IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

STATE OF HAWAIʻI, vs. GERHARDT KONIG, Defendant.	Case No. 1CPC-25-0000373 ATTEMPTED MURDER IN THE SECOND DEGREE (§§ 705-500, 707-701.5 and 706-656, H.R.S.) ORDER DENYING DEFENDANT GERHARDT KONIG'S EMERGENCY EX PARTE MOTION TO SEAL DOCKET #230

ORDER DENYING DEFENDANT GERHARDT KONIG'S
EMERGENCY EX PARTE MOTION TO SEAL DOCKET #230

Defendant GERHARDT KONIG ("Defendant"), by and through his counsel Thomas M. Otake, Esq., and Manta K. Dircks, Esq., filed an Emergency *Ex Parte* Motion to Seal Docket #230 ("Motion to Seal") on January 25, 2026, and a Supplemental Memorandum in Support on February 3, 2026. The State of Hawaiʻi ("State") filed a Memorandum Concerning Sealing Records in a Criminal Proceeding on February 3, 2026. The Public First Law Center filed an Objection to Defendant's Motion to Seal Court Record on February 3, 2026. A hearing was had on the Motion to Seal on February 5, 2026. At the hearing, the State was represented by Deputy Prosecuting Attorney Joel R. Garner, Defendant was present and represented by his aforementioned counsel, and the Public First Law Center was represented by Benjamin M. Creps, Esq. The

Court, having considered the written submissions, the oral presentation of counsel, taking judicial notice of the records, files, and proceedings in the above-entitled matter, finds and concludes as follows:

1. "The First Amendment to the U.S. Constitution and article I, section 4 of the Hawai'i Constitution grant the public a right of access to court proceedings in criminal cases." *Grube v. Trader*, 142 Hawai`i 412, 422, 420 P.3d 343, 353 (2018) (*Citing Oahu Publ'ns Inc. v. Ahn*, 133 Hawai'i 482, 494, 496, 331 P.3d 460, 472, 474 (2014)).

2. The Supreme Court of Hawaii has held that the public has a constitutional right of access to criminal proceedings generally, as well as the records thereof, reasoning that

> the right of public access corresponds with our system's "deeply ingrained" traditional mistrust for secret trials, which has led "the general policy of open trials [to] become firmly embedded in our system of jurisprudence. The right of access thus functions not only to protect the public's ability to obtain information—a requisite "to the enjoyment of other First Amendment rights—but also as a safeguard of the integrity of our courts. The corrective influence of public attendance at trials for crime serves to limit unfairness, discrimination, undue leniency, favoritism, and incompetence in our administration of justice. In short, open courtroom proceedings are important to the liberty of the people.

Id., 142 Hawai`i at 422 *(Citations omitted).*

3. "Therefore, the qualified right of public access provided by the First Amendment and article 1, section 4 can be overcome 'only by an <u>overriding interest</u> based on findings that <u>closure is essential to preserve higher values</u> and is <u>narrowly tailored</u> to serve that interest.'" *Oahu Publications*, 133 Hawai`i at 496, 331 P.3d at 474 (Emphasis original).

4. In order for a court to seal records or proceedings, it must consider and balance: "(1) [the] closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest." *Grube*, 142 Hawai`i at 423, 420 P.3d at 354.

5. In this case, sealing absolutely protects the defendant's right to a fair trial by reducing any possible taint of prospective jurors. *See Oahu Publications* 133 Hawai`i at 499, 331 P.3d at 477 ("Where a defendant's right to an impartial jury may be compromised by the possibility of external interference with jury deliberations or juror misconduct, the court has a duty to act."); *Gannett Pac. Corp. v. Richardson*, 59 Haw. 224, 233, 580 P.2d 49, 56 (1978) ("while publicity in legal proceedings is favored by the law, it has always been with the qualification that no injustice to the persons immediately concerned would be occasioned thereby").

6. As to the second and third factors, the analysis is far more nuanced. "Extensive publicity implicates the defendant's due process rights only if it rises to a level sufficient to preclude a fair trial for the accused." *State v. Komisarjevsky*, 338 Conn. 526, 557, 258 A.3d 1166, 1191 (2021). The U.S. Supreme Court has also held that "[p]rominence does not necessarily produce prejudice, and juror *impartiality,* we have reiterated, does not require

ignorance. *Skilling v. United States*, 561 U.S. 358, 381, 130 S.Ct. 2896, 2914–15, 177 L.Ed.2d 619 (2010) (Emphasis original).[1]

7. This Court, in considering the best way to balance the public's constitutional rights to access and a defendant's right to a fair trial, in the face of the endless and instant flow of information—and in some cases disinformation—enabled by the twenty-first century social media environment, finds the guidance of the Supreme Court of California, in the high publicity prosecution of Scott Peterson highly persuasive. The Supreme Court of California stated the best practice is "to rigorously vet potential jurors to screen out those tainted and irrevocably biased by pretrial publicity, to find [twelve], plus alternates, who can decide only on the evidence admitted at trial." *People v. Peterson*, 10 Cal.5th 409, 441, 472 P.3d 382, 409 (2020).[2] The words of the Supreme Court of California are particularly persuasive because they arise in a 21st century case, yet resoundingly echo the Hawaii Supreme Court's now nearly half century admonishment to the trial courts in *Gannett* where voir dire

[1] In so holding, the Supreme Court quoted *Irvin v. Dowd,* 366 U.S. 717, 722, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961) (Jurors are not required to be "totally ignorant of the facts and issues involved"; "scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case.") and *Reynolds v. United States,* 98 U.S. 145, 155–156, 25 L.Ed. 244 (1879) ("[E]very case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits.").

[2] This Court found the proposed alternatives of partially sealing material prejudicial to the Defendant until the completion of jury selection highly persuasive because of the deft balancing of the rights of all persons interested. Had this order been timely filed (prior to jury selection), the Court would have employed the suggested "layered" unsealing of Docket #230.

in a jury trial remains the best mechanism to ensure a defendant's rights to a fair trial in the face of pretrial publicity. 59 Haw. at 234, 580 P.2d at 57.

ACCORDINGLY, Defendant's Motion to Seal is respectfully denied.

Dated: Honolulu, Hawai'i, April 8, 2026.

/S/ Paul B.K. Wong

Judge of the above-entitled Court