

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

WPSD TV, THE PADUCAH SUN, AND THE
MARSHALL COUNTY TRIBUNE-COURIER

PETITIONERS

v. **VERIFIED PETITION FOR WRIT OF MANDAMUS OR PROHIBITION
AND MOTION FOR INTERMEDIATE RELIEF**

HON. JAMES T. JAMESON, Marshall Circuit Court Judge

RESPONDENT

Pursuant to Ky. CR 76.36, Petitioners WPSD TV, The Paducah Sun, and the Marshall County Tribune-Courier ask this Court to issue a writ of mandamus or prohibition, and grant intermediate relief, against Marshall Circuit Court Judge James T. Jameson (“Respondent”). As explained below, Judge Jameson has acted outside of his jurisdiction and committed clear errors of law that cannot be remedied by subsequent appeal.

This case arises out of the tragic events that took place at Marshall County High School on January 23, 2018. In the hours, days, and weeks that followed, Respondent apparently engaged in a highly unusual and inappropriate series of actions to prematurely intervene in the handling of this criminal matter, and to prevent the public and media from accessing any information that would allow scrutiny of his actions. In so doing, Respondent has called into question his own impartiality, and with it the very integrity of the judicial system. Immediate and full transparency of the events that have occurred to date is required.

Upon information and belief, Respondent is an acquaintance of the defendant’s mother; took steps within hours of the shooting to assign a public defender to represent the defendant (even though the case was not then in Respondent’s court); and intervened in an ongoing interview of the defendant to demand that the police stop questioning him. After the defendant was indicted and referred to Respondent’s court to be tried as an adult, Respondent closed the arraignment hearing to

the public (in violation of Rule of Criminal Procedure 8.02), over the written objection of Petitioners. Upon information and belief, Respondent went on record at the hearing to disclose his pre-indictment actions and purported to enter certain “findings” about the appropriateness of his conduct and his ability to continue presiding over the case. Finally, Respondent refused Petitioner’s post-hearing requests to release the video transcript of the hearing, even though state law requires that all records in cases like this be open after arraignment. *See* KRS 635.120(1) (“Records . . . of juveniles tried as adults in the Circuit Court shall be open to the public after the child has been indicted and arraigned on the offense for trial of the child as an adult.”).

Plainly, the public has a compelling right—and need—to know what happened in the closed hearing. Immediate relief is necessary to vindicate the public’s right to know how its courts are handling one of the most high-profile murder cases in the state in recent memory.

INFORMATION REQUIRED BY CR 76.36

1. Petitioners seek relief against Hon. James T. Jameson, Marshall Circuit Court Judge.
2. The style and file number of the underlying action in the Marshall Circuit Court is *Commonwealth of Kentucky v. Gabriel Ross Parker*, 18-CR-0030.
3. The facts entitling Petitioners to relief are set forth below in the Statement of Facts.
4. Petitioners seek an order requiring the Marshall Circuit Court to conduct all proceedings in the case in open court, accessible to the public and the media, and to release the tape of the proceedings held in court on Friday February 16, 2018.
5. The Real Parties in Interest to the proceeding below are (1) Gabriel Ross Parker, [REDACTED] [REDACTED] and (2) Commonwealth of Kentucky, c/o Hon. Mark Blankenship, Commonwealth’s Attorney, [REDACTED] [REDACTED].

STATEMENT OF FACTS

1. Gabriel Ross Parker has been indicted for murder and assault based on allegations that he entered Marshall County High School on January 23, 2018 and opened fire with a handgun, killing 2 fifteen-year-old students and injuring 18 others.

2. Parker is fifteen years old but was indicted as an adult by a Marshall Circuit Court Grand Jury on February 13, 2018. *See* Indictment, attached as Exhibit 1.

3. Parker's arraignment was presided over by Judge James T. Jameson of the Marshall Circuit Court on February 16, 2018.

4. Upon information and belief, Judge Jameson is personally acquainted with Parker's mother, Mary Garrison-Minyard, although the extent of their relationship is unclear.

5. Upon information and belief, within hours of the shooting, Judge Jameson took it upon himself to appoint a public defender for Parker, even though Parker had not yet been indicted at that time and was not under the jurisdiction of the Circuit Court.

6. Upon information and belief, shortly after the shooting, Judge Jameson contacted a detective who was then in the process of interviewing Parker and sought to stop the interview.

7. Between the time when Parker was indicted on February 13, 2018 and when he was arraigned by Judge Jameson on February 16, 2018, reporters from local news outlets WPSD TV, The Paducah Sun, and The Marshall County Tribune-Courier learned that Judge Jameson intended to close Parker's arraignment to the press and public.

8. In an effort to inform Judge Jameson that the law required the arraignment to be open, and in the hope of avoiding the need to file a Writ such as this, counsel for Petitioners delivered a letter to Judge Jameson on Thursday, January 15, 2018, which outlined the legal authorities mandating that criminal proceedings in Circuit Court are presumptively open to the

public, regardless of the age of the offender. *See* February 15, 2018 Letter from C. Hinkle to J. Jameson, attached as Exhibit 2.

9. Prior to the arraignment on February 16, 2018, Judge Jameson responded with a letter describing Parker's arraignment as "juvenile proceedings before the Circuit Court," and directing counsel for Petitioners to contact the Kentucky Administrative Office of the Courts ("AOC") for further inquiry. *See* February 16, 2018 Letter from J. Jameson to J. Fleischaker, attached as Exhibit 3.

10. Upon receipt of Judge Jameson's letter, Petitioners' counsel immediately spoke with Leigh Anne Hiatt of the AOC, to make sure the AOC was aware of Judge Jameson's intent to close Parker's arraignment and Petitioners' objections thereto. Ms. Hiatt agreed to look into the issue, but, to date, has not responded to Petitioners' counsel.

11. Parker's arraignment in Marshall Circuit Court was held on Friday, January 16, 2018. That hearing was closed to the public and media, over the objections of media organizations including Petitioners.

12. Upon information and belief, based on reports of individuals who attended the closed arraignment, Judge Jameson used the arraignment proceedings to make certain disclosures and findings of fact regarding his appointment of a public defender for Parker and interference in the detective's interview of Parker. Upon information and belief, Judge Jameson made these findings in effort to avoid his recusal from the case.

13. Immediately following the arraignment and then again on February 19, 2018, reporters from WPSD TV, The Paducah Sun, and The Marshall County Tribune-Courier requested copies of all records of Parker's arraignment proceedings, including any audio/video recordings or transcripts of the hearing. The Marshall Circuit Court Clerk's Office refused these requests. Upon

information and belief, the Clerk's refusal to provide copies of these records was at Judge Jameson's direction.

14. Upon information and belief, no judicial findings have been made which could possibly support the closure of Parker's arraignment or any subsequent proceedings in Marshall Circuit Court.

MEMORANDUM OF AUTHORITIES IN SUPPORT OF PETITION

I. Petitioners Have a Presumptive Right to Obtain A Writ of Mandamus or Prohibition to Address Access to Courts Issues.

In a typical case, a party seeking a writ of prohibition or mandamus must show that either "the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court" or "the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted." *Riley v. Gibson*, 338 S.W.3d 230, 234 (Ky. 2011) (quoting *Hoskins v. Maricle*, 150 S.W.3d 1, 10 (Ky. 2004)). However, the Kentucky Supreme Court "has recognized sui generis availability of writs by the media seeking trial access." *Riley v. Gibson*, 338 S.W.3d 230, 234 (Ky. 2011) (citing *Central Kentucky News-Journal v. George*, 306 S.W.3d 41, 44 (Ky. 2010)). In order "to preserve higher values,' the news media have been made an exception to the usual rules regarding standing to intervene and standing to seek mandamus where access is denied." *Courier-Journal and Louisville Times Co. v. Peers*, 747 S.W.2d 125, 128 (Ky.1988). Thus, writ petitions by media organizations seeking access to court proceedings are presumptively appropriate, without regard to the traditional standard for obtaining extraordinary relief. *Riley*, 338 S.W.3d at 234.

Moreover, writ petitions from media organizations would easily satisfy the traditional standards for extraordinary relief, even if they did apply in such cases. In media access cases "there exists no adequate remedy by appeal or otherwise" because "the media seeking access to court

proceedings is never itself party to those proceedings, it has no alternate remedy aside from a writ petition.” *Riley*, 338 S.W.3d at 234. Moreover, “great injustice and irreparable injury would result if the petition is not granted” because “the injury the media claims in such actions is potentially an abridgement of its First Amendment right to access information.” *Id.* And, in this case, relief would further be warranted because the court below plainly acted outside its jurisdiction by refusing to hold the arraignment in open court, as required by RCr. 8.02, or to release records concerning the case, as required by KRS 635.120(1).

II. The Trial Court Improperly Closed the February 16, 2018 Hearing.

The Kentucky Constitution plainly states that “All courts shall be open.” Ky Const. § 14. The United States Supreme Court has long recognized that the right of the press to attend all court proceedings in a criminal matter is guaranteed by the First Amendment. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (tracing the “unbroken, uncontradicted history” of the “presumption of openness” of criminal proceedings in this country). Indeed, to work effectively, it is important that society’s criminal process satisfy the appearance of justice, which can best be provided by allowing people to observe it. *Richmond Newspapers*, 448 U.S. at 573 (citing *Offutt v. United States*, 348 U.S. 11, 14 (1954)). Such proceedings may only be closed if the trial court follows a detailed procedure that requires notice to the public, a hearing on the issue, and specific findings on the record concerning the compelling need for a closed hearing in lieu of other more limited measures. *Lexington Herald-Leader Co. v. Meigs*, 660 S.W.2d 658, 663 (Ky. 1983).

Here, there is no question that the public had a right to attend the February 16, 2018 proceeding in Marshall Circuit Court. At that hearing, Gabe Parker was scheduled to be arraigned *as an adult* after a grand jury indicted him on two counts of murder and fourteen counts of assault and referred the matter *to circuit court*. *See* KRS 635.020(4) (requiring defendant to be tried as an adult in

circuit court where he commits a felony using a gun after reaching the age of 14).¹ Thus, there simply is no factual or legal basis for Respondent’s oxymoronic suggestion that the case was a “juvenile proceeding[] before the Circuit Court.” Exh. 3. Rather, it was an arraignment of a defendant who was to be tried as an adult for murder—something that *must* be done in open court. See Ky. R.Cr. 8.02 (“Arraignment shall be conducted in open court”); *Caudill v. Commonwealth*, 120 S.W.3d 635, 650 (Ky. 2003), as modified (Feb. 5, 2004) (recognizing that arraignments must be held in open court).

Moreover, it now appears that the February 16, 2018 hearing involved far more than an arraignment. On information and belief, at that hearing Respondent disclosed his unusual conduct on the day of the shootings, including: (1) intervening in a criminal matter not assigned to him to appoint a public defender for the suspected shooter, whose mother apparently is an acquaintance of the judge, and (2) intervening in an ongoing police interview of the suspect to insist that it be stopped. Also on information and belief, at the hearing the judge entered unusual “findings” in the record of the case to explain why he need not recuse himself despite these unusual actions.

There can be no question that public confidence in the fairness of the proceedings requires open access to a hearing at which the judge reportedly made such disclosures and purported to explain why he can continue to preside over the case nonetheless. The need to know what happened at the hearing is even more compelling because of the Court’s deliberate refusal to allow the public to attend that hearing, or to provide a copy of the video transcript after it concluded. *Cf. Courier-Journal & Louisville Times Co. v. Peers*, 747 S.W.2d 125, 130 (Ky. 1988) (“On the contrary, perhaps it is the fact that the litigants wanted the file closed which suggested that there might be need for public scrutiny.”).

¹ Furthermore, any hearing to determine whether there was sufficient probable cause that Parker (1) committed a felony (2) using a firearm (3) after turning fourteen was to be held in district court. KRS 635.020(4). Judge Jameson would not have jurisdiction to hold such a hearing in Circuit Court in the first instance.

Here, there can be no question that “the public at large [has] a stake in the process and outcome of such proceedings.” *Riley*, 338 S.W.3d at 236. Indeed, “[t]he value [to the public] of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that anyone is free to attend gives assurance that established procedures are being followed and that deviations will become known.” *Id.* at 235 (quoting *Press–Enterprise v. Superior Court I*, 464 U.S. 501, 508 (1984)). Thus, “public access must be allowed.” *Id.* at 236.

Because Respondent plainly erred in refusing Petitioners’ written request to attend the February 16, 2018 proceedings, issuance of a writ of mandamus or prohibition is required.

III. The Court Improperly Refused to Release the Video Transcript of the February 16, 2018 Hearing.

Respondent compounded its error in closing the February 16, 2018 hearing by refusing to release the video transcript documenting what happened behind closed doors. Again, the law on this issue is crystal clear: “Records, limited to the records of the present case in which the child has been charged, of juveniles tried as adults in the Circuit Court *shall be open to the public after the child has been indicted and arraigned on the offense for trial of the child as an adult.*” KRS 635.120 (emphasis added). Thus, if there ever was any basis for closing the February 16, 2018 hearing—which there was not—it evaporated the minute that the arraignment concluded. At that point, Petitioners requested a copy of the video transcript of the relevant hearing, and Respondent once again refused to release it.

This deliberate refusal to abide by state law plainly entitles Petitioners to a writ of mandamus or prohibition. Respondent must be ordered to release the video transcript of the hearing, and to make all other documents in the record of the case publicly available, forthwith.

IV. Petitioners are Entitled to Intermediate Relief

Pursuant to Ky. CR 76.36(4), Petitioners further request that this Court grant immediate, intermediate relief by ordering Respondent to (1) release the tape of the February 16, 2018 hearing and (2) hold all future proceedings in the case in open court. As noted above, the Kentucky Supreme Court has held that media access cases present the very kind of extraordinary circumstances where “there exists no adequate remedy by appeal or otherwise” and “great injustice and irreparable injury would result if the petition is not granted.” *Riley*, 338 S.W.3d at 234. Here, the need for immediate disclosure of the hearing transcript is compelling; without it, the public cannot understand Respondent’s unusual behavior following the shooting or the purported basis for why none of those actions require the judge’s recusal from this sensitive and important case. The very integrity of the impartial judiciary is at stake and requires immediate action by this Court.

Respectfully Submitted,

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VERIFICATION

After being duly sworn, I, JIM PAXTON, have personal knowledge concerning the matters set forth in the foregoing petition, and do hereby verify, certify, swear, and affirm that the allegations contained in the foregoing complaint are true and accurate to the best of my information, knowledge, and belief.

JIM PAXTON

COMMONWEALTH OF KENTUCKY)

)

COUNTY OF McCRACKEN)

The foregoing Verification was subscribed and sworn to and/or acknowledged before me by JIM PAXTON, on this the 20th day of February 2018.

My Commission expires on the _____ day of _____, _____.

CERTIFICATE OF SERVICE

Pursuant to CR 76.36(1) and CR 5.03, undersigned counsel hereby certifies that a copy of this Petition For Writ of Mandamus Or Prohibition and Motion For Intermediate Relief was served this 20th day of February, 2018, by first class mail, upon: (1) Hon. James T. Jameson, Marshall Circuit Judge, 80 Judicial Drive, Benton, Kentucky 42025; (2) Gabriel Ross Parker, c/o Tom Griffiths, Department of Public Advocacy, P.O. Box. 207, Danville, KY 40422 and (3) Commonwealth of Kentucky, c/o Hon. Mark Blankenship, Commonwealth's Attorney, 304 North Fifth Street, P.O. Box 1488, Murray, KY 42071.

Counsel for Petitioners