

APPENDIX

Jeff Howell
Petitioner, pro se

vs.

State of Indiana
Defendant

1A

Appendix A

Indiana Supreme Court denial
of Howell's petition to transfer

Jeff Howell v. State of Indiana
19A-CR-02913 (Ind. 2020)
Not reported

2A

In the
Indiana Supreme Court

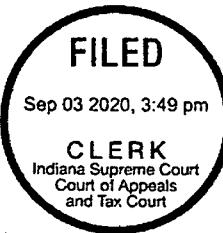
Jeff Howell,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
19A-CR-02913

Trial Court Case No.
49G03-0807-PC-158636



Order

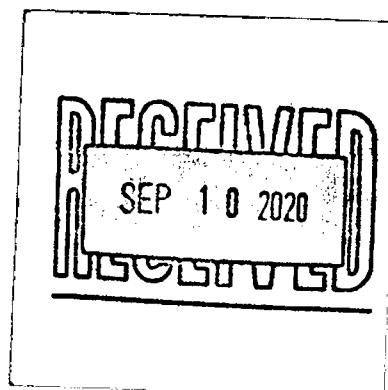
This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 9/3/2020.

Loretta H. Rush
Loretta H. Rush
Chief Justice of Indiana

All Justices concur.



3A

Appendix B

Indiana Court of Appeals dismissal
of Howell's appeal

Jeff Howell v. State of Indiana
19-CR-02913 (Ind. Ct. App. 2020)
Not reported

4A

IN THE
COURT OF APPEALS OF INDIANA

Jeff Howell,

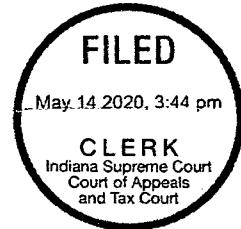
Appellant,

v.

State of Indiana,

Appellee.

Court of Appeals Cause No.
19A-CR-2913



Order

- [1] Appellee, by counsel, has filed a Motion to Dismiss. Appellant, pro se, has filed an Objection to Motion to Dismiss.
- [2] Having reviewed the matter, the Court finds and orders as follows:
 1. Appellee's Motion to Dismiss is granted, and this appeal is dismissed with prejudice.
 2. The Clerk of this Court is directed to send this order to the parties, the trial court, and the Marion Circuit and Superior Courts Clerk.
 3. The Marion Circuit and Superior Courts Clerk is directed to file a copy of this order under Cause Number 49G03-0807-PC-158636, and, pursuant to Indiana Trial Rule 77(D), the Clerk shall place the contents of this order in the Record of Judgments and Orders.

[3] Ordered 5/14/2020.

Robb, J., Sharpnack, Barnes, Sr.JJ., concur.

For the Court,

Caleb Bruland

Chief Judge

SA

Appendix C

State of Indiana v. Jeff Howell

49G03-0807-PC-158636

(Marion Superior Court 2008)

Motion for Release of Juror Information
(Denied)

6A

D E N I E D

November 14, 2019

Mark E. Kelly

STATE OF INDIANA)
)
COUNTY OF MARION)
)
)
JEFF HOWELL)
)
VS.)
)
STATE OF INDIANA)

IN THE MARION SUPERIOR COURT
CRIMINAL DIVISION 3

49G03-0807-PC-158636

FILED

401 NOV 14 2019

Myla A. Eldridge
CLERK OF THE MARION CIRCUIT COURT

MOTION FOR RELEASE OF JUROR INFORMATION

Comes now the Petitioner, Jeff Howell, and files this Motion for Release of juror information, to include names and addresses of all jurors, in the above captioned cause. Petitioner offers the following in support of this motion.

1. Petitioner was Defendant in this cause.
2. Petitioner plead not guilty to all charges.
3. Petitioner was found guilty by jury trial.
4. Petitioner maintains his actual innocence of all charges under this cause.
5. Petitioner intends to remedy his wrongful conviction through litigation and other appropriate and legal means and the information sought in this motion is necessary to that end.
6. Petitioner's case was not "high profile" and the trial was not closed.
7. Petitioner submitted an informal written request for juror information to the Marion County Clerk by letter dated October 9, 2019. That letter was marked "filed" on October 17, 2019. Petitioner made his request informally due to the fact that, according to various rules and statutes, parties to an action are entitled to such information.

8. On October 30, 2019, Petitioner received a copy of his letter with a typed notation at the top "The request for juror information is DENIED. The requested juror information is confidential according to Indiana law." This statement appears to be "signed" by Commissioner Stanley E. Kroh.

9. The statement referenced in paragraph 8 fails to cite what "Indiana law" purportedly makes juror information confidential.

10. Indiana Code 33-28-5-22 states that "After the period of service for which names were drawn from the master jury list has expired, and all persons selected to serve as jurors have been discharged, all records and papers compiled and maintained by the jury administrator or the clerk must be preserved by the clerk of the courts for the period prescribed by rule of the supreme court. The records and papers *must be available for public inspection* at all reasonable times and in accordance with this chapter and applicable supreme court rules." Emphasis added.

11. "All persons have access to Court Records as provided in this rule, except as provided in section (B)(2) of this rule." Rule 9 - Access to Court Records, Ind. Admin. R. 9.

12. "The following persons, in accordance with their functions within the judicial system, may *have greater access* to Court Records: [...] (d) *the parties to a case* or their lawyers with respect to their own case." *Id.* Emphasis added.

13. "Personal information relating to a juror or prospective juror not disclosed in open court is confidential, *other than for the use of the parties* and counsel. The court shall maintain that confidentiality to an extent *consistent with the constitutional and statutory rights of the parties.*" Rule 10 - Access to Court Records, Ind. Admin. R. 10. Emphasis added.

14. A number of courts have held that the First Amendment provides for a public right to access jury trials and that this right includes information obtained during the juror selection

process. The Washington Post sought juror questionnaires in the murder trial of Ingmar Guandique, accused of murdering Chandra Levy in 2001. The murder received extensive media coverage because Levy was having an affair with a Congressman. The jury was promised that their answers to the questionnaire would be confidential, but ultimately, the court of appeals held that the questionnaires had to be disclosed to the public except for any questions that the trial judge believed to involve "deeply personal matters." *In Re Access to Juror Questionnaires; The Washington Post*, (D.C. Court of Appeals, 2012)

15. A court may deny access to all identifying information about jurors when there is a serious threat to the jurors' welfare. In the 1977 trial of Leroy Barnes, who was charged with violating multiple federal narcotics and firearms laws, a federal district court withheld jurors' names and addresses after the judge determined that the case presented an unusual risk to the jurors. See *U.S. v. Barnes*, 604 F.2d 121 (1979). However, Petitioner was not charged with any violent crimes and is not a threat to jurors or any other person.

16. The U.S. Supreme Court has recognized that the First Amendment protects the public's right to attend criminal proceedings. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 55 (1980). The Court has further recognized that the public and the press have a right to attend not only the trial itself, but also those pretrial proceedings that have been traditionally open to the public and whose function would be enhanced by allowing public scrutiny. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) [hereinafter *Press-Enterprise II*] (holding that a First Amendment right of access applies to preliminary hearings); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) [hereinafter *Press-Enterprise I*] (holding that a First Amendment right of access applies to voir dire proceedings). Although the Supreme Court has not yet directly addressed whether this

constitutional right of access to judicial proceedings applies to civil proceedings or to court documents, numerous federal and state courts have extended the First Amendment right of access to civil proceedings and to court records filed in both criminal and civil cases.

17. The following cases recognize a First Amendment right of access to civil proceedings:

United States v. A.D., 28 F.3d 1353 (3d Cir. 1994); *Westmoreland v. CBS, Inc.*, 752 F.2d 16 (2d Cir. 1984); *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059 (3d Cir. 1984); *In re Continental Illinois Sec. Litig.*, 732 F.2d 1310 (7th Cir. 1984); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165 (6th Cir. 1983).

18. The following cases recognize a First Amendment right of access to judicial records:

Republic of the Philippines v. Westinghouse Elec. Corp., 949 F.2d 653 (3d Cir. 1991); *Public Citizen v. Liggett Group Inc.*, 858 F.2d 775 (1st Cir. 1988); *Rushford v. New Yorker Magazine*, 846 F.2d 249 (4th Cir. 1988); *In re New York Times Co.*, 828 F.2d 110 (2d Cir. 1987); *Associated Press v. U.S. District Court*, 705 F.2d 1143 (9th Cir. 1983); *United States v. Dorfman*, 690 F.2d 1230 (7th Cir. 1982).

19. A First Amendment right of access to information exists if the information in question passes the twin tests of "experience and logic." First, is there a long history of access to the information at issue? Second, does public dissemination of the information play a significant role in the functioning and enhancement of the judicial process at issue? Information about the individuals who literally decide the fate of both civil litigants and criminal defendants, including information about where the jurors reside, work, or both, satisfies both tests. *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984), and *Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1 (1986).

20. The roots of open trials reach back to the days before the Norman Conquest when cases in England were brought before "moots," a town meeting kind of body such as the local courts of the hundred of the county court. Attendance was virtually compulsory on the part of the freeman of the community, who represented the "patria," or the "country," in rendering judgment. The public aspect thus was "almost a necessary incident" of jury trials, since the presence of a jury . . . already ensured the presence of a large part of the public. *Press-Enterprise I*, 464 U.S. at 505.

21. When the jury system grew up with juries of the vicinage . . . everybody knew everybody on the jury and we may take judicial notice that this is yet so in many rural communities throughout the country. So, everyone can see and know everyone who is stricken from the venire list or otherwise does not serve. Even in the case before us, the entire voir dire proceeding was in open court. But the anonymity of life in the cities has so changed the complexion of this country that even the press, with its vast and imaginative methods of obtaining information, apparently does not know and cannot easily obtain the names of the jurors and of the venire men and women who did not serve in this case. We think it no more than an application of what has always been the law to require a district court, upon the seating of the jury and alternates, if any, to release the names and addresses of those jurors. . . . *In re Baltimore Sun Co.*, 841 F.2d 74, 75 (4th Cir. 1988).

22. So common was the practice of disclosing the identity of jurors that in the conspiracy trial of Aaron Burr, over which Chief Justice Marshall presided, the names of the twelve chosen jurors were printed in the reported decision. See *Gannett Co. v. State*, 571 A.2d 735, 757 (Del. 1990) (Walsh, J., dissenting) (citing *United States v. Burr*, 25 F. Cas. 55, 87, No. 14,693 (C.C.D.Va. 1807)); see also *David Weinstein, Protecting a Juror's Right to Privacy: Constitutional Constraints and Policy Options*, 70 Temp. L. Rev. 1, 30 (1997). The jurors'

names were also made public in the highly publicized trials of William Penn in 1670 and of John Peter Zenger in 1735. *Gannett Co. v. State*, 571 A.2d 735, 756 n.3 (Del. 1990) (Walsh, J., dissenting). Thus, there is a long-established tradition of allowing access to jurors' identities in criminal trials in the United States.

23. In recognizing the public's constitutional right to attend criminal proceedings, the Supreme Court identified the following purposes served by an open judicial system: ensuring that proceedings are conducted fairly; discouraging perjury, misconduct of participants, and biased decisions; providing an outlet for community hostility and emotion; ensuring public confidence in a trial's results through the appearance of fairness; and inspiring confidence in judicial proceedings through education regarding the methods of government and judicial remedies. *Richmond Newspapers*, 448 U.S. at 569.

24. Many of the purposes listed above which open justice serves are equally served by access to the identities of the jurors. Knowledge of juror identities allows the public to verify the impartiality of key participants in the administration of justice, and thereby ensures fairness, the appearance of fairness, and public confidence in that system. *In re Globe Newspaper Co.*, 920 F.2d at 94.

25. It is possible, for example, that suspicions might arise in a particular trial (or in a series of trials) that jurors were selected from only a narrow social group, or from persons with certain political affiliations, or from persons associated with organized crime groups. It would be more difficult to inquire into such matters, and those suspicions would seem in any event more real to the public, if names and addresses were kept secret. Furthermore, information about jurors, obtained from the jurors themselves or otherwise, serves to educate the public regarding the judicial system and can be important to public debate about its strengths, flaws, and means to

improve it. . . . Juror bias or confusion might be uncovered, and jurors' understanding and response to judicial proceedings could be investigated. Public knowledge of juror identities could also deter intentional misrepresentation at voir dire. *Id.*

26. It is important for the public to receive information about the operation of the administration of justice, including information about the actual people who do render justice in the truest sense of the word. Access to such information not only serves the cause of justice generally by providing an independent, non-governmental verification of the utter impartiality of the processes involved in selecting jurors and shielding them from improper influences, it also serves to enhance the operation of the jury system itself by educating the public as to their own duties and obligations should they be called for jury service. *United States v. Doherty*, 675 F. Supp. 719, 723 (D. Mass. 1987), aff'd in part, rev'd in part on other grounds, 867 F.2d 47 (1st Cir. 1989).

27. Several examples from the recent past confirm these views of the essential role that access to information about jurors plays in promoting the public's confidence in the fairness of the judicial process. Access to juror information helped reveal that an African-American juror in Washington, D.C., refused to convict an African-American criminal defendant, regardless of the evidence. Similarly, it was revealed that a law student juror in a civil libel case had erroneously instructed his fellow jurors on the meaning of the "actual malice" standard. See Steven Brill, *Inside the Jury Room at The Washington Post Libel Trial*, Am. Law., Nov. 1982, at 1. Furthermore, information obtained as a result of public access to juror identities has even uncovered juror misconduct. *United States v. Posner*, 644 F. Supp. 855, 886 n.2 (S.D. Fla. 1986) (jurors' exposure to prejudicial outside influences revealed in newspaper article featuring interview with juror), aff'd without opinion, 828 F.2d 773 (11th Cir. 1987). Most recently, news

reports revealed that jurors in a civil case switched their votes late Friday afternoon from plaintiff to defendant solely to avoid having to resume deliberations after the weekend. Jeff Blumenthal, *Did Civic Duty Go Awry?*, Legal Intelligencer, Sept. 15, 1999. Not only the names of the jurors, but also the places they live and work may reveal useful background information about the citizens who rendered the verdict in a particular case.

28. Courts typically stress the nation's long tradition of making the names and addresses of jurors open to the public. In *United States v. Wecht*, the news media challenged a trial court's decision to empanel an anonymous jury in the criminal case against Wecht, a coroner charged with using his public office for private financial gain, the United States Court of Appeals for the Third Circuit noted that it was rare for juror names to be withheld before the upsurge in the use of anonymous juries in the 1970s. *U.S. v. Wecht*, 537 F.3d 222 (3d Cir. 2008).

29. The Supreme Court of Ohio in *Beacon Journal* also interpreted the Court's holding in *Press-Enterprise I* as requiring the First Amendment right of access to attach to juror names. According to that court, juror identity is a component of *voir dire*, which the Court in *Press-Enterprise I* held a qualified First Amendment right of access attaches to. *Beacon Journal*, 98 Ohio St. 3d at 157.

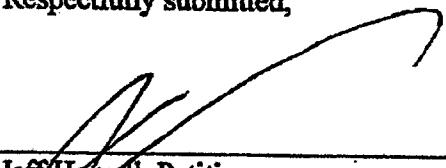
30. As shown in the preceding paragraphs, there is a firmly established tradition of providing public access to juror identities, including their addresses, and access to that information enhances the functioning of our judicial system. Therefore, under the *Press-Enterprise* test of "experience and logic," the names and addresses of jurors are subject to the *qualified right of access guaranteed by the First Amendment*. In holding that the entire jury selection process in criminal trials is subject to the First Amendment right of access by the public, the Supreme Court has strongly suggested that any limitation on information ordinarily disclosed at such

proceedings must satisfy the "strict scrutiny" test. Accordingly, before denying the public access to information about jurors in judicial proceedings, courts must conduct a case-by-case analysis and determine that withholding the information is necessary to further a compelling government interest, is narrowly tailored to serve that interest, and that no less restrictive means are available to adequately protect that interest.

31. The information requested is in the public interest, convenience, and necessity in the Petitioner's efforts to further litigate his wrongful conviction.

WHEREFORE, Petitioner requests the Court to grant this motion and provide him with a list of jurors as requested.

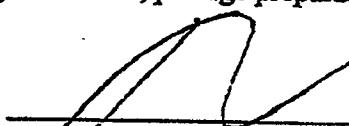
Respectfully submitted,



Jeff Howell, Petitioner, *pro se*
P.O. Box 6093
Bloomington IN 47407

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the Marion County Prosecutor on the 2nd day of November, 2019, by U.S. Mail, postage prepaid.



Jeff Howell, Petitioner, *pro se*
P.O. Box 6093
Bloomington IN 47404

Appendix D

Howell's October 9, 2019, letter to the Marion
County Clerk requesting information on the jurors
who presided at his trial
(Denied)

The request for juror information is DENIED. The requested juror information is confidential according to Indiana law. Letter forwarded to Court Reporter to provide estimate for transcript.



October 24, 2019

Jeff Howell
P.O. Box 6093
Bloomington IN 47407

October 9, 2019

401 OCT 17 2019
FILED

Myla A. Edwards
CLERK OF THE MARION CO.

Marion County Clerk
200 E. Washington Street
Indianapolis IN 46204

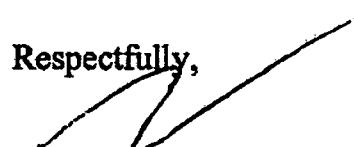
RE: 49G03-0807-PC-158636

To Whom it May Concern:

Please forward a copy of the list of all jurors, including names and mailing addresses, who served in the above captioned trial.

Please also advise what the cost would be to obtain the transcript of the *voir dire* proceedings.

Respectfully,


Jeff Howell

cc: file