IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

STATE OF MISSOURI, ex rel. JENNIFER M. JOYCE, Circuit Attorney for the City of St. Louis, Relator,	)	
v.	)	Cause No. ED104226
THE HONORABLE MICHAEL K. MULLEN, Circuit Judge, Twenty-Second Judicial Circuit, Respondent.	)	

BRIEF OF JEAN PETERS BAKER, JACKSON COUNTY PROSECUTOR, ON BEHALF OF THE JACKSON COUNTY PROSECUTOR'S OFFICE; THE MISSOURI ASSOCIATION OF PROSECUTING ATTORNEYS; THE KANSAS CITY, MISSOURI POLICE DEPARTMENT; THE KANSAS CITY, MISSOURI FIRE DEPARTMENT; THE ROSE BROOKS CENTER; AND THE AD HOC GROUP AGAINST CRIME IN SUPPORT OF RELATOR AS *AMICI CURIAE*

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The Jackson County Prosecutor's Office represents the interests of the citizens of Jackson County in promoting effective law enforcement and in the protection of victims and witnesses involved in criminal cases within the county. The Court's decision in this writ proceeding has the potential to affect the ability of the Jackson County Prosecutor's Office to perform its investigative and prosecutorial duties in that the disclosure of the types of personal information at issue in this case to criminal defendants could have a stifling effect on the willingness of individuals to provide information and to testify. Moreover, the required disclosure of such information would greatly hamper the efforts of the Prosecutor's Office to fulfill their duty to keep victims and witnesses in Jackson County cases safe from threats and criminal harm.

The Missouri Association of Prosecuting Attorneys represents the interests of the elected prosecuting and circuit attorneys of the State of Missouri, and the assistant prosecuting and circuit attorneys and investigators who work in the several prosecuting and circuit attorneys' offices. These individuals represent the interests of citizens across the state in promoting effective law enforcement and protecting the rights of victims and witnesses. The Missouri Association of Prosecuting Attorneys shares the

concerns of the Jackson County Prosecutor's Office about the impact of any decision in this case on prosecutors throughout the state.

The Kansas City, Missouri Police Department has the duty to investigate criminal activities occurring within Kansas City. Besides uniformed patrol officers and detectives, it also employs crime scene technicians and crime laboratory personnel. These employees are witnesses or potential witnesses in the vast majority of criminal cases that occur in Kansas City. Similarly, the Kansas City Fire Department employs individuals as fire fighters and emergency medical technicians. The employees of the Kansas City Fire Department are potential witnesses in a significant number of criminal cases. If the State is required to disclose personal identifying information of all witnesses in criminal cases, such a rule would infringe on the privacy interests of the employees of these amici and may make it more difficult for amici to attract and retain potential employees.

Additionally, amicus Kansas City Police Department, amicus Rose Brooks Center, and amicus Ad Hoc Group Against Crime have an interest in the safety of crime victims and children and in the effective investigation and prosecution of criminal conduct. In particular, the Rose Brooks Center provides temporary housing to the victims of domestic violence and would be affected if the State must disclose to defendants that victims are staying at

the Rose Brooks Center. These amici share a concern that a ruling upholding the trial court's grant of broad disclosure of personal identifying information of witnesses will discourage potential witnesses from cooperating with law enforcement and may expose the victims of crime to further criminal activity.

STATEMENT OF FACTS

Relator is the Circuit Attorney of the City of St. Louis and is the prosecutor on the underlying criminal cases.[1] Petition, page 1; Relator's Exhibit 1; Answer 1, page 1. In the underlying criminal cases, the Circuit Attorney filed for a protective order seeking permission to redact the last known address and other identifying information from the police reports.[2] Relator's Exhibit 2. As part of her request for a protective order, the Circuit Attorney indicated that she would make all witnesses available to defense counsel. Relator's Exhibit 2, page 3.

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[1] Given the nature of amici's interest, amici only provide a limited statement of facts. For the purposes of this brief, amici will only refer to the pleadings and exhibits originally filed in Case Number ED104226. Amici believes that the pleadings and exhibits filed in the other cases that are consolidated with this case are substantially similar.

[2] The Circuit Attorney attached part of the police reports as an exhibit. Relator's Exhibit 4. In particular, the portion attached consists of "case information" pages and does not include any narrative from the reporting officer or any oral or written statements of any witness. Relator's Exhibit 4. These pages do not reflect the source of any identifying information. Relator's Exhibit 4.

At the hearing on the motion for protective order, the defendants argued that: 1) Rule 25.03 was constitutional; and 2) the State had to demonstrate a specific good cause to support a protective order under Rule 25.11 (with general assertions of the privacy of witnesses or fear of misuse of the information being insufficient). Respondent's Exhibit B, pages 4-7, 9, 11, 12-13, 14, 16, 17-18, 20, 21, 22, 23-24, 25, 26, 28. The defendants did not specifically address whether all of the identifying information of all of the individuals noted in the police report was subject to Rule 25.03. Respondent's Exhibit B, pages 4-7, 9, 11, 12-13, 14, 16, 17-18, 20, 21, 22, 23-24, 25, 26, 28. Respondent denied the motion for protective order in all of the underlying cases without further explanation other than agreeing with defendants that the State had to make a specific showing of good cause to support a protective order. Respondent's Exhibit B, pages 10, 11, 13, 14, 16, 18, 20, 21, 22, 24, 25, 26-27, 28. Respondent further ordered the Circuit Attorney to produce the unredacted police reports to the defendants. Respondent's Exhibit B, page 28.

SUMMARY OF ARGUMENT

In this brief, the aforementioned parties write in support of relator, Jennifer M. Joyce, Circuit Attorney for the City of St. Louis, and urge this Court to issue a permanent writ of mandamus ordering respondent, the Honorable Michael K. Mullen, to grant the Circuit Attorney's Motion for

Protective Order under Rule 25.11 in the underlying criminal proceeding or, alternatively, to grant a writ of prohibition precluding respondent from ordering relator to disclose unredacted police reports which include the identifying information of prospective witnesses. This brief will primarily focus on other provisions of law that this Court should use to provide context to the requirements of Rule 25.03 and Rule 25.11. Amici believe that the interpretation of Rule 25.03 and Rule 25.11 put forward by defendants below and accepted by respondent create an unnecessary conflict between the discovery rules and these other provisions of law and violate the rights of witnesses that are recognized and protected by these other provisions of law.

"A writ of prohibition or mandamus is the proper remedy for curing discovery rulings that exceed a court's jurisdiction or constitute an abuse of discretion." *State ex rel. White v. Gray*, 141 S.W.3d 460, 463 (Mo. App. W.D. 2004) (internal quotation omitted). A writ of prohibition is the appropriate remedy for an abuse of discretion during discovery. *State ex rel. Kander v. Green,* 462 S.W.3d 844, 848 (Mo. App. W.D. 2015).

Respondent has abused his discretion in ordering the State to provide the defendant with unredacted police reports and to disclose the personal information of victims and witnesses. Irreparable harm will result if the Circuit Attorney is forced to comply with respondent's orders. In particular, respondent has clearly abused his discretion in failing to adequately

safeguard the constitutional right to privacy of the victims and witnesses in this case as well as the victims' constitutional right under Mo. Const. Art. I, § 32 to reasonable protection from the defendant or any other person acting on his behalf. Whatever legitimate purpose, if any, the information ordered to be disclosed could serve for a criminal defendant is dwarfed in comparison to the interest victims and witnesses have in keeping their information private and their physical and mental well-being secure. Those served by the entities represented in this brief are especially vulnerable to the harm that can result from the disclosure of such information. Moreover, precedent requiring the production of such information could seriously hamper the ability of law enforcement to find witnesses willing to aid in the investigation and prosecution of criminal cases.

Respondent's denial of the motion for protective order and his order compelling disclosure of unredacted police reports are flawed in two distinct ways. First, most of the material that the Circuit Attorney seeks to redact is not covered by Rule 25.03. Second, even if the material is covered by Rule 25.03, the privacy interests of the witnesses involved is sufficient good cause.

Most of the discovery covered by the Circuit Attorney's requested protective order falls outside the scope of Rule 25.03. The only information that the State must disclose in all cases under Rule 25.03 are the names of the witnesses, a current address, and the statement of those witnesses. Rule

25.03 does not require the automatic disclosure of dates of birth, social security numbers, driver's license numbers, phone numbers, or other means of identification. As detailed further below, state and federal law recognize that individuals have significant privacy interests in keeping this other identifying information confidential. Respondent's broad interpretation of "statement" to cover this other identifying information significantly infringes on the privacy interest of witnesses. As presented in this Court's questions to the parties, this Court should find: 1) that the pedigree information is not part of the statement of a witness; and 2) that the inclusion of pedigree information by an officer witness in her report does not make such information a statement of the officer. This Court should reject respondent's interpretation of Rule 25.03 and permit the Circuit Attorney (and other prosecutors) to redact such information from police reports before disclosing those reports to defendants absent a showing of good cause for disclosure under Rule 25.04.

Additionally, even for those matters subject to disclosure under Rule 25.03, the discovery rules permit the entry of protective orders to protect the interests of witnesses and limit the use of such matters to those uses directly related to the criminal case. Amici believe that the Circuit Attorney's proposed protective order protects the legitimate privacy interests of the witnesses and reduces the significant potential that defendants will missuse

the information provided in discovery. Thus, even if a witness officer includes such information in his report, the discovery rules – particularly Rule 25.09 and Rule 25.11 – would authorize a trial court to permit redaction. Given the legitimate privacy interests of witnesses, respondent abused his discretion in denying relator's proposed protective order.

ARGUMENT

I. The discovery rules do not require the State to disclose the dates of birth, social security number, or other private identifying information of witnesses.

A. The right to discovery is limited.

Criminal defendants do not have a constitutional right to discovery outside of *Brady* information. "There is no general constitutional right to discovery in a criminal case, and *Brady* did not create one." *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977). Indeed, "'the Due Process Claus has little to say regarding the amount of discovery which the parties must be afforded.'" *Id*. (quoting *Wardius v. Oregon*, 412 U.S. 470, 474 (1973)).

Despite the lack of a constitutional right to discovery, the Missouri Supreme Court has created a limited right to discovery by adopting Rule 25.03 and Rule 25.04. Rule 25.03 defines the scope of discovery which the

State must disclose upon request. Rule 25.04 permits a court to require additional discovery upon a showing of good cause by the defendant.

Any right any of the defendants have to the witness information at issue arises solely from Rule 25.03 as they have not requested discovery under Rule 25.04 nor made a showing of good cause. Rule 25.03(A)(1) governs the disclosure of witness information. In particular, Rule 25.03(A)(1) requires the State to disclose the names, the last known address, and any statements (either recorded statements or memorandum summarizing oral statements) by the witnesses that the State *intends* to call. *Id.* (emphasis added).

Respondent has ordered the Circuit Attorney to disclose the social security numbers, birthdates, and phone numbers of individuals referenced in the police reports generated in this case.[3] Respondent's Exhibit B. Such information goes beyond the mere name and last known address of the witnesses.

Respondent apparently contends that such personal identifying information included in a police report constitutes either a written statement of the police officer or a memorandum summarizing the oral statement of a

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[3] Indeed, respondent's order includes the personal information of at least one individual that the State does not intend to call as witnesses in the underlying cases. *See* Respondent's Exhibit B, pages 13-14.

witness for the purposes of Rule 25.03 (A)(1). This attempt is simply incorrect for several reasons. First, as discussed further below, there are multiple potential sources for the personal information of witnesses besides direct questioning of the witnesses. Much of that information is readily accessible to officers through computer records of the police department or the Department of Revenue and may even auto-populate when an officer enters a witness's name in a report.[4] Certainly, information that has not been provided by the witness is not a "statement" that has been made by the witness.

Second, even if the witness did freshly disclose that information to the officer (or the officer who retrieved that information from a computer system is a witness that the state intends to call), such personal information is not a "statement" as contemplated within the meaning of Rule 25.03 (A)(1). As has often been stated, the mandatory requirements of Rule 25.03 are intended "to provide the defendant with an appropriate opportunity to avoid surprise and to prepare for trial in advance." *State v. Henderson,* 410 S.W.3d 760, 764 (Mo. App. E.D. 2013). The clear purpose behind requiring the disclosure of statements is to provide the defendant with the substance of the witness's

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[4] On information and belief, for many police agencies, the case management system either requires or requests that information for witnesses, suspects, and other parties connected to the case.

testimony, not to provide a defendant with personal information that has no relevance to the defense of the case.

B. State and federal law recognize that individuals have privacy interests in identifying information.

Respondent's position depends upon this Court broadly interpreting statement to cover such identifying information contained in police reports. However, such a broad interpretation of statement is inconsistent with how the law treats identifying information in other contexts.

The most significant recognition of the privacy interests in personal identifying information is contained in Section 570.223, RSMo., and Section 570.224, RSMo. These two statutes recognize that the nature of this type of identifying information is to verify the identity of a person. As Section 570.223 recognizes, the "theft" of identifying information permits others to use that information to assume the identity of the victim of the identity theft to obtain credit, property or services. *See, e.g.,* § 570.223.3. Additionally, as recognized by Section 570.224, the thief may sell the stolen identity to others who can market the stolen identity to multiple individuals. § 570.224.1. Additional protection for such identifying information is found in Section 578.450 which bars posting certain information on the internet if the intent is to cause great bodily harm to or the death of the person whose information is posted.

While Section 570.223 contains an exception allowing courts to require the disclosure of such identifying information as needed for court proceedings, the Missouri Supreme Court has recognized the needs for limits on that disclosure. In particular, Supreme Court Operating Rule 2.04 only mandates that certain information – not including any personal identification of any victim or witness – be included as part of the searchable case data. Even for parties to cases (which does not include witnesses or victims), the searchable data is limited to the year of birth, not the complete date of birth. Supreme Court Operating Rule 2.04(b)Civil Cases(6); Supreme Court Operating Rule 2.04(b)Criminal Cases(10).

The operating rules place the burden on counsels to redact personal information (except when expressly required by statute or rules) from any document filed with the court. Supreme Court Operating Rule 2.02. While the operating rules do not generally require circuit clerks to assure that identifying information like social security numbers are redacted from such documents, those rules do permit local courts to adopt rules creating such an obligation on behalf of the clerks before such documents are publicly accessible. Supreme Court Operating Rule 2.02; Supreme Court Operating Rule 2.05.

Particularly in the context of social security numbers, there are also restrictions established by federal law on the dissemination of such

information. Under the federal law governing the establishment and assignment of social security numbers, the federal government permits various government agencies (including states and state agencies) to use such numbers as a means of identification in certain circumstances. 42 U.S.C. § 405(c)(2)(C-F). However, that same law also contains restrictions on the use of social security numbers obtained by such agencies. *Id.*

One of the permitted uses under Section 405 is to verify the identity of those seeking driver's licenses. 42 U.S.C. § 405(c)(2)(C)(i); 42 U.S.C. § 405(c)(2)(C)(vi). In addition to the general restrictions contained in Section 405 on the further dissemination of social security numbers by state agencies, federal law also addresses the dissemination of identifying information contained within driving records. *See* 18 U.S.C. §§ 2721 *et seq*. In particular, for the purposes of these statutes, an individual's address and telephone number are considered to be "personal information" and an individual's social security number is considered to be "highly restricted personal information." 18 U.S.C. § 2725. Under these statutes, a state department of motor vehicles may disclose both personal information and highly restricted personal information to law enforcement agency (or a court) is necessary for those agencies to carry out their functions. 18 U.S.C. § 2721(b)(1). With limited exceptions (including the carrying out of law enforcement functions), highly restricted personal information can only be disclosed with the express

consent of the individual. 28 U.S.C. §2721(a)(2). Personal information can only be disclosed for the purposes listed in the statute. 28 U.S.C. § 2721(a)(1). Furthermore, an authorized recipient may not redisclose the information except as expressly permitted by Section 2721(b). 28 U.S.C. § 2721(c).

To implement this federal law, the General Assembly has adopted Section 32.090 and Section 32.091. Under Section 32.090, the Department of Revenue may not disclose personal information contained within a driving record except as permitted by Section 32.091. § 32.090.3, RSMo. In turn, Section 32.091 limits the disclosure of personal information by the Department of Revenue to those purposes and exceptions permitted by federal law. In furtherance of these two statutes, the Department of Revenue has adopted a regulation governing such distribution – 12 C.S.R. § 10-24.460 – that only permits the Department of Revenue to disclose such information with the express written consent of the individual except for those purposes permitted by Section 32.091.

Under these provisions, particularly Section 2721(b)(1), law enforcement has access to the personal identifying information of witnesses, victims, and defendants. Thus, even if a witness does not provide such information as part of the witness's statement, law enforcement can obtain

that information and include it in the report to positively identify such witnesses.

Additionally, the Sunshine Law provides that investigative reports are closed records until the case is finally concluded – i.e. the end of all appeals and collateral review. § 610.100.1(3), RSMo; § 610.100.2. Before the General Assembly adopted this language closing investigative reports, the Missouri Court of Appeals, Western District recognized that the disclosure of such reports posed a danger to witnesses and infringed on their interests in personal privacy and personal safety. *Hyde v. City of Columbia,* 637 S.W.2d 251, 263-64 (Mo. App. W.D. 1982). As such, the Western District created a judicial exemption forbidding the disclosure of such reports before the arrest of the defendant. *Id.*

In short, the law recognizes a general need to protect individuals from the disclosure of personal information. Generally speaking, victims and lay witnesses become involved in the criminal justice because of circumstances beyond their control. There are multiple criminal statutes either criminalizing attempts to dissuade or prevent victims and witnesses from cooperating or requiring members of the public to cooperate in the investigation of cases. *See. e.g.,* § 575.020, RSMo.; § 575.170, RSMo.; § 575.270, RSMo. In particular, the law criminalizes the failure of a witness

to provide a report.[5] § 575.190, RSMo. Such laws recognize the importance to society as a whole from witnesses and victims of crime coming forward to assure the prompt capture, prosecution, and appropriate punishment for those who commit offenses. Having created an obligation for a witness to cooperate, it would be a cruel paradox if the law were to create a strong disincentive by requiring the disclosure of personal identifying information without a showing of good cause.

Aside from the general privacy concerns of all witnesses, there is also special concern for law enforcement officers and employees of other agencies – such as firefighters, EMTs, and child advocacy center employees – who frequently interact with the criminal justice system. The law recognizes – particularly in the context of public employees – the need for the confidentiality of personal information. While the Sunshine Law requires the disclosure of many public records, the Sunshine Law contains two exceptions related to the records of individual employees. First, any hearing regarding the hiring, promoting, disciplining or firing of a public employee can be closed with only the results of the meeting disclosed. § 610.021.1(3), RSMo. Second,

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[5] The law also allows either party to request a subpoena to compel a reluctant witness to appear and testify. § 491.090, RSMo. If a witness fails to honor that subpoena, a court can issue a writ of body attachment to incarcerate that witness until he or she testifies or can post a bond. § 491.150, RSMo; § 491.170, RSMo.

individual personnel files and the information contained within them are confidential except for the name, salary, and length of service of the employee. § 610.021.1(13). Additionally, beyond the general restrictions on disclosures of identifying information in driving records by the Department of Revenue, the distribution of records related to peace officers and their families is even further restricted. § 32.056, RSMo.

These laws recognize that a person does not give up the right to keep their personal identifying information confidential just because they choose to work for a governmental body. They should also not give up that right because the officer preparing a police report opts to include (or the form used by an individual department suggests that the officer should include) personal identifying information in the report. In the absence of any specific requirement for the disclosure of such information in Rule 25.03, this Court should not expand the scope of that rule to mandate the automatic disclosure of the identifying information of government employees who are routinely involved in criminal cases. Such a mandatory disclosure would be contrary to the public policy established by the General Assembly and would be a substantial disincentive to individuals considering accepting employment as a peace officer or fire fighter or EMT.

For these reasons, this Court should find that the State does not violate Rule 25.03 by redacting information such as social security number or dates

of birth or phone numbers from any reports or statements provided under Rule 25.03. Since Rule 25.03 does not require the disclosure of it, in order to obtain the information at issue, the defendant is required by Rule 25.04 to prove that the information requested is relevant and material to the case and that the request is reasonable. In the cases at bar, the defendants have wholly failed to demonstrate how the witnesses' social security numbers, phone numbers, or birthdates are relevant or material to the case or to explain why it is reasonable to require the Circuit Attorney to disclose such information.

For these reasons, this Court should find that respondent abused his discretion in ordering the Circuit Attorney to provide unredacted copies of the police report and enter a writ of prohibition setting aside that order as it applies to information not specifically set forth in Rule 25.03 (A)(1).

II. Respondent abused his discretion in not entering a protective order related to the address of the witnesses.

While Rule 25.03 requires the State to provide a defendant with the last known address of a witness, that right is not absolute. Rule 25.11 permits a court to enter appropriate protective orders upon a showing of good cause. Furthermore, Rule 25.09 provides that such information is only to be used for the purposes of preparing and trying a case. Additionally, Missouri law recognizes the need to protect witnesses, as discussed further below. In

light of these general concerns, the State made an adequate showing to support the very limited protective order sought in this case.[6]

Section 595.209(1)(9) provides that victims and witnesses have "the right to reasonable protection from the defendant or any person acting on behalf of the defendant from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts." For victims, this is a constitutional right. Mo. Const. Art. I, § 32(1)(6). The withholding of sensitive personal information of victims and witnesses from the defendant and those who might act on his or her behalf would seem to fall squarely within the scope of the right to "reasonable protection" where the defendant has no corresponding statutory or constitutional right to obtain such information.

Proper consideration should also be given to the due process issues involved in this breach of witnesses' right to privacy. Those affected directly by the disclosure of their information are afforded no avenue of recourse to prevent the disclosure of their personal information to criminal defendants.

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[6] In this section, amici focuses on the protective order in the context of the request to not disclose addresses. To the extent that this Court finds that, in some circumstances, other identifying information should be disclosed, amici believes that the showing is even more adequate for such information which is even less likely to be relevant than the address of a witness.

An individual who has simply answered questions posed to them by a police officer, as is their civic obligation, is not afforded notice that their personal information is going to automatically be provided to the defendant(s) in the case. Furthermore, they are afforded no avenue through which to challenge or be heard in order to prevent or limit the disclosure of such information.

Issuing a protective order allowing for the withholding of the addresses or prohibiting their disclosure by defense counsel to the defendant certainly constitute "reasonable protection" for witnesses, especially where the State has agreed to produce those witnesses for the defense. A very real threat of harm, either through physical force, harassment, or identity theft, is posed by providing criminal defendants with the last known address of their victims and the witnesses against them. Moreover, simply knowing that the defendant has their address can cause significant emotional distress to victims and witnesses, especially in cases involving defendants with a history of violence. Thus, regardless of the level of threat actually posed by the defendant, these victims and witnesses are harmed by providing such information to the defendant.

The potential for misuse of contact information and identifiers of a victim or witness is recognized by Missouri law. In particular, the law recognizes that individuals with an interest in a case may threaten victims and witnesses to discourage them from participating in a case. § 575.270, RSMo. This concern is substantial enough that a warning against tampering

with witnesses and victims is included as part of the bond conditions in every case. § 491.620, RSMo. Furthermore, as noted above, the law recognizes that the internet can be used as a means of publicly identifying a person with the intent that others will target that person for serious injury or death. § 578.450.

To protect against this misuse of information, both the federal government and Missouri have enacted additional protections for specific victims. The Violence Against Women Act seeks to preclude the disclosure by the State and its entities of personal information (including name, home or other physical address, phone number, e-mail address, postal address, social security number, driver's license number, and date of birth) of any "adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families." 42 U.S.C. § 13925(a)(20) & (b)(2). The Family Violence and Preventative Services Act contains similar provisions. 42 U.S.C. § 10406(c)(5).

In Missouri, Section 455.220, RSMo. "establishes strict confidentiality requirements to safeguard the identity and location of shelter residents." *State ex rel. Hope House, Inc. v. Merrigan*, 133 S.W.3d 44, 46 (Mo. 2004). For victims of sexual offenses, domestic violence, and stalking, the law presumes that the name, current address, telephone number, and social security number should be redacted from any court record and not publicly disclosed.

§ 566.226.1, RSMo. These same victims are also authorized to participate in an "Address Confidentiality Program" run by the Secretary of State. § 589.663, RSMo. If a victim meets the requirements of this program, that victim is given a fictitious official address by the Secretary of State and the victim's actual address becomes confidential. *Id.*

These laws recognize the unfortunate reality that individuals who engage in serious criminal activity and their friends and family will often try to prevent the case from going to trial by attempts to intimidate or eliminate potential witnesses. In areas where such violence is prevalent, the prosecution has a legitimate interest in minimizing disclosure of information about the witnesses which is unrelated to the accurate trial of the case on its merits but can be improperly used to prevent witnesses from providing truthful and honest testimony.

The Missouri Supreme Court has noted that "strict confidentiality is an essential component for protecting women and children seeking refuge from their abusers" and "their safety and that of their children often depend upon maintaining the secrecy of their whereabouts." *Hope House, Inc.*, 133 S.W.3d at 46.

Despite these recognized concerns for the safety of victims, however, the default provision of Rule 25.03 (A)(1) is to require the State to provide individuals charged with harming women and children with the last known

address of their victims if the State intends to call those victims to testify at trial. Certainly, the fact that an individual is residing at a particular shelter can be of no legitimate use to a defendant's case[7] and sharing that information would expose the victims to unnecessary danger and, at the very least, the emotional distress caused by the knowledge that their abuser knows where they are. This need to maintain the secrecy of their whereabouts is equally held by women and children who find alternative shelter on their own or with friends or family. The rule, which, by default, requires the State to provide defendants in such cases with the name and last known address of the victims and their families who might serve as witnesses in the case, runs directly contrary to the intent of these statutes and the constitutional right of victims to reasonable protection from the defendant.

Providing a criminal defendant with the personal information about the victims and witnesses in the case against him or her increases the risk of the defendant harming or harassing those victims and witnesses, either directly or by malicious use of that information. Even if a criminal defendant does not directly use the information acquired to harm a victim or witness, the

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[7] All shelter employees, volunteers, and residents are required to maintain confidentiality at all times. *Hope House, Inc.,* 133 S.W.3d at 46 (citing § 455.220).

simple act of a defendant posting such information online can have devastating effect.

Since the adoption of Rule 25.03 in 1979, the information age has unfolded, and the crime of identity theft has developed. Information can now be shared on the internet, and such information can be easily data-mined by individuals with criminal intent. An individual's full name, address, date of birth, and social security number are all pieces of information now utilized in committing the crime of identity theft. The federal government advises individuals to careful guard such information, especially social security numbers, because of the ability of identity thieves to utilize that information. *See* Department of Justice, "Identity Theft" (https://www.justice.gov/criminal-fraud/identity-theft/identity-theft-and-identity-fraud). Indeed, as noted above, 18 U.S.C. § 2725, dealing with records held by state departments of motor vehicles, considers social security numbers to be "highly restricted personal information." Given the number of individuals constantly combing the internet for such information, the simple act of making such information public can pose devastating and long-lasting consequences for witnesses.

This danger is especially prevalent for those individuals, like police officers, who are repeatedly called upon to testify in criminal cases and whose personal information would be given out over and over in the course of discovery. Doctors, nurses, firefighters, psychologists, social workers, and

paramedics also find themselves named as witnesses in significantly more cases than ordinary citizens. Given the number of times their personal information would be given out to criminal defendants, eventually, one of the criminal defendants obtaining such discovery is likely to, either directly or indirectly, use that information in a way that exposes such a witness to harm. Moreover, where the State can and will make such witnesses available to the defense for questioning, the benefit to the defense of having such personal information is minimal.

From the perspective of the prosecutor's office and law enforcement, if witnesses become aware that their personal information will likely be shared with the criminal defendant against whom they would be testifying, they will be much less likely to cooperate in criminal investigations. Accordingly, precedent requiring the production of such information could seriously hamper the ability of law enforcement to find and retain witnesses willing to aid in the investigation and prosecution of criminal cases. Disclosure of such information also makes it more difficult for prosecutors and police to fulfill their duty to keep those witnesses that do step forward safe from threats and criminal harm.

There is a real risk to witnesses that comes from the disclosure of identifying information. The State should not have to wait for a defendant or a defendant's friends and family to misuse that information before it can

obtain a reasonable protective order that complies with the spirt of all of the rules of discovery by allowing a defendant through counsel to obtain the relevant information about witnesses while keeping irrelevant information about the witness's confidential. The Circuit Attorney's proposed redaction is consistent with the spirit of the rules of discovery; respondent's order denying the motion for protective order is not. The Missouri Supreme Court has recognized that it is appropriate to enter protective orders to protect the privacy rights of individuals. *State ex rel. Delmar Gardens N. Operating, LLC, v. Gaertner,* 239 S.W.3d 608, 611-12 (Mo. 2007) (finding protective order appropriate when party sought personnel file of a witness).

This Court should find that the State has a right to a protective order permitting it to redact identifying information (other than the name) of witnesses from discovery and allowing the State to comply with the obligation to provide an address for the witness by making the witness available to defense counsel.

CONCLUSION

For the reasons set forth above, amici request that this Court enter a writ of mandamus or, in the alternative, a writ of prohibition directing respondent to set aside his order requiring the disclosure of unredacted police reports and directing respondent to enter a protective order permitting the State to redact such information.

Respectfully submitted,

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/s/ Terrence M. Messonnier

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Rule 84.06(b) and Rule 55.03. The brief contains 6,465 words.

I further certify that this brief will be electronically served by the e-filing system on all participants in this case.

/s/ Terrence M. Messonnier
Terrence M. Messonnier