jr., Tadarrius Bean, and Demetrius Haley. Please feel free to reach out with any questions. Thank you.

Marc

Marc Perrusquia
Director, Institute for Public Service Reporting

<image001.jpg>

The University of Memphis
318 Meeman
Memphis, TN 38152

O: 901.678.4238 | C: 901.634.2551