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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD, COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO 05-2012-CF-035337-AXXX-XX ✓
05-2012-CF-035337-BXXX-XX

Plaintiffs,

vs

BRANDON LEE BRADLEY
and
ANDRIA M KERCHNER

Defendants

MITCH NFEDELMAN
2012 JUL 13 PM 13
FILED IN TVL-01
CLERK OF CIR CT
BREVARD CO FL

MOTION TO INTERVENE AND/OR MOTION FOR PROTECTIVE ORDER

COMES NOW the surviving spouse of the deceased victim, STEVEN B PILL, by and through his undersigned counsel, pursuant to § 406 136, Florida Statutes, and moves this Honorable Court for a protective order prohibiting the Custodian (Brevard County Sheriff), State Attorney and/or Attorney for the Defendant from releasing any evidence in the form of photographs, or video, recordings that depict the death of victim BARBARA A PILL

WHEREFORE, the Defendant prays this Honorable Court grants the Surviving Spouse's motion on the grounds set forth above

- 1 Steven B Pill married Barbara A Pill on March 20, 1981 and was married to her at the time of her death He is her "surviving spouse as defined in § 406 11, Florida Statutes and, as such, has standing to intervene and seek relief in this action
- 2 The surviving spouse has been advised that there exists a video currently in the possession of the Brevard County Sheriff that depicts her murder, as well as autopsy photographs and or other photographs that depict her death

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3 Surviving spouse recognizes and concedes that these materials may need to be used in the prosecution of his wife's killers and that the defendants' in these cases are entitled to view and copy these materials pursuant to the Criminal Rules of Discovery, however he is seeking a protective order that would prohibit further distribution or disclosure of these materials to any third party without express permission of the Court after disclosure to the surviving spouse and an opportunity for him to be heard before any such distribution or disclosure

4 § 406 136, Florida Statutes excludes such material from public records. A copy of the statute is appended below

406 136 A photograph or video or audio recording that depicts or records the killing of a person

(1) As used in this section, the term 'killing of a person' means all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death

(2) A photograph or video or audio recording that depicts or records the killing of a person is confidential and exempt from s. 119 07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, then the surviving parents shall have access to such records. If there is no surviving spouse or parent, then an adult child shall have access to such records

(3)(a) The deceased's surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records

(b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a person and, unless otherwise required in the performance of their duties, the identity of the deceased shall remain confidential and exempt

(c) The custodian of the record, or his or her designee, may not permit any other person to view or copy such photograph or video recording or listen to or copy such audio recording without a court order

(4)(a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording that depicts or records the killing of a person or to listen to or copy an audio recording that depicts or records the killing of a person and may prescribe any restrictions or stipulations that the court deems appropriate

(b) In determining good cause, the court shall consider

1. Whether such disclosure is necessary for the public evaluation of governmental performance,

2 The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available, and

3 The availability of similar information in other public records, regardless of form

(c) In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording that depicts or records the killing of a person must be under the direct supervision of the custodian of the record or his or her designee

(5) A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording that depicts or records the killing of a person or to listen to or copy any such audio recording, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, then such notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased

(6)(a) Any custodian of a photograph or video or audio recording that depicts or records the killing of a person who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084

(b) Any person who willfully and knowingly violates a court order issued pursuant to this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084

(c) A criminal or administrative proceeding is exempt from this section but, unless otherwise exempted, is subject to all other provisions of chapter 119, provided however that this section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recordings in the manner prescribed herein

(7) This exemption shall be given retroactive application and shall apply to all photographs or video or audio recordings that depict or record the killing of a person, regardless of whether the killing of the person occurred before, on, or after July 1, 2011. However, nothing herein is intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a person

(8) This section only applies to such photographs and video and audio recordings held by an agency as defined in s. 119.011

(9) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature

5 While subsection (6)(c) provides that a criminal proceeding is exempt from this section but, unless otherwise exempted, is subject to all other provisions of chapter 119, provided however that this section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar

photograph or video or audio recordings in the manner prescribed herein

- 6 The surviving spouse seeks to intervene for the purpose of demonstrating good cause Good cause in this case includes, but is not limited to, the emotional distress that the surviving family members would suffer if this material was released to the general public and/or disseminated to the media

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by mail to Norman Wolfinger Esq , State Attorney/Tom Brown Esq , Assistant State Attorney, 400 South Street, Suite D, Titusville, FL 32780, Brevard County Sheriff Jack Parker, Custodian c/o Charles Ian Nash Esq , General Counsel, 440 South Babcock, Melbourne, Florida, Michael Bross Esq , Attorney for Defendant Kerchner, 997 S Wickham Road, Melbourne, Florida 32901, James Russo Esq , Public Defender/Michael Pirolo Esq , Assistant Public Defender, Attorney for Defendant Bradley, 2725 Judge Fran Jamison Way, Building E, Viera, Florida, and Jack Kirschenbaum Esq , Attorney for Cape Publications, Inc d/b/a FLORIDA TODAY, 1795 W Nasa Blvd , Melbourne, Florida 32901 this 12th day of July, 2012

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