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LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Jan. 23, 2026

Case No. 25CR114453

STATE OF OHIO
Plaintiff

Paul Griffin
Plaintiff's Attorney

VS

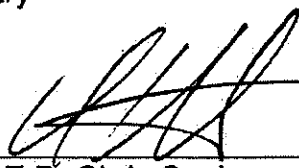
RYAN M. STRMAC
Defendant

Ian Friedman
Defendant's Attorney

This matter is before the Court on the Victim's Motion to Quash, filed December 22, 2025; Defendant's Brief in Reply, filed January 6, 2026; and, the Victim's Reply Brief, filed January 7, 2026.

The motion is not well-taken and is hereby DENIED.

IT IS SO ORDERED. No Record. See Judgment Entry



JUDGE D. Chris Cook

cc: Griffin, Asst. Cty. Pros.
Friedman, Esq.
Bailey, Esq.
Cleveland Rape Crisis Center



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Defendant

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I. INTRODUCTION

This matter is before the Court on the Victim's Motion to Quash, filed December 22, 2025; Defendant's Brief in Reply, filed January 6, 2026; and, the Victim's Reply Brief, filed January 7, 2026.

In essence, the Victim renews her objection to the release of her counseling records created by Grace Herbener of the Cleveland Rape Crisis Center. The relevant subpoena seeks Herbener to produce the records under seal directly to the Court.

Both parties reference case law, statutes, constitutional provisions, and common law for the competing propositions that the records should, or should not, be released. As noted at the previous evidentiary hearing, both arguments are compelling.

The Victim's counseling records at issue herein are clearly privileged¹, sensitive, highly private, and were created under both the Victim's and Herbener's reasonable presumption that they are, and will remain, confidential.

Conversely, the Defendant is charged with very serious crimes. He has a right to defend himself, which includes the right to obtain discoverable materials that may contain exculpatory evidence.

Complicating the tension between these competing interests is the recent amendment to the Ohio Constitution known as Marsy's Law². This constitutional amendment

¹ See: R.C. 2317.02(B)(1); R.C. 4732.19.

² See: Ohio Constitution, Article I, Section 10a.



appears to put the rights of victims in Ohio on par with the rights of the criminally accused.

So how do Ohio's trial courts resolve this conflict? Who wins when the rights of a victim and a defendant are equivalent and there is no real middle ground? Either the records get released, or they do not.

After a close review of the caselaw, statutes, and constitutional arguments raised, this Court finds the position advanced by the Defendant to be slightly more compelling - for two reasons.

First, the time-honored, long-standing method that trial courts have employed for decades to adjudicate the release, or not, of sensitive materials is, and remains, an *in-camera* inspection.

While the Victim makes a strong argument that many of the cases cited by the Defendant that favor *in-camera* inspection are pre-Marsy's Law, the logic and rationale of those cases remain intact. And it should be noted that while Marsy's Law constitutionally enshrines new rights for victims and puts victims' rights, for the first time, on par with the constitutional rights of criminal defendants, it does not vest victims with *greater* rights than defendants.

Second, it is this Court's connate belief that despite having concomitant constitutional rights in a criminal case, where those rights are in conflict between the rights of an Ohio victim and Ohio criminal defendant, the rights, or perhaps better put, the needs, of the defendant are paramount.

--- The reason for this is simple -- the victim in a criminal prosecution does not face the possible loss of liberty, property, or in some situations, life. Put another way, a criminal defendant has much more to lose than a victim and as such, close calls, when they must be made to resolve conflicts between the rights of victims and defendants, must inure to the benefit of the defendant.

II. ANALYSIS

THE VICTIM'S POSITION

In support of her position to quash, the Victim cites this Court to a number of civil cases that are not particularly germane and two cases from sister states (Wisconsin and Colorado) that are not compelling. In *Hageman-v-Southwest General*, 2008-Ohio-3343, the Ohio Supreme Court affirmed potential liability for an attorney who improperly



released counseling records to a third-party outside of the scope of the litigation in which the records were disclosed.

And in *Folmar v. Griffin*, 2006-Ohio-1849, (5th Dist.), the court reiterated the proposition that an *in-camera* inspection of disputed records is the appropriate vehicle in which to determine release of such records.

We hold that the trial court erred in not conducting an *in camera* inspection of the records before ordering them disclosed. **The trial court should have issued an order for the records to be transmitted under seal for the court's review in camera.** After receiving records under seal, a court then examines each record to determine whether it is a medical or psychiatric document to which R.C. 2317.02(B) applies. If the court finds that a record is a medical document, the court must further determine whether it is related causally or historically to physical or mental injuries relevant to the issues in the civil action. Only those medical and psychiatric records that meet this definition under R.C. 2317.02(B) should be released.

Id. at ¶ 25, emphasis added.

Ironically, this procedure is exactly what this Court has Ordered relative to the disputed counseling records, and it is not lost on this Court that the *Folmar* case involves a civil, not criminal, dispute.

Finally, the Victim cites this Court to *State v. Smorgala*, 50 Ohio St.3d 222, (1990), a case with no precedential authority as it was superseded by statute in 2017.³

— THE DEFENDANT'S POSITION —

Conversely, the Defendant has cited the Court to cases that are more on point and provide more, but not complete, guidance regarding the potential disclosure of counseling records in a criminal case.

For example, in the matter *In re Subpoena Duces Tecum Served upon Potts*, 2003-Ohio-5234, the Ohio Supreme Court once again affirmed the procedure that trial court should employ when evaluating a motion to quash.

Pursuant to Crim.R. 17(C), when deciding a motion to quash a subpoena duces tecum requesting the production of documents prior to trial, **a trial court shall hold an evidentiary hearing.** At the hearing, which may be held *in camera*, the

³ See: R.C. 4511.191(A), Amended by HB 26, 7/1/17.



proponent of the subpoena must demonstrate that the subpoena is not unreasonable or oppressive by showing "(1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general 'fishing expedition.'" *Nixon*, 418 U.S. at 699–700.

Id. at ¶ 16, emphasis added.

Potts goes on to counsel,

If the trial court determines that the subpoenaed documents meet the *Nixon* test and a party claims that the documents are privileged, **the trial court shall conduct an in-camera inspection of the documents in question** before ruling on any claims of privilege.

Id. at ¶ 18, emphasis added.

Once again, this procedure is precisely what occurred herein. This Court did conduct an evidentiary hearing and then Ordered the Victim to identify her counselor and where the counseling occurred in order for the Defendant to issue a subpoena. The Court also Ordered during the hearing from the bench that any records produced pursuant to that Subpoena be served directly upon the Court, under seal.

The problem, of course, is that *Potts* and its progeny do not direct trial courts on how to proceed if both the *Nixon* test is met *and* the disputed records are privileged.

Now what?

This Court has already determined that the documents at issue, the Victim's counseling records from the Rape Crises Center, are privileged – a fact that the Defendant does not appear to dispute.

So therein lies the conundrum.

Should records that meet the *Nixon* test, and are relevant, and may contain exculpatory evidence be disclosed, even if they are privileged? Or does the fact that the records are privileged trump everything, even if they contain exculpatory evidence?



This Court finds that the documents at issue are privileged and that the *Nixon* test has been met. What then is the purpose of the *in-camera* inspection? The purpose of the *in-camera* inspection is to determine whether, or not, the documents contain exculpatory information.

If they do, then substantive due process, the fundamental-fairness doctrine, and the fair administration of criminal justice, all mandate the release of that portion of the records, even if they are privileged.

If the records contain no exculpatory information, they will not be released.

The Defendant cites this Court to two close decisions that provide support for this approach, but again, are not dispositive. In *State v. O'Neill*, 2024-Ohio-485, (12th Dist.), in reliance upon *State v. Boyle*, 2023-Ohio-3161, (8th Dist.), the Twelve District Court of Appeals dealt with a similar issue when it evaluated a trial court's decision denying a motion to quash a subpoena for a crime victim's medical records in a domestic violence case.

The *O'Neill* and *Boyle* decisions advance the proposition that when confronted with a Marsy's Law claim by a victim to prevent the disclosure of records against a defendant's desire to inspect those records, trial courts should balance the competing rights of the victim and defendant by conducting an *in-camera* review prior to any disclosure of the records.

Before any disclosure of the records is made, **the court must conduct this balancing of the victim and defendant's respective rights * * *** Although the court reviewed the records in camera, nothing in the court's order indicates that it considered whether the records were privileged, and nothing indicates the court then weighed the victim's rights against the defendant's rights as required by the statute.

O'Neill, at ¶ 12, emphasis added.

The problem with fully relying on the *O'Neill* case for guidance is twofold: first, the decision evaluates and analyzes the issue in consideration of R.C. 2970.031, a statute captioned, "Subpoena of victim records," that was recently repealed. Second, this Court, unlike the trial court in *O'Neill*, has already determined that the Victim's records are privileged.

So, does that mean that the next step is to "balance the victim and defendant's respective rights" by conducting an *in-camera* inspection of the records to determine if they contain exculpatory evidence? Or, as urged by the Victim, is the fact that the



records at issue are privileged enough, on its face, to quash the subpoena and prohibit any disclosure?

The review of a different statute in Ohio Revised Code Chapter 2930, "Victim's Rights," provides some illumination. R.C. 2930.07(B) contains a provision wherein trial courts must consider if "fundamental demands of due process" prevails over a victim's rights "to keep the information confidential." The subsection reads as follows,

The victim and victim's representative, if applicable, have the right at any court proceeding, including any juvenile court proceeding, not to testify regarding the victim's address, telephone number, place of employment, or other locating information unless the victim specifically consents **or the court determines that the fundamental demands of due process of law in the fair administration of criminal justice prevails over the victim's rights to keep the information confidential.**

The court shall make this determination pursuant to an in-camera review. If the court determines that the information shall be disclosed, the court proceeding shall be closed during the disclosure.

R.C. 2930.07(B), emphasis added.

Admittedly, this statute deals with the release of information different than that at issue here. And to be sure, a victim's "address, telephone number, place of employment, or other locating information," is much less sensitive and confidential than counseling records.

But, the analysis is the same and the rationale is applicable to both situations.

Clearly, the statute implicitly acknowledges the friction between the Marsy's Law rights of victims and the constitutional, due process rights, of defendants. The resolution required by the statute, to be employed by trial courts, is identical to the approach that this Court has mapped out. That is, after an *in-camera* inspection of the disputed records, if the court determines they contain exculpatory information, then due process, fundamental-fairness, and the "fair administration of criminal justice," all mandate disclosure, even if the records are privileged.

To that end, as this Court noted above, at least in some situations, a crime victim's right to privacy must yield to a criminal defendant's right to discover possible exculpatory evidence. The concepts of due process and fundamental fairness demand nothing less.



The Ohio Supreme Court, as well as the United States Supreme Court, has a substantial, well-developed body of case law and precedent interpreting the state and federal due process provisions. Recently, in *State v. Aalim*, 2017-Ohio-2956⁴, the Ohio Supreme Court observed the following,

Substantive Due Process

The Supreme Court's "established method of substantive-due-process analysis has two primary features." * * * First, the court has "observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition' * * * and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.' * * * Second, the court has "required in substantive-due-process cases a 'careful description' of the asserted fundamental liberty interest." * * * The court has cautioned against using the Fourteenth Amendment to define new fundamental liberty interests without "concrete examples involving fundamental rights found to be deeply rooted in our legal tradition." * * * The court has observed that "[t]his approach tends to rein in the subjective elements that are necessarily present in due-process judicial review."

Aalim, at ¶ 16.

Inarguably, citizens in the State of Ohio have a fundamental right, deeply rooted in the Nation's history and tradition, implicit in the concept of ordered liberty, to discover and use in their defense of criminal charges, exculpatory evidence.

Conversely, the same cannot be said for victims' rights. Recall that Marsy's Law was enacted in 2017 and became part of the Ohio Constitution in 2018, just eight years ago. That hardly amounts to a constitutional precept "deeply rooted in this Nation's history and tradition."

Regardless, implicit in this understanding of due process is the concept of fundamental fairness. The Ohio Supreme Court explains,

Fundamental Fairness

Next, we address *Aalim*'s fundamental-fairness due-process argument. As the United States Supreme Court has observed, "[f]or all its consequence, 'due process' has never been, and perhaps can never be, precisely defined." * * *

⁴ Aka, *Aalim II*.



Due process is a flexible concept that varies depending on the importance attached to the interest at stake and the particular circumstances under which the deprivation may occur. * * * "Applying the Due Process Clause is therefore an uncertain enterprise which must discover what 'fundamental fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake." * * * (what process satisfies Article I, Section 16 of the Ohio Constitution "depends on considerations of fundamental fairness in a particular situation") * * *

Aalim, at ¶ 22, emphasis added.

In the matter at bar, the importance of the interest at stake is manifest and the deprivation of liberty is substantial. Due-process rights are applicable to criminal offenders through the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

In the context of criminal proceedings, the term "due process" "expresses the requirement of "fundamental fairness," a requirement whose meaning can be as opaque as its importance is lofty." *Id.* at ¶ 23. In evaluating "fundamental fairness" "[a] court's task is to ascertain what process is due in a given case, * * * while being true to the core concept of due process . . . to ensure orderliness and fairness." *Id.*

Applying this concept to the issue at hand requires us to ask this question: in a criminal, felony prosecution, whose rights are paramount, the rights of the victim, or the rights of the defendant, when it comes to disclosure of the victim's privileged, confidential, counseling records?

As articulated above, this Court believes that the answer must inure to the benefit of the Defendant.

**THE DEFENDANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS AND
FUNDAMENTAL-FAIRNESS TRUMP THE VICTIM'S STATUTORY RIGHT TO
PRIVACY**

Even if this Court were to find that the Victim's and Defendant's constitutional rights relative to this issue are equal, the law still must favor possible disclosure.

While the Victim makes a number of arguments to quash the subpoena at issue and keep her counseling records from disclosure, she grounds her primary argument on a privilege assertion codified at R.C. 2317.02, "Privileged Communications."



This important statute codifies the common law concept of "privilege" which in general, prohibits the testimony, or disclosure, of certain information. But, despite codifying widely accepted legal constructs, it is still just a statute, and as such, must yield to constitutional provisions, to wit: due process.

No lengthy citation of authority is necessary to support the general proposition that when a statute conflicts with a constitutional provision, **the latter must prevail.**

In re Black, 36 Ohio St.2d 124, (1973), emphasis added.

ONE FINAL OBSERVATION

This Court would be remiss not to observe, once again, that it has employed safeguards to protect the Victim's counseling records from disclosure to anyone (other than the Court) if they contain no exculpatory information.

The records have been Ordered to be sent directly to the Court where they will remain under seal until the Court alone has reviewed them. And even then, this Court has Ordered that if the Court determines that the records contain any exculpatory information, it would conduct an additional evidentiary hearing, in chambers if requested, prior to disclosure.

And, obviously, if the records do not contain any exculpatory information, they will be returned to the Victim and if requested, made part of the record, again, under seal, for possible appellate review.

--- This Court also wants to be clear that this decision is neither simple nor guided by on-point precedent. There are many cases that deal with discovery, privilege, disclosure, and *in-camera* inspection of sensitive materials. Conversely, there appears to be few cases that address this exact issue, and, to be sure, this is not that surprising given the recent passage of Marsy's Law. Ironically, the one case that comes closest to hitting the mark, *O'Neill*, deals with the issue in the context of a repealed statute.

Regardless of how this Court were to rule, the issue is ripe for appellate consideration by the Ninth District Court of Appeals, and, perhaps even the Ohio Supreme Court. To that end, this Court, and all of Ohio's trial courts, would welcome guidance from a superior court on how to address this vexing conundrum.

----- In the interim, this Court has no choice but to create *interstitial* law to resolve this emergent issue and resolve the competing interests of the Victim and the Defendant. Accordingly, this Court has endeavored to fashion a result that will protect the Victim's



confidential, privileged counseling records from disclosure unless they contain what is determined to be exculpatory evidence that the Defendant is entitled to.

Any other result would effectively elevate the Victim's right to privacy over the Defendant's rights to due process. While both the Victim and Defendant have constitutionally protected interests and rights in this outcome, the Defendant has much more to lose than the Victim and thus, his right to possible disclosure of exculpatory evidence, even if confidential, sensitive, and privileged, is paramount.

For these reasons, the Victim's motion to quash is DENIED.

III. CONCLUSION

As previously Ordered, the subpoenaed materials are to be provided directly to the Court, under seal, and they will not be released in any manner without a further evidentiary hearing.

It is further Ordered that the Court will meet with counsel in chambers at the next pre-trial, currently scheduled for February 9, 2026, to review and discuss release, or not, of the materials that have previously been sent to the Court by the Victim, which for now, also remain under seal, and the counseling records pursuant to this Order.



JUDGE D. Chris Cook