John Wesley Hall

a Little Rock, criminal defense attorney, is a Past President of the National Association of Criminal Defense Lawyers (2008-09). He was chair of the NACDL Ethics Advisory Committee from 1990-2005. He received NACDL's 2002 prestigious Robert C. Heeney Award in 2002 and NORML's 2018 Al Horn for service to criminal defense.

The author of the two-volume treatise SEARCH AND SEIZURE (Lexis Law Publishing (5th ed. 2013, supp. 2022), Hall is the only published Fourth Amendment author who actively handles criminal cases. He writes on it daily at www.fourthamendment.com since 2003. He is also the author of PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE (4th ed. 2023) (publishing in February) and TRIAL HANDBOOK FOR ARKANSAS LAWYERS (4th ed. 2018) (both for Thomson-West).

Hall has tried approximately 400 jury trials, handled about 400 appeals, argued twice before the U.S. Supreme Court, and defended a West African nation's defense minister accused of war crimes in an international tribunal in Sierra Leone 2004-06. He is listed in BEST LAWYERS IN AMERICA for Criminal Defense and White Collar Criminal Defense, and is their lawyer of the year, 2018, 2020, 2023. He's been practicing law since August 1973.

In 2009-15, Hall was NACDL's representative to the ABA Standards committee revising the ABA Standards for Criminal Justice, Prosecution and Defense Function (4th ed. 2017)

He's the de facto Eastern District of Arkansas's CJA Panel attorney janitor designated to clean up messes.[1]

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[1] "I'm not a miracle worker, I'm a janitor. The math on this is simple. The smaller the mess the easier it is for me to clean up."

—Michael Clayton to Mr. Greer in "Michael Clayton" (2007)

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIFTH DIVISION

STATE OF ARKANSAS — Plaintiff

v. — No. 60CR-22-1312

[redacted]R — Defendant

MOTION TO SUPPRESS AND MEMORANDUM IN SUPPORT

Defendant moves to suppress the search her car under the Fourth Amendment and Ark. Const., Art. 2, § 15, Ark. R. Crim. P. 3.1, and Ark. Code Ann. § 16-81-203, or all.

I. The Burden of Proof is On the State

1. This is a warrantless search, and it is presumptively invalid. *See, e.g., McDonald v. United States,* 335 U.S. 451, 456 (1948); *United States v. Jeffers,* 342 U.S. 48, 51 (1951); *Vinston v. State,* 274 Ark. 452, 458, 625 S.W.2d 533, 537 (1981).

2. Defendant has the burden of going forward. This motion to suppress satisfies that. The burden now shifts to the state.

3. Thus, the state carries the burden of proof that the constitutional and rule requirements were met. *See, e.g., State v. Kelley,* 362 Ark. 636, 646-47, 210 S.W.3d 93, 99 (2005):

> The cardinal principle in search-and-seizure law is that searches conducted without a warrant are per se unreasonable under the Fourth Amendment to the United States Constitution. *McDonald v. State,* 354 Ark. 216, 223, 119 S.W.3d 41, 45 (2003) (citing *Flippo v. West Virginia,* 528 U.S. 11, 120 S.Ct. 7, 145 L.Ed.2d 16 (1999)); *Katz v. United States,* 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). There are a few exceptions to this rule, but when the government seeks to introduce evidence that was seized during a warrantless search, it bears the burden of showing an exception from the warrant requirement and that its conduct fell within the bounds of the exception. *Mincey v. Arizona,* 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978).

II. The Stop was Invalid

4. Defendant disputes that the stop was valid for an alleged improper lane change. The paper discovery having just been received, the video is not yet available to the defense.

III. Even if the Stop was Valid, Its Continuation was Not

5. Once the drug dog is called in, the entire purpose of the traffic stop, if there was one unless it was pretext, was ignored. The continuation stop of this stop for a drug dog was without reasonable suspicion or probable cause and it long exceeded thet time and purposes of the stop permitted under *Rodriguez v. United States,* 575 U.S. 348, 354 (2015):

> Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop, *Caballes,* 543 U.S., at 407, and attend to related safety concerns, infra, at __-__. See also *United States v. Sharpe,* 470 U.S. 675, 685 (1985); *Florida v. Royer,* 460 U.S. 491, 500 (1983) (plurality opinion) ("The scope of the detention must be carefully tailored to its underlying justification."). Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate th[at] purpose." *Ibid.* See also *Caballes,* 543 U.S., at 407. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. See *Sharpe,* 470 U.S., at 686 (in determining the reasonable duration of a stop, "it [is] appropriate to examine whether the police diligently pursued [the] investigation").

6. Ark. R. Crim. P. 3.1 also provides:

> A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances. At the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense.

Reasonable suspicion is defined in Ark. R. Crim. P. 2.1:

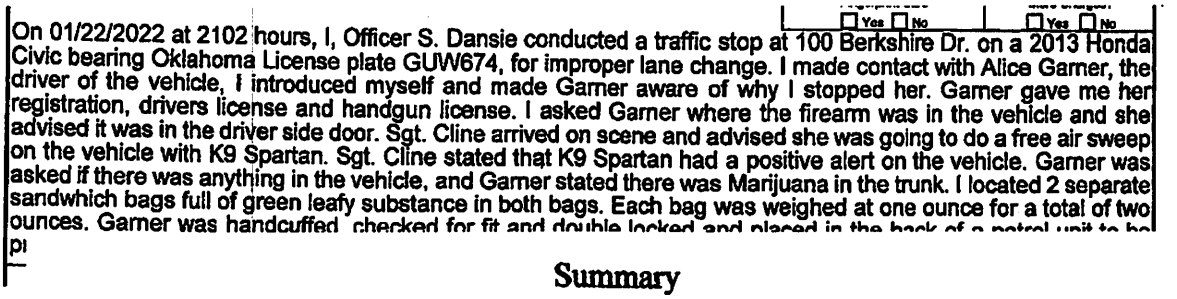
"Reasonable suspicion" means a suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to an imaginary or purely conjectural suspicion.

7. Defendant submits that Rule 3.1 imposes greater restrictions on the ability to detain than *Rodriguez.*

8. The continuation of the stop was thus unreasonable as a matter of law under Rule 3.1, § 16-81-203, Art. 2, § 15, or *Rodriguez* or all four.

IV. The Police Summary of the Stop

9. From the pdf of the discovery off the ADR and then page 3 of the discovery:



☐Yes ☐No ☐Yes ☐No

On 01/22/2022 at 2102 hours, I, Officer S. Dansie conducted a traffic stop at 100 Berkshire Dr. on a 2013 Honda Civic bearing Oklahoma License plate GUW674, for improper lane change. I made contact with Alice Garner, the driver of the vehicle, I introduced myself and made Garner aware of why I stopped her. Garner gave me her registration, drivers license and handgun license. I asked Garner where the firearm was in the vehicle and she advised it was in the driver side door. Sgt. Cline arrived on scene and advised she was going to do a free air sweep on the vehicle with K9 Spartan. Sgt. Cline stated that K9 Spartan had a positive alert on the vehicle. Garner was asked if there was anything in the vehicle, and Garner stated there was Marijuana in the trunk. I located 2 separate sandwhich bags full of green leafy substance in both bags. Each bag was weighed at one ounce for a total of two ounces. Garner was handcuffed, checked for fit and double locked and placed in the back of a patrol unit to be pl

Summary

On 01/22/2022 at 2102 hours, Officer S. Dansie conducted a traffic stop at 100 Berkshire Dr. on a 2013 Honda Civic bearing Oklahoma License plate GUW674, for improper lane change.

Officer S. Dansie made contact with Alice Garner, the driver of the vehicle, and made Garner aware of why she was being stopped. Garner gave Officer S. Dansie her registration, driver's license and handgun license out of Oklahoma. Officer S. Dansie asked Garner where the firearm was in the vehicle and she advised it was in the driver's side door and not loaded.

Sgt. Cline arrived on scene and advised she was going to do a free air sweep on the vehicle with K9 Spartan. Sgt. Cline stated that K9 Spartan had a positive alert on the vehicle. Garner was asked if there was anything in the vehicle, and Garner stated there was Marijuana in the trunk. Upon searching the vehicle, Officer S. Dansie located 2 separate sandwich bags full of green leafy substance in both bags. Officer Hoffman weighed each bag, they were each weighed at one ounce for a total of two ounces. The firearm, a Smith and Wesson M&P Shield .40 caliber with 6 rounds in the magazine, was located and secured.

V. This Seizure Then Search

10.

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

Johnson v. United States, 333 U.S. 10, 13-14 (1948).

A. No Reasonable Suspicion

11. No justification whatsoever is given in the reports for the dog sniff. This police report reads like a vehicle is a moving target subject to a drug dog on the whim of the police. That cannot be Arkansas law.

12. First, on the totality of circumstances, reasonable suspicion is lacking. There isn't even nervousness. And, it is settled law and axiomatic that the reasonable suspicion has to develop before the dog is called. *See, e.g., MacKintrush v. State,* 2016 Ark. 14, at *11, 479 S.W.3d 14, 18–19 & n.4 (2016); *Lilley v. State,* 362 Ark. 436, 444, 208 S.W.3d 785, 791 (2005) (nervousness and air freshener not enough); *Laime v. State,* 347 Ark. 142, 159, 60 S.W.3d 464, 474–75 (2001).

13. What this suggests is that the officers apparently call the drug dog to every traffic stop. They were bound and determined to get the drug dog out there, and the traffic stop was immediately abandoned without following up at all, contrary to *Rodriguez,* just to get the dog there. There is no time line on when the dog was called and arrived.

14. Therefore, within minutes of the initiation of the stop, it was already in violation of *Rodriguez,* the Fourth Amendment, Ark. Const., art. 2, § 15, and the standards of reasonable suspicion in Rule 3.1 and § 16-81-203 as explained in *MacKintrush.* The dog alert came without

lawful justification.

15. A vehicle near the Little Rock Air Force Base with out-of-state plates, a completely common occurrence, is not a moving target to be stopped and virtually searched at will or with any excuse the officers can come up with and hope that a court will hold it was with reasonable suspicion or more. *Compare Knowles v. Iowa,* 525 U.S. 113 (1998) (a speeding stop doesn't justify a search incident; pre-*Gant*'s removal of vehicles from search incident); *Delaware v. Prouse,* 440 U.S. 648 (1979) (random driver's license checks hoping to lead to searches of car unreasonable); *Arizona v. Gant,* 556 U.S. 332 (2009) (arrest in a car no longer provides basis for search incident, overruling *Belton v. New York*).

B. Even if the State Argues Reasonable Suspicion Is Unnecessary the Arkansas Constitution was Violated

16. If the state argues that no justification is necessary for a dog sniff of any vehicle in Arkansas as long as the stop wasn't extended, no matter how de minimus, then Ark. Const., art. 2, § 15 should hold this unreasonable.[1]

17. It is clear that Arkansas' Constitution as to a right to privacy is independent of the federal constitution and also more far reaching. *See, e.g.,*

- *Griffin v. State,* 347 Ark. 788, 67 S.W.3d 582 (2002) (Ark. Const., Art. 2, § 15 independent of Fourth Amendment; night time knock-and-talk required notice); and see Hannah, C.J., concurring.[2]

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[1] *See generally* Justice Robert L. Brown, *Expanded Rights Through State Law: The United States Supreme Court Shows State Courts the Way,* 4 J. APP. PRAC. & PROCESS 499, 514 (2002) (elaborating on how the Arkansas Supreme Court applies the Arkansas Constitution in other cases as well).

[2] In closing, we note an observation made in a concurring opinion in *Griffin v. State:*

- *State v. Sullivan,* 348 Ark. 647, 74 S.W.3d 215 (2002) (pretextual arrests void under Art. 2, § 15)
- *Box v. State,* 348 Ark. 116, 124, 71 S.W.3d 552, 557 (2002) (defendant did not waive right to appear in street clothes; due process clause of Ark. Const., Art. 2, § 8 construed to grant more rights than under Federal Constitution)
- *McCambridge v. City of Little Rock,* 298 Ark. 219, 229, 766 S.W.2d 909, 914 (1989) (recognizing "a constitutional right to non-disclosure of personal matters", and "a personal matter was a matter 'personal in character and potentially embarrassing or harmful if disclosed.'" (citing *Whalen v. Roe,* 429 U.S 589, 589 (1977))
- *Jegley v. Picado,* 349 Ark. 600, 626–28, 80 S.W.2d 332, 346–47 (2002) (general right of privacy under Arkansas Constitution protects same sex private sexual relations; invalidating Arkansas' sodomy statute as applied to private consensual acts between adults)
- *Arkansas Dept. of Human Services v. Cole,* 2011 Ark. 145, 380 S.W.3d 429 (2011) (Initiated Act 1 which burdened homosexuals and denied them the ability to be foster parents violated *Jegley v. Picado*)
- *Paschal v. State,* 2012 Ark. 127, 388 S.W.3d 429 (2012) (right to sexual privacy

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> In the majority opinion, we now depart from our earlier decisions wherein this court has declared that the Arkansas Constitution provides no greater protection than the Fourth Amendment to the United States Constitution. We previously noted that the wording of each document is comparable, and through the years, in construing this part of the Arkansas Constitution, we have followed the United States Supreme Court's cases. Current interpretation of the United States Constitution in the federal courts no longer mirrors our interpretation of our own constitution.

Griffin, 347 Ark. at 804, 67 S.W.3d at 593 (Hannah, J., concurring). This is another instance in which we depart from the standards established by the federal courts and rely instead on independent state grounds to determine what, in Arkansas, constitutes unreasonable police conduct warranting suppression.

protects relationship between adult student and teacher)

- *Vankirk v. State,* 2011 Ark. 428, 385 S.W.3d 144 (2011) (there is a state constitutional right to confrontation at sentencing)

18. The Arkansas Supreme Court has always been sensitive to issues of pretext in criminal procedure. In *Sullivan,* at 652–54, 74 S.W.3d at 221–22, the court held that pretextual arrests violated art. 2, § 15, and it elaborated on several areas where pretextual police action was held unreasonable and suppressed.

> We have noted our concern with pretextual police conduct in a number of other decisions. *See Stephens v. State,* 342 Ark. 151, 28 S.W.3d 260 (2000) (finding no pretextual arrest where officers approached defendant with an outstanding arrest warrant) (citing *Ray, supra; Hines, supra*); *Brenk v. State,* 311 Ark. 579, 847 S.W.2d 1 (1993) (finding no pretextual arrest where defendant was suspected in a homicide but was picked up on an unrelated outstanding arrest warrant); *State v. Shepherd,* 303 Ark. 447, 454, 798 S.W.2d 45, 49 (1990) (finding pretextual conduct, based on "the law of Arkansas," where five police officers entered and searched defendant's property with the ostensible purpose of serving a prosecutor's subpoena); *Thomas v. State,* 303 Ark. 210, 795 S.W.2d 917 (1990) (finding no pretextual search incident to arrest where defendant was stopped for speeding, but arrested because an NCIC search revealed that a person with defendant's name was wanted in Texas for escape); *Guzman v. State,* 283 Ark. 112, 672 S.W.2d 656 (1984) (finding pretextual police conduct where police entered defendant's property with the stated purpose of searching for illegal aliens, when in fact they were searching for drugs).

19. It is apparent that Arkansas constitutional privacy law is better developed that federal constitutional law. Existing case law leads us here: A motorist should have a right to be stopped and not subjected to a drug dog without any justification and on a pretext. Bringing a drug dog to any traffic stop without reasonable suspicion violates our right of privacy.

CONCLUSION

The motion to suppress the continuation of the stop and search or both should be granted. Moreover, the use of the drug dog here was pretextual and unreasonable under the Arkansas

Constitution.

Respectfully submitted,

/s/ John Wesley Hall

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Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy was served by mail on the Prosecuting Attorney and Circuit Clerk and Court on May 25, 2022.

/s/ John Wesley Hall
John Wesley Hall

IN THE DISTRICT COURT OF LONOKE COUNTY, ARKANSAS
ENGLAND DIVISION

IN RE SEARCH WARRANT FOR	)	
HARDING UNIVERSITY SHARED DORM	)	No. SESW-21-____
ROOM 131, SEARCY, ARKANSAS,	)	
EXECUTED APRIL 29, 2021	)	

TARGET'S MOTION FOR PRODUCTION OF SEARCH WARRANT AFFIDAVIT AND MEMORANDUM IN SUPPORT

The court issued a search warrant on April 29, 2021 for the target's cell phones, computers, computer related equipment and alleged child pornography. The warrant is attached. The target of search warrant seeks access to the affidavit in support of the warrant which he has a common law, Fourth Amendment, First Amendment, and Freedom of Information Act right of access to.

The target sought the affidavit from the Prosecuting Attorney and the District Court Clerk. Chief Deputy Prosecuting Attorney Norene Smith had no knowledge by text message on Sunday, May 2, 2021. The District Clerk refused on May 5, 2021 without an FOIA request, per the court's instruction.

That "it's under investigation" does not prohibit the target from getting access to the material. The state would have to attempt to seal the record based on a compelling governmental need, and merely because a case is still under investigation isn't a compelling need. The target already obviously knows he's under investigation just from reading the warrant itself. Still, he is entitled to the records.[1] He was subjected to an invasive search of his person, so it follows he's

[1] *See, e.g.,* Michael D. Johnson & Anne E. Gardner, *Access to Search Warrant Materials:*

got a right to know the basis for this search warrant. The fact an investigation is ongoing doesn't mean that he will risk further prosecution by tampering with witnesses, which is never assumed.

There has to be a substantial showing of need for secrecy even before the target gets charged. They haven't asserted one yet. No motion to seal was sought, and the Prosecuting Attorney's Office apparently wasn't in on the decision to seek it.

I. Common Law Right of Access to Search Warrant Materials

The target of a search warrant and the public have a common law[2] right of access to the search warrant materials as a court records which are universally public. *See, e.g., Nixon v. Warner Communications, Inc.,* 435 U.S. 589 (1978); *In re EyeCare Physicians of Am.,* 100 F.3d 514, 517 (7th Cir. 1996); *In re Newsday, Inc.,* 895 F.2d 74, 79 (2d Cir. 1990); *Baltimore Sun Co. v. Goetz,* 886 F.2d 60, 62 (4th Cir. 1989); *United States v. Wells Fargo Bank Account Number 7986104185,* 643 F. Supp. 2d 577, 583-84 (S.D. N.Y. 2009); *In re N.Y. Times Co.,* 585 F. Supp. 2d 83, 92 (D. D.C. 2008); *Commonwealth v. Fenstermaker,* 515 Pa. 501, 530 A.2d 414, 417–19 (1987); *People v. Lambey,* 176 A.D.3d 1232, 111 N.Y.S.3d 388, 391 (2d Dept. 2019). *See also In re Search Warrant for Secretarial Area Outside Office of Gunn,* 855 F.2d 569, 575–76 (8th Cir. 1988) (Bowman, J., concurring).

As will be seen below under the following heading, the public also has a First Amendment right of access, and, if the public does, a fortiori, most certainly so does the target. After all, why would the public have access and he not?

Balancing Competing Interests Pre-Indictment, 25 U. ARK. LITTLE ROCK L. REV. 771 (2003); David Horan, *Breaking the Seal on White Collar Criminal Search Warrant Materials,* 28 PEPP. L. REV. 317 (2001); Daniel E. Monnat & Paige A. Nichols, *Unsealing Search Warrant Materials for Uncharged Clients,* 30 CHAMPION 22 (July 2006).

[2] Ark. Code Ann. § 1–2–119 (common law is law in Arkansas except where superseded).

II. There is a Pre-Charging, Pre-Arrest Fourth Amendment Right of Access by the Target

The Fourth Amendment implicitly guarantees a right of access to search warrant materials even during an investigation. *See, e.g., United States v. The Business of the Custer Battlefield Museum and Store Located at Interstate 90, Exit 514, South of Billings, Montana,* 658 F.3d 1188, 1192 (9th Cir. 2011); *United States v. Sealed Search Warrants,* 868 F.3d 385, 390–93 (5th Cir. 2017); *In re Search Warrants Issued on April 26, 2004,* 353 F. Supp. 2d 584, 591 (D. Md. 2004) (affirming magistrate's order recognizing "a search subject's pre-indictment Fourth Amendment right to inspect the probable cause affidavit"); *In re Search of Up North Plastics, Inc.,* 940 F. Supp. 229, 232 (D. Minn. 1996) (denying government's motion to continue order sealing affidavit in support of search warrant); *In re Search Warrant for 2934 Anderson Morris Rd.,* 48 F. Supp. 2d 1082, 1083 (N.D. Ohio 1999) (finding right of access implicit in the Fourth Amendment without any substantive analysis); *In re Search Warrants Issued August 29, 1994,* 889 F. Supp. 296, 301 (S.D. Ohio 1995) (holding that "the Fourth Amendment right to be free of unreasonable searches and seizures includes the right to examine the affidavit that supports a warrant after the search has been conducted and a return has been filed"; granting uncharged home and business owners' motion to unseal materials in support of search warrant); *Sloan v. Sprouse,* 1998 OK CR 56, 968 P.2d 1254 (1998) (granting mandamus relief and ordering lower court to grant searched party precharge access to documents supporting search warrant; finding Fourth Amendment right to examine affidavit).

Compare to this the fact the press and public also have a First Amendment right of access to search warrant materials. *See, e.g., In re Search Warrant for Secretarial Area Outside Office of Gunn,* 855 F.2d 569 (8th Cir. 1988). "[T]here is a 'strong presumption in favor of public

access to judicial proceedings,' including judicial records." *In re Leopold to Unseal Certain Electronic Surveillance Applications and Orders,* 964 F.3d 1121, 1127 (D.C. Cir. 2020) (quoting *United States v. Hubbard,* 650 F.2d 293, 317 (D.C. Cir. 1980)). Significantly, two years ago, CNN got access to Michael Cohen's search warrant materials in his campaign expenditure and "hush money" case identifying Donald Trump as co-conspirator "Individual 1." *In re Access to Certain Sealed Warrant Materials,* 2019 U.S. Dist. Lexis 85285 at *8–9, 2019 WL 2184825 (D. D.C. May 21, 2019).

If the press has a right of access, then, a fortiori, so must the target of the search. *In re Search Warrants Issued on April 26, 2004,* 353 F. Supp. 2d 584, 587–88 (D. Md. 2004) ("The right of a private citizen under the Fourth Amendment can be no less than the rights afforded to the press under the First Amendment in Goetz, 886 F.2d 60. The common law right of access to a search warrant affidavit by a newspaper pales in comparison to the rights of a property owner subject to a search and seizure by Government agents.")

III. Other Presumption Against Sealed Records

A. Administrative Order No. 2–Separate Dockets for These Records

Since 2015, Arkansas Supreme Court Administrative Order No. 2 requires a separate docket for arrest warrants and search warrants in recognition that the target of a warrant or the public can look at them.[3] This is in further recognition of the heavy presumption against sealed records in Arkansas and elsewhere. *See, e.g., Ivy v. State,* 52 Ark. App. 256, 258, 917 S.W.2d 179, 180 (1996) (citing *Arkansas Best Corp. v. General Elec. Capital Corp.,* 317 Ark. 238, 878 S.W.2d 708 (1994)):

[3] The target's counsel was the moving party with the Criminal Rules Committee to get this order adopted so search warrant materials won't be kept from defense counsel and their clients.

> This Court is therefore required to balance the public's right of access in exercising its inherent authority to seal records, and in so doing it must overcome a "strong presumption in favor of the right of access." *Id.* Our Supreme Court has said that the sealing of any other records besides those explicitly authorized by statute would be subjected to close scrutiny. *Id.* at 247, 878 S.W.2d 708.

B. Administrative Order No. 19

No Arkansas statute or rule says warrants and their materials are uniformly sealed only because there is an ongoing investigation. Confidential information like the names of minors or social security and other identifying information can and should be, but that's a redaction, not a sealing. Of course, names and identifying information of minors must be redacted from search warrant materials in the public domain.

Indeed, Arkansas Supreme Court Administrative Order No. 19 tells us all that virtually all court records are open subject to certain limited redactions not necessarily even applicable here. Arkansas Supreme Court Administrative Order No. 19.1.

Whether the records should be sealed requires the state to make a motion to seal them and then prove its need for temporary confidentiality. To the target's knowledge that hasn't been done here. And, redaction is not sealing.

C. FOIA

The Arkansas Freedom of Information Act, Ark. Code Ann. § 25–19–101 *et seq.*. also makes the records public. Under FOIA, there are penalties for attorney's fees against the recalcitrant official if an action has to be filed. § 25–19-107. Criminal sanctions can also lie in more egregious cases. § 25–19–104.

CONCLUSION

The motion for production of the search warrant materials should be granted forthwith.

Respectfully submitted,

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Attorney for Target of Search Warrant

CERTIFICATE OF SERVICE

I certify that a copy was efiled, faxed to, or emailed (nsmith@17distpa.com) or mailed to the Prosecuting Attorney's Office in Searcy on May 5, 2021.

/s/ John Wesley Hall
John Wesley Hall