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**IN THE DISTRICT COURT OF WASHINGTON
IN AND FOR THE COUNTY OF SAN JUAN**

STATE OF WASHINGTON,
Plaintiff,

v.

DUSTIN SCHIBLE,
Defendant.

No. 8Z0773349

STEPHEN BRANDLI'S
OPPOSITION TO STATE'S
MOTION TO SEAL

I. INTRODUCTION

Against the backdrop of the extraordinary events of these last few days, the State's motion to seal the courtroom security camera video threatens the highest principles of our free society. Proposing to block public view of this video attempts to erode the governmental transparency that we depend on to ensure that our government serves us and not its own interests. The laws guaranteeing our visibility into our government protect our freedoms. Honoring, protecting, and faithfully implementing these laws are among the greatest sacred trusts of our courts.

It is for this reason that the undersigned attorney¹ and member of the public opposes the State's motion to seal the security camera video. The video should be released in full.

II. FACTS

The video footage in question became an issue and an exhibit in these proceedings when it was discovered that, during the trial in this case, someone manipulated the security

¹ Stephen Brandli is a member of the Washington State Bar Association. He represents himself in this matter.

1 camera in the courtroom to focus in on the trial notes of Defendant’s attorney. There is
2 one security camera in the courtroom positioned near the ceiling in the far-right corner as
3 viewed from the public’s entrance in the rear of the courtroom. The camera’s image can
4 be viewed from the dispatch room of the Sheriff’s Office and from several other locations
5 in the courthouse. At each viewing location, the video from multiple cameras is displayed
6 on the screen. The operator at each location can choose a camera to fill the entire screen
7 with a single click.

8 Three cameras at the courthouse have the ability to be panned left-to-right, tilted up
9 and down, and zoomed in and out (PTZ functionality). Two of these cameras are outside
10 of the courthouse. The third is the subject camera in the District Court courtroom. The
11 zooming feature is implemented by the camera’s optics rather than digitally. When these
12 cameras are panned, tilted, and zoomed, the modified image they produce is seen on all of
13 the remote monitors. However, the PTZ functionality is accessible only using special
14 software, which is typically accessed only from the dispatch room in the Sheriff’s Office.

15 At approximately 3:38 PM on Thursday January 31, 2019, while the trial in this
16 matter was underway and the jury was seated in the jury box, Sheriff Ronald Krebs came
17 into the dispatch room. While there, he viewed the 50-inch monitor showing multiple
18 security cameras. Sheriff Krebs selected the courtroom camera to be viewed full screen.
19 Then, either Sheriff Krebs or a dispatcher manipulated the PTZ feature of the camera as
20 follows:²

- 21 1. The camera was panned, tilted and zoomed to focus on the wood bar that is in the
22 front of the jury box. It then was panned and tilted to show a juror’s closed
23 Stenopad Notebook lying on the bar. The handwritten words “Jury #3” could
24 clearly be read on the cover of the notebook. It then zoomed back out.
- 25 2. The camera was then panned, tilted, and zoomed onto the prosecutor’s table.
26 According to one witness, the camera was moved along the table to type-written
27 notes of the Prosecuting Attorney. The camera then zoomed out.
- 28 3. The camera was then panned, tilted, and zoomed onto the table occupied by
29 Defendant and his attorney. This zooming was performed in three separate
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31 ² The undersigned has not viewed the video. This recitation is based upon the testimony of Judge Kathryn Loring and the recitation of these events by the Court during its oral ruling.

1 motions. The camera was ultimately focused in the middle of the table where the
2 defense attorney's hand-written notes on a yellow legal pad were visible. The
3 camera then returned to a normal, wide-angled view.

4 While these camera manipulations were occurring, Superior Court Judge Kathryn
5 Loring and the Court Administrator, Jane Severin, were working together at Ms. Severin's
6 workstation. One of the remote security camera monitors mentioned earlier is next to Ms.
7 Severin's computer. Judge Loring and Ms. Severin noticed the camera movement. One of
8 them selected the courtroom camera to be displayed full screen. They observed all three of
9 these camera movements, starting from when the camera was focused on the wood bar in
10 front of the jury box. They both saw the camera zoom into the defense attorney's trial
11 notes.

12 Judge Loring alerted Judge Donald Eaton who was presiding over the trial. Judge
13 Eaton went to the Sheriff's Office and viewed a recording of the video multiple times. The
14 recording of the afternoon was placed on a USB drive (commonly called a thumb drive) to
15 be kept by the court as an exhibit. This exhibit is the subject of the State's sealing motion.

16 On the next morning, Friday February 1, 2019, with the jury out of the courtroom,
17 Judge Eaton related what Judge Loring had told him and what he saw of the security
18 camera footage.³ Later in the morning, it was learned that Sheriff Krebs had manipulated
19 the camera. He was called to testify.

20 On the stand, Sheriff Krebs testified that, in the afternoon of January 31, he went to
21 the dispatch room in part to check on the security cameras as he often does. He stated that
22 he was familiar with the operation of the PTZ feature on the two outside cameras that have
23 this feature, and had used the PTZ feature on prior occasions, but that he did not know
24 until that afternoon that the District Court courtroom camera had the PTZ feature. He
25 selected the courtroom camera to view full-screen with a click and then a double-click. He
26 never explained why he double-clicked the display. He stated that the camera suddenly
27 and accidentally zoomed in. This was when he realized that the camera had PTZ

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³ The Court's recitation mentions four camera movements, focusing first on the juror's notebook, followed by the prosecutor's poster board, followed by the prosecutor's table, and finally followed by Defendant's table. Other testimony suggests the sequence related here.

1 capability. The camera focused on what he recalled as hand-written notes. He “freaked”
2 for a few seconds. He then zoomed the camera back out.

3 Judge Eaton asked specific questions to ascertain if Sheriff Krebs knew of the
4 multiple camera manipulations that had occurred on and shortly after 3:38 PM:

5 J EATON: And the only thing it zoomed in on was Mr. Gaylord’s notes.

6 KREBS: It was one of their notes.

7 J EATON: Somebody’s notes.

8 KREBS: Yes, somebody’s.

9 J EATON: Or just one set of notes.

10 KREBS: Yes.

11 . . .

12 J EATON: And it’s your testimony that you did not pan the camera
13 intentionally . . .

14 KREBS: No.

15 J EATON: And did not see the camera pan around inside the courtroom
16 while you were there.

17 KREBS: No.

18 J EATON: And did not, you did not tilt the camera while you were there . . .

19 .

20 KREBS: No.

21 J EATON: And you did not see the camera tilt up or down while you were
22 there.

23 KREBS: No.

24 J EATON: And you did not see the dispatcher manipulate the camera at all
25 in terms of tilting, panning, or zooming.

26 KREBS: No.

27 J EATON: And then you left dispatch.

28 KREBS: Yes
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1 That day, Defendant moved to dismiss the case under CrRLJ 8.3(b) alleging
2 governmental misconduct prejudicial to his right to a fair trial. The Court continued the
3 proceedings until the morning on Saturday February 2 to hear the motion.

4 On Saturday February 2, Sheriff Krebs signed, and the State filed, a declaration
5 under penalty of perjury. In that declaration, Sheriff Krebs stated:

6 On Thursday January 30, 2019 [sic], while monitoring the security footage
7 from the surveillance cameras, from the dispatch room I inadvertently
8 manipulated the camera in the District Court courtroom in such a way that it
9 zoomed in on one or more locations in the courtroom. This occurred while
10 I was attempting to enlarge the screen of the district court courtroom so that
11 I could get a larger view of the entire area. The enlargement was not
intentional, nor did I view or intend to view any item or writing located in
the district court courtroom.

12 (emphasis added) The declaration contains no further explanation and so does not explain
13 the discrepancy with Sheriff Krebs' earlier testimony that he only zoomed once, and does
14 not explain how one could inadvertently zoom in on more than one location in the
15 courtroom at different times.⁴

16 That morning, Sheriff Krebs was again called to the stand to testify. This time, one
17 day after his prior testimony and now two days after the incident, Sheriff Krebs admitted
18 that he saw the camera move through all three camera movements:

19 PROSECUTOR: You were present in the dispatch office when the camera
20 screen in the district courtroom was zoomed in on three different places?

21 KREBS: Yes.

22 In response to more questions from the prosecutor, Sheriff Krebs went on to testify about
23 the details of what he saw of the juror's notebook, the prosecutor's notes, and the defense
24 attorney's notes.

25 Sheriff Krebs changed his testimony further in response to questions from Judge
26 Eaton:

27 J EATON: When did you see all of these zooms into the juror notebook
28 and the prosecutor's table and the defense attorney? I heard you say about
29 what you saw. But when did you see all of that?

30 _____
31 ⁴ Sheriff Krebs confusingly uses the words "enlargement" and "enlarge" in two different contexts. The undersigned interprets the declaration to say that he intentionally selected the courtroom camera to display full-screen, but that he unintentionally caused the camera to zoom in using the PTZ feature.

1 KREBS: At whatever time is on the video <unintelligible>.

2 J EATON: When it was happening?

3 KREBS: Yes.

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5 J EATON: So you were in the dispatch room long enough to see all of the
6 various time that that camera zoomed in on these various things?

7 KREBS: Yes

8 J EATON: And saw all of that?

9 KREBS: Yes

10 Sheriff Krebs offered no explanation for his inconsistent testimony one and two days after
11 the events in question.

12 The Court granted the motion to dismiss. In his oral ruling, Judge Eaton stated
13 that, while viewing the video footage, he could read a date, a proper name, and a “helping
14 verb” on the defense attorney’s notepad, but that he could not discern any meaning from
15 what he could read.⁵ He could see but not read any of the other handwriting on the
16 notepad. Nevertheless, not only did the judge find that the State had committed
17 governmental misconduct, the judge found that the State had not met its burden to prove
18 beyond a reasonable doubt that the misconduct caused no prejudice to Defendant’s right to
19 a fair trial. In his oral ruling, Judge Eaton did not explain the reasonable doubt that he had
20 and did not give examples of reasonably possible prejudice.

21 The State seeks to seal the video from the security camera. The State claims that
22 public access to the footage will compromise San Juan County’s ability to secure the
23 courthouse because the footage may disclose “weaknesses” in the camera system.
24 Defendant has waived any rights he may have to redact at least the writing on his
25 attorney’s notepad, and is not joining nor opposing the State’s motion to seal.

26 III. AUTHORITY

27 GR 15 provides the “uniform procedure for the . . . sealing and redaction of court
28 records.” GR 15(a). Court records include exhibits. GR 31(c)(4). Under the rule, the
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31 ⁵ The undersigned could easily read nearly a full sentence of the notes on the screenshot. Of course, the
readability of the screenshot does not necessarily reflect the readability of the video, underlining the
constitutional harm in sealing it.

1 court may seal or redact court records if the court finds that “the specific sealing or
2 redaction is justified by identified compelling privacy or safety concerns that outweigh the
3 public interest in access to the court record.” GR 15(c)(2). However, more protection of
4 the public is needed than GR 15 provides. *State v. Parvin*, 184 Wn.2d 741, 765, 384 P.3d
5 94 (2015).

6 The Washington State Constitution guarantees that “[j]ustice in all cases shall be
7 administered openly, and without delay.” Wash. Const. art. 1, § 10. This constitutional
8 provision entitles the public to openly administered justice. *Cohen v. Everett City Council*,
9 85 Wn.2d 385, 388, 535 P.2d 801 (1975).

10 We adhere to the constitutional principle that it is the right of the people to
11 access open courts where they may freely observe the administration of
12 civil and criminal justice. Openness of courts is essential to the courts'
13 ability to maintain public confidence in the fairness and honesty of the
14 judicial branch of government as being the ultimate protector of liberty,
15 property, and constitutional integrity.

16 *Allied Daily Newspapers of Wash. v. Eikenberry*, 121 Wn. 2d 205, 211, 848 P.2d 1258
17 (1993). “Proceedings cloaked in secrecy foster mistrust and, potentially, misuse of
18 power.” *Dreiling v. Jain*, 151 Wn.2d 900, 908–09, 93 P.3d 861 (2004).

19 In order to protect the public’s right to open justice, the Washington Supreme Court
20 has created a list of five steps that a court must apply to a motion to seal court records.⁶
21 *See State Times Co. v. Ishikawa*, 97 Wn.2d 30, 37–39, 640 P.2d 716 (1982). The five
22 *Ishikawa* steps are:

- 23 1. The proponent of sealing must make some showing of the need for doing
24 so, and where that need is based on a right other than an accused's right to a
25 fair trial, the proponent must show a “serious and imminent threat” to that
26 right.
- 27 2. Anyone present when the sealing motion is made must be given an
28 opportunity to object to the closure.
- 29 3. The proposed method for curtailing open access must be the least
30 restrictive means available for protecting the threatened interests.

31 ⁶ The use of these same five factors are also required to protect a criminal defendant’s right to a public trial
guaranteed by article I, section 22 of the Washington Constitution. *State v. Bone-Club*, 128 Wn.2d 254, 259,
906 P.2d 325 (1995). However, Defendant is apparently not asserting his right for the purposes of this
motion.

1 4. The court must weigh the competing interests of the proponent of closure
2 and the public.

3 5. The order must be no broader in its application or duration than necessary
4 to serve its purpose.

5 *Eikenberry*, 121 Wn.2d at 210–11 (citing *Ishikawa*, 97 Wn.2d at 36–39). These steps
6 apply to both civil and criminal cases. *Dreiling*, 151 Wn.2d at 908. This analysis starts
7 with the presumption of openness. *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d
8 1182 (2005). The burden is on the proponent of the sealing to show that public access
9 must be restricted. *Ishikawa*, 97 Wn.2d at 37.

10 The first *Ishikawa* step requires the proponent of the sealing to make a showing of
11 the need for the sealing. *Ishikawa*, 97 Wn.2d at 37. The proponent “should state the
12 interests or rights which give rise to that need as specifically as possible without
13 endangering those interests.” *Id.* Where the interests at stake do not involve a criminal
14 defendant’s Sixth Amendment rights, the showing must be of “a serious and imminent
15 threat” to those interests. *Id.* This high threshold is required due to the importance of the
16 constitutional guarantees that would be threatened by restricting public access. *Id.*

17 The third *Ishikawa* step requires the court to analyze carefully whether the
18 requested sealing “would be both the least restrictive means available and effective in
19 protecting the interests threatened.” *Ishikawa*, 97 Wn.2d at 38. No presumption can be
20 made that, if a portion of a record should be sealed, the rest of the record presumptively
21 should be sealed. *Parvin*, 84 Wn.2d at 741. “Courts must start with the presumption that a
22 court record should not be sealed and then seal or redact only what is necessary to protect
23 the interests at stake.” *Id.*

24 When weighing the competing interests in the fourth *Ishikawa* step, the court must
25 articulate its findings and conclusions with as much specificity as possible. *Ishikawa*, 97
26 Wn.2d at 38. Then, in the last step, the court must fashion an order no broader in
27 application or duration than is necessary. *Id.* at 39.

28 When a court considers a motion to unseal records previously sealed, it applies the
29 same *Ishikawa* steps to the then-current circumstances. *State v. Richardson*, 177 Wn.2d
30 351, 359, 302 P.3d 156 (2013). The proponent of the continued sealing must prove that
31 there is still an ongoing need for the sealing. *Id.* at 360.

1 Court, would support a finding that the State has met its burden of eliminating reasonable
2 doubt of prejudice. However, the video itself contains more information in the form of the
3 movements of the camera: the sequence, timing, and extent of those movements. Based on
4 the what is presently available to the public, the camera's movements appear to call into
5 question the credibility of the testimony. While the Court did not comment strongly on the
6 credibility of Sheriff Krebs, it is reasonable to believe that the Court's credibility
7 determination played a part in its analysis of reasonable doubt.

8 Thus, the nuances of the video—more than just the screenshots provided—are an
9 important basis for the Court's ruling. The public cannot fully understand the Court's
10 ruling without viewing the video. The Court's description of the movements on the video
11 are not sufficient.

12 It is important to remember that the primary concern that gives rise to the public's
13 right guaranteed by article I, section 10 of the Washington Constitution is about the
14 integrity of court proceedings. Especially in a proceeding instigated by a criminal
15 defendant's motion to dismiss alleging governmental misconduct, it is public oversight of
16 the judge that primarily motivates the constitution's grant here. If a judge is to find
17 governmental misconduct and to thereby dismiss a criminal proceeding on a basis other
18 than the merits, then the public should have full visibility into the processes leading up to,
19 the evidence supporting, and the reasons for, that dismissal. In this case, there can be no
20 full visibility without the video.

21 **B. Sheriff Kreb's misconduct heightens the public's interest in the video even**
22 **further.**

23 The second reason for the public's especially heightened interest in the security
24 camera video is ancillary to the public's interest in open judicial proceedings: The public
25 has an interest in the integrity of our elected officials and the resulting integrity of our
26 criminal justice system beyond just the courts. While this ancillary interest does not
27 directly arise out of the public's interest in the administration of criminal justice, it
28 nonetheless must be considered when evidence important to this interest is proposed to be
29 sealed.

30 This type of heightened public interest was a concern of the Washington Supreme
31 Court in *State v. Parvin*, 184 Wn.2d at 771. In that case, the King County Superior Court
routinely granted ex-parte motions to seal applications for indigent funds to pay for the

1 parents' expert witnesses in parental termination cases. *Id.* at 749–50. DSHS discovered
2 the practice and filed a motion to unseal several of those applications. *Id.* at 750. The
3 Washington Supreme Court held that the practice violates GR 15 and article I, section 10
4 of the Washington Constitution. *Id.* at 753. In analyzing the fourth *Ishikawa* step, in
5 which the Court is required to weigh the competing interests, the Court cited the
6 fundamental interest that the public has in the open administration of justice. *Id.* at 771.
7 However, the Court cited a further interest in that case:

8 The public's interest is heightened yet further in this case because the
9 motions in question called for the expenditure of public funds, which is of
10 interest to both the State and the public. In the instant case, public funds
11 were, in fact, wasted because the discovery deadline had already passed at
12 the time the parents filed the motion for expert services.

12 *Id.* The public's interest in public expenditure is ancillary to its interest in the open
13 administration of justice. Yet, courts should consider such ancillary interests when
14 following the *Ishikawa* steps. *Id.*

15 As in *Parvin*, the State's motion to seal implicates an important public interest not
16 directly related to the administration of justice. Sheriff Krebs' actions have created public
17 concern in the integrity of an elected official in whom we have trusted our security. He has
18 done so in two respects.

19 First, he caused, or at least did not stop, a security camera from zooming onto the
20 notes of a criminal defendant's attorney during the defendant's trial, close enough to read
21 at least some of those notes. The manner in which Sheriff Krebs manipulated the pan, tilt,
22 and zoom features of the camera, or in which someone else manipulated the camera while
23 Sheriff Krebs watched, directly reflects on Sheriff Krebs' intent and motive and on the
24 propriety of his actions.

25 Second, Sheriff Krebs' inconsistent testimony raises questions about his veracity.
26 The public certainly expects the county's top cop, above all else, to be truthful in a court of
27 law and to set an example for his deputies in this respect. Comparison of Sheriff Krebs'
28 testimony to the security camera video would allow the public to consider its faith in his
29 integrity. This concern about Sheriff Krebs' testimony is a separate public concern from
30 his testimony's role in the Court's decision to dismiss the case.

31 The national attention on this incident is evidence of the importance of the public's
concern about Sheriff Krebs' actions and testimony. This concern heightens the public's

1 interest in the security camera video beyond that created by the public’s strong interest in
2 the administration of justice.

3 **C. The State cannot articulate with specificity a “serious and imminent threat” to**
4 **a compelling interest.**

5 The State, purporting to represent the public, has apparently decided that the strong
6 interest that the public has in the open administration of our courts and in the integrity of
7 our criminal justice system is not as important as protecting the features of this specific
8 security system. The State’s claim is that the video would reveal weaknesses in the
9 security camera that could be exploited by a bad actor in the court room. The argument is
10 specious.

11 The State has the burden to show that the release of the video would create “a
12 serious and imminent threat” to a compelling interest. *Ishikawa*, 97 Wn.2d at 37. The
13 State must assert specifically what that threat would be. *Id.* Conclusory assertions about
14 the threat are not sufficient. *Id.* The State will not be able to meet this burden.

15 Sheriff Kreb’s declaration, filed February 5, claims that the video reveals the
16 security camera’s “blind spots” due to “structural design or the limitations of current
17 surveillance video cameras.” Applying the principle that “the camera cannot see you if
18 you cannot see the camera,” anyone can determine where the blind spots of a camera are.
19 Sheriff Kreb’s declaration does not explain how current camera limitations creates these
20 blind spots.

21 The only features of the security camera that will be revealed in the video are: (1)
22 the ability to pan, tilt, and zoom, and (2) the resolution of the camera. The ability to pan,
23 tilt, and zoom is already known to the public through the testimony, the Court’s
24 representations, and the video screen shots in these proceedings. Unless more is on the
25 video than has been represented, the limits of the camera’s ability to be manipulated in this
26 manner was not demonstrated in the video.

27 The resolution of the camera is already apparent from the screenshots that have
28 been provided and the representations of the Court as to what was readable in the video.
29 Public viewing of the video will not add to the public’s understanding of the resolution of
30 the camera.

31 The State’s concern here must be considered in light of the purpose of the camera.
A fixed, wide-angle camera would meet the purpose of the camera, which is to alert law

1 enforcement of an emergency. This is not a casino where camera operators are looking for
2 dealers palming chips. The lack of a true need for the pan, tilt, and zoom functionality was
3 recognized by the Court when it ordered that these features be disabled. The fact is,
4 allowing law enforcement to view portions of a courtroom with a high-resolution camera is
5 of dubious value and, as has been demonstrated, an invitation for abuse.

6 Finally, Sheriff Kreb's declaration should be considered in light of his testimony
7 and his self-serving interests. As the Court found, Sheriff Krebs committed misconduct
8 that ultimately led to the dismissal of a criminal complaint. At best, his contradictory
9 testimony was an attempt to minimize the extent and the importance of his actions. In light
10 of his testimony, the video is likely to be damning. The Court should consider these
11 factors when deciding how much weight to place on his representations regarding the
12 importance of the video.

13 **D. The Public Records Act is not relevant to the State's motion.**

14 In court, the prosecutor cited the Public Records Act (PRA) as authority for sealing
15 the video camera footage. *But see Does v. King County*, 192 Wn. App. 10, 366 P.3d 936
16 (2015) (holding properly redacted security camera footage not exempt from PRA). The
17 *Ishikawa* analysis and the appropriate analysis of public records requests under the PRA
18 have entirely different legal underpinnings. Indeed, when a record is considered in a
19 court's decision, and especially under the circumstances of this case, the public's interest
20 in that record is higher than it is in other public records. A court's analysis of a motion to
21 seal is therefore separate from its analysis under the PRA. *See Seattle Times Co. v. Serko*,
22 170 Wn.2d 581, 598, 243 P.3d 919 (2010) (engaging in *Ishikawa* analysis separate from
23 PRA analysis).

24 **V. CONCLUSION**

25 There can be no greater failure of a free society than to fail to stop the insidious
26 erosion of our freedoms in the name of an attractive and yet less important goal.
27 "Security" is just such a goal. The antidote to its siren song is knowledge.

28 Our courts serve as perhaps our society's most important guarantee of our
29 freedoms. We give our judges tremendous power with only attenuated checks on that
30 power. Subjecting our courts to public scrutiny is critical to our judicial system's integrity.

1 The founders of our state recognized this fact when they guaranteed the public's
2 comprehensive view of the administration of justice.

3 This comprehensive view of our courts allows the public to not only hear a judge's
4 decision but to review the basis for that decision. As much respect as judges deserve—
5 particularly the presiding judge in this matter—the public should only rarely be required to
6 “take the judge’s word for it.” In this case, the video is necessary to understand fully the
7 basis for the Court’s decision.

8 Finally, but no doubt most importantly, our efforts to secure our society should not
9 result in feeling less secure. Security is not just freedom from violence but is also the
10 security of our freedoms. We trust our Sheriff to keep us safe from violence and other
11 crime. But we also trust our Sheriff to respect and protect our freedoms. When there is a
12 credible allegation that the Sheriff has betrayed this trust, the public’s right to the evidence
13 supporting that allegation becomes of paramount importance, rendering such routine
14 concerns such as the potential vulnerability of a security camera as insignificant by
15 comparison.

16 The Court should deny the State’s motion to seal.

17 Respectfully submitted,

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Dated: February 6, 2019



Stephen A. Brandli, WSBA #38201
Pro se