

**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CRIMINAL DIVISION**

STATE OF OHIO

CASE NO. 2024CR03226

Plaintiff,

JUDGE DANKOF

V.

**MOTION TO DISMISS AND/OR SUPPRESS
EVIDENCE FOR VIOLATION OF
DEFENDANT'S ATTORNEY/CLIENT
PRIVILEGE**

JONATHAN LINK

Defendant.

Defendant, Jonathan Link, herby respectfully moves this Court pursuant to the Fifth and Fourteenth Amendment of the United States Constitution and Article 1, Section 16 of the Ohio Constitution for appropriate relief based on the State's improper review of privileged attorney-client communications. Specifically, Mr. Link requests that the Court: (1) dismiss the indictment in its entirety; or, in the alternative, (2) suppress the three-ring binders containing privileged communications and order their immediate return to the defense; or, alternatively, (3) preclude the State from using the three-ring binders in any matter at trial and order that they be returned to the defense.

Respectfully submitted;

/s/ Dennis A. Lieberman

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I

FACTUAL BACKGROUND

1. On May 26, 2025, three-ring binders were seized from the attic of Mr. Link's residence, 5710 Red Coach Road, Centerville, Ohio 45429.
2. These three-ring binders that were seized from Mr. Link's residence were given to him by his former attorney, now Judge, Dennis Atkins.
3. Mr. Link had made notes and impressions he had created for the purpose of communicating with his attorney and in relation to his legal representation.
4. The State has not demonstrated, nor can it demonstrate that the privilege was waived.
5. The State has retained possession of the three-ring binders and it is believed has reviewed the entirety of their contents.

II.

THE THREE-RING BINDERS ARE PROTECTED UNDER THE ATTORNEY-CLIENT PRIVILEGE.

The attorney client privilege is covered by a statute R.C. 2317.02(A)(1) provides that an attorney may not testify about a communication made to the attorney by a client in that relation unless the client either waives the privilege or voluntarily reveals the substance of attorney-client communications in a nonprivileged context. *State v. Tench*, 2018-Ohio-5205.

In determining the proper remedy for a violation of a criminal defendant's right to confidential attorney-client communications, the Ohio Supreme Court has adopted a case-by-case balancing test. Relevant considerations include: (1) whether the government deliberately intruded to obtain privileged information, (2) whether the government obtained was or could be used to the

defendant's detriment, and (4) whether the government gained insight into trial strategy. *State v. Kimmel*, 2004-Ohio-1207.

Here, Mr. Link's three-ring binders fall squarely within the scope of attorney-client privilege because they contain confidential communicated materials prepared in connection with his legal representation. The binders were given to Mr. Link by his attorney at the time, Dennis Atkins. Mr. Link had created notes and impressions inside of the binders for the purpose and in relation to his legal representation. The State has not demonstrated, nor can it demonstrate that the privilege was waived. Therefore, absent waiver, privileged materials are absolutely protected from disclosure or use at trial. *State v. Tench*, 2018-Ohio-5205. Accordingly, all evidence derived from Mr. Link's three ring binders are protected under attorney client privilege.

In *Kimmel*, the State satisfied its burden of showing that the intrusion, although improper, did not prejudice the defendant because the prosecution never used the conversation, had no knowledge of it until jury deliberations, and derived no benefit from it. By contrast, here, the State seized privileged materials from the attic of Mr. Link's home, are still in possession of the privileged materials, and it is believed the State knows that the contents inside had been provided by Mr. Link's former attorney as well as Mr. Link's comments, and now seek to use that information against him at trial. Thus, Mr. Link is substantially prejudiced in the preparation of his defense and prosecution was given the "upper hand" to warrant dismissal of this matter. *Id.*

WHEREFORE, Mr. Link respectfully requests that this Court : (1) dismiss the indictment in its entirety; or, in the alternative, (2) suppress the three-ring binders containing privileged communications and order their immediate return to the defense; or, alternatively, (3) preclude the State from using the three-ring binders in any matter at trial and order that they be returned to the defense.

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Certificate of Service

I hereby certify that on this 1st day of October 2025 this document was electronically filed via the Court's authorized electronic filing system which will send notifications of this filing to all parties.

/s/ Dennis A. Lieberman

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