

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

05-2012-CF-035337-XXXX-XX  
CASE NO.: ~~05-2009-CF-035337-XXXX-XX~~

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON BRADLEY,

Defendant.

**ORIGINAL**

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TRANSCRIPT OF DIGITALLY RECORDED  
HEARING

SCOTT ELLIS  
2012 SEP 30 P 2:56  
RECORDED & INDEXED  
CLERK OF CIRCUIT  
JUDICIAL CIRCUIT  
BREVARD COUNTY, FL.

The transcript of the Digitally Recorded  
Hearing held in the above-styled cause  
at the Moore Justice Center, 2825 Judge Fran Jamieson  
Way, Viera, Florida, on the 24th day of August, 2012,  
before the Honorable Morgan Reinman.

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A P P E A R A N C E S

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Appearing for the  
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ALSO PRESENT:

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GREGORY W. EISENMENGER, ESQUIRE  
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P R O C E E D I N G S

1  
2 THE COURT: Please be seated. Okay. We're here  
3 this morning on the cases of the State of Florida versus  
4 Brandon Bradley and the State of Florida versus Andrea  
5 Kerchner.

6 Mr. Bross, and Ms. Kerchner I received information,  
7 is delayed. They had an issue. Was that in Seminole  
8 County? Issue in Seminole County about getting her  
9 here. She left like 25 minutes ago.

10 With all due respect I'm not going to wait for her.

11 MR. BROSS: Judge, we object.

12 THE COURT: Okay.

13 MR. BROSS: She has every right in a material matter  
14 to be present during every proceeding that involves her.  
15 This is not about Brandon Bradley; this is about Andrea  
16 Kerchner. If --

17 THE COURT: Okay. Wait, I'm still talking.

18 MR. BROSS: Yes, Your Honor.

19 THE COURT: I'll give you an opportunity to preserve  
20 the record.

21 I do not consider this to be a material matter.  
22 So, you may proceed.

23 MR. BROSS: Thank you, Your Honor. At any time that  
24 it's involving Ms. Kerchner, and Ms. Kerchner is the  
25 individual Defendant in this matter that the motion is

1 being brought in front of the Court for, it's not being  
2 brought in the Brandon Bradley case, it's being brought  
3 in the Andrea Kerchner case, she has a right to be here.

4 We object that the Court's not allowing her to be  
5 here. We object that the rest of the bond hearing is  
6 not being done, and justice delayed is justice denied,  
7 and she's not --

8 THE COURT: The bond hearing has been set for  
9 October the 2nd.

10 MR. BROSS: It's over a month away, month-and-a-half  
11 away, Judge. So, it's going to be two months waiting  
12 for a bond hearing.

13 But yet we have this motion here before this Court  
14 that's spending the time, and you're not even bringing  
15 Ms. Kerchner. This is the problem with having her sent  
16 to Orange County, having her in protective custody, away  
17 from others, as well.

18 She needs to be here. We object that she's not  
19 here. If she's not here, Judge, then with all due  
20 permission, I want to leave, if this Court will let me  
21 walk out the door. I'm not here to help in this matter  
22 if she's not here to be with me.

23 THE COURT: Mr. Bross, if that's your choice, that's  
24 your choice, but I'm going to proceed with the hearing.  
25 I don't consider this a material hearing upon which her

1 presence is required.

2 Mr. Eisenmenger, if you'll step up to the podium,  
3 because you're the person I want to address first.

4 MR. EISENMENGER: I should correct Mr. Bross in one  
5 area. While I know that the sheriff's department's  
6 motion to intervene was only with Ms. Kerchner, my  
7 motion is directed towards Mr. Bradley and Ms. Kerchner  
8 and was filed in that fashion.

9 Essentially, we've filed a motion to --

10 THE COURT: Okay. Before you begin, I've reviewed  
11 your motion. It's the Victim's Husband's Motion to  
12 Intervene and/or Motion for Protective Order. I have  
13 reviewed that motion thoroughly. I reviewed the file  
14 thoroughly.

15 My question to you is, how is your request not  
16 already addressed in Judge Crawford's prior Order, and  
17 if it's not, you need to clarify that for me. Because  
18 it's my impression, after reading and reviewing Judge  
19 Crawford's prior Order, that I've adopted in the  
20 Kerchner case as well as the Bradley case, I mean,  
21 obviously it's the law of the case, so how is your  
22 request today not already covered by that motion?

23 So, you need to clarify to me what relief you're  
24 actually seeking and why it is not covered in the Orders  
25 of this case.

1 MR. EISENMENGER: The Orders that I've reviewed in  
2 this particular case pertain only to the State  
3 Attorney's Office, not the custodian of records. It is  
4 the Sheriff who's also filed a Motion to Intervene, and  
5 it's also not binding on Defense Counsel.

6 If you review Judge Crawford's Order, it was issued  
7 only in terms of what the State Attorney's Office can  
8 release. I certainly understand how the process of  
9 discovery works. Material is legitimately going to be  
10 released to Defense Counsel in this case. There is no  
11 protective order prohibiting Defense Counsel from  
12 releasing any of this information to any third party.

13 And I have not been provided a copy of this Court  
14 adopting it in Ms. Kerchner's case, which is one of the  
15 reasons that I filed it in Ms. Kerchner's case, because  
16 the only Order that I've been provided up and to this  
17 point was Judge Crawford's Order, which was only in Mr.  
18 Bradley's case.

19 THE COURT: There was a proceeding in Ms. Kerchner's  
20 case where there was a request made, and now that you  
21 say that, I'm not sure it got reduced to writing, but I  
22 orally did not allow them to go forward and announce  
23 that I was adopting the Order in Ms. Kerchner's case  
24 that was entered in Mr. Bradley's case.

25 MR. EISENMENGER: And I appreciate that. I  
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1 apologize because I didn't know about the oral Order. I  
2 would like to have that reduced to writing, and I'm  
3 willing to provide an Order in both cases that meets the  
4 criteria.

5 Again, my only other issue is I think that the  
6 Order needs to be expanded to deal with all of the  
7 parties, not just the State Attorney.

8 THE COURT: Okay. So, your concern is not the  
9 contents of that Order. I just didn't want to re-  
10 litigate an Order that had already been litigated, as  
11 far as I'm concerned. But you want clarification as to  
12 -- you want it to be extended to be binding upon the  
13 sheriff's office and the Defense attorneys for both  
14 Defendants.

15 MR. EISENMENGER: That is correct.

16 MR. NASH: Could I add one thing, Your Honor?

17 THE COURT: Okay. I'm going to give everybody an  
18 opportunity to be heard.

19 Anything else, Mr. Eisenmenger?

20 MR. EISENMENGER: No, ma'am, that takes care of my  
21 position.

22 THE COURT: Okay. Mr. Nash.

23 MR. NASH: Thank you, Your Honor. Your Honor, I  
24 want to make sure it's clear in the Order that it's not  
25 only extended to the State Attorney's Office and their

1 employees and the Public Defender's Office, their  
2 employees, and the private attorney involved for the  
3 Defense, but also the Defendants themselves.

4 THE COURT: Okay. And Mr. Nash, just for the  
5 record, you're here on behalf of -- you represent the  
6 Sheriff in this matter.

7 MR. NASH: Yes, Your Honor, I do.

8 THE COURT: Okay. I just wanted to put that on the  
9 record.

10 MR. NASH: Thank you.

11 THE COURT: I would assume the Defendants and the  
12 Defendants' families, anyone who has access to the  
13 information.

14 MR. NASH: Yes, Your Honor. And maybe if Your Honor  
15 would consider making it clear that you're ordering that  
16 the video and audio recordings depicting the death of  
17 Deputy Pill, as well as any photographs, are not  
18 considered to be a public record under Chapter 119.

19 THE COURT: I did review Judge Crawford's Order, and  
20 in my review of it, it does appear the photos, the  
21 videos and the recordings would be covered, but because  
22 documents can be considered separate from photos, videos  
23 and recordings for purposes of access to the public  
24 record, I think it might be -- in reading his Order, I  
25 thought that was covered, but I think some clarification



1 might be helpful. So, I wouldn't object to that.

2 MR. NASH: Thank you so much, Your Honor. Anything  
3 else you want to hear from me, Your Honor?

4 THE COURT: Anything else?

5 MR. NASH: Nothing from me. I didn't know if you  
6 had anymore questions.

7 THE COURT: No, those were my questions.

8 MR. NASH: Thank you.

9 MR. EISENMENGER: Judge, may I ask just a quick  
10 clarification, because the Court made a comment. You  
11 mentioned Defendants' family. As I understand Judge  
12 Crawford's Order, the family does have any right to  
13 discovery. Defendant has right to discovery, his  
14 counsel has right to discovery. These materials should  
15 not be disseminated to any third party other than the  
16 Defense team and the Defendants.

17 Defendants' family have no right to review these  
18 materials, and I --

19 THE COURT: No, I would agree with that.

20 MR. EISENMENGER: -- would ask for the Order to  
21 prohibit that, as well.

22 THE COURT: I would agree with that. Okay. I'm --

23 MR. NASH: I'm sorry, Your Honor, can I make you  
24 aware of just one other thing --

25 THE COURT: Yes.  
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1 MR. NASH: -- that hasn't really been brought forth?

2 THE COURT: I need to give the Defendants an  
3 opportunity to be heard. I want each attorney for the  
4 Defendants to have an opportunity to be heard, as well.  
5 So, go ahead.

6 MR. NASH: Of course, Your Honor.

7 Your Honor, somehow the radio transmissions that  
8 occurred as a part of this incident, when Deputy Pill  
9 was on the radio with the Brevard County Sheriff's  
10 Office communications center, there are -- those  
11 communications are recorded, and apparently those  
12 recordings have been accessed, and they were played in  
13 the media already, where you can hear the gunshots as  
14 Deputy Pill was trying to communicate with the  
15 communications center.

16 And I'd like you to consider making the Order cover  
17 that, because that is certainly within the confines of  
18 that statute. That is an audio recording, and it  
19 occurred in connection with Deputy Pill's demise.

20 THE COURT: My concern about that is that  
21 information has already been disseminated. It's kind of  
22 what Judge Crawford's Order said; you can't get it back.  
23 If it's already out there, it's out there. So, it would  
24 only be from the date of the Order, forward.

25 I mean, it's --

1 MR. NASH: I understand, at least, Your Honor, if  
2 somebody else came to the sheriff's office and asked for  
3 a copy of those radio transmissions, we could refuse it  
4 under your Order.

5 THE COURT: Okay. I think that the Order -- if you  
6 want to be specific and add that, you can add that, but  
7 I think the Order does cover that.

8 MR. NASH: Yes, Your Honor.

9 THE COURT: Okay. Does the State wish to be heard?

10 MR. HOLMES: Yes, Your Honor. My understanding of  
11 the purpose of these motions primarily was to assert the  
12 victim's family's right of privacy, and that was not  
13 asserted in the original proceeding that was handled in  
14 front of Judge Crawford. There we were dealing with the  
15 Defendant's right to a fair trial, and the thrust of his  
16 Order goes to keep these matters out of public  
17 dissemination during the course of this trial.

18 It's my understanding that one of the primary  
19 reasons in coming forward with the family's right at  
20 this time is once the trial is over, these records would  
21 then become a public record subject to dissemination,  
22 and unless they asserted their right and at least got  
23 the Court to issue a temporary Order that they do have a  
24 right to challenge the release of these items, then they  
25 might not be able to get to the Court after the trial

1 for the Court to make a determination on what items  
2 would remain out of the public eye even after the trial.

3 So, that was what I picked up in Mr. Eisenmenger's  
4 motion that is wanting to establish that right in front  
5 of the Court and establish at least a temporary Order  
6 until that can be fully litigated at a later time, is  
7 the way I --

8 MR. EISENMENGER: Actually, I'm asking for a  
9 permanent Order. It's my belief that this Order would  
10 apply before, during and after the trial. That's our  
11 right under the statute, that's the Order that I've  
12 asked for in this particular case.

13 MR. HOLMES: And see, the statute really does not  
14 apply. If you notice the provision that Mr. Eisenmenger  
15 cited, it says that it does not apply to this Court and  
16 these Court proceedings, but the Court may look to the  
17 statute in constructing an Order if they demonstrate  
18 good cause to protect these items.

19 And the issue before this Court is the Court must  
20 do a balancing test of all the different rights; rights  
21 of privacy, rights of public record, right to the media,  
22 etcetera. And at this point in time, it's the State's  
23 position that that's premature for this Court to do that  
24 balancing.

25 And I have a case that I can give the Court to  
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1 assist, and it was in the Danny Rolling case, where  
2 basically the Court balanced all those interests and  
3 there were some very horrendous photographs. And what  
4 the Court did in balancing those interests, is even  
5 those photographs that were very graphic, the Court  
6 actually let the media see those in camera; not to make  
7 copies of, not to disseminate, but to actually see the  
8 items that were actually introduced at trial.

9 And of course, we're at a point in time now where  
10 you don't know exactly what is going to be actually  
11 introduced in evidence.

12 So, that's where I thought Mr. Eisenmenger was  
13 headed, was wanting to obviously protect those rights,  
14 and the State has no objection to those rights being  
15 protected, and clearly right now they are protected by  
16 the Order that's already there.

17 But the State has no objection to expanding that to  
18 cover the rights of privacy, but the State wanted to  
19 make the Court aware that I think there's still a  
20 balancing test that this Court may have to do down the  
21 road.

22 And I can give you a copy of the case, which is --  
23 it's an unpublished case, it's an Order that was entered  
24 back in 1994, in the Rolling case, and it's a very good  
25 case in terms of going through step-by-step and looking

1 at the different issues that are involved in this  
2 balancing process, because I wish the statute, just as  
3 it has with autopsy photographs, would have just said  
4 it's not a public record, you can't disseminate it.

5 Instead, the statute gives some preliminary  
6 protection, but then it throws it to the Court to do all  
7 of the balancing that ultimately would need to be done  
8 to protect the rights of all the different parties who  
9 may have an interest in these records.

10 THE COURT: Mr. Eisenmenger, my research of this  
11 matter, it is my impression that there is kind of a --  
12 there's two separate issues. The pretrial and what's  
13 happening during the trial -- I mean the pretrial, and  
14 then once things get introduced into evidence, that's  
15 when I think what Mr. Holmes is talking about, because  
16 once it's introduced into evidence, at some point you  
17 have to discuss whether that becomes a matter of public  
18 record.

19 And one of my other concerns is, I don't have  
20 anyone from the press here. I don't know if they were  
21 noticed to be here.

22 MR. EISENMENGER: Every party that appeared in the  
23 original hearing -- I noticed Florida Today, for  
24 example. None of the television media had entered  
25 Notices of Appearance or counsel had entered Notice of  
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1 Appearance. But we generally disseminated notice of  
2 this to all of the media in the area, so that they would  
3 have knowledge of it.

4 I specifically noticed Mr. Kirschenbaum for this  
5 hearing.

6 THE COURT: Okay.

7 MR. EISENMENGER: Judge, just two points. I think  
8 we can deal with that issue, and that whatever Order the  
9 Court issues at this point, if you put in language that  
10 nothing is to be released until further Order of the  
11 Court, then that allows the media to come in and assert  
12 a right at the time of trial, etcetera.

13 We are prepared to --

14 THE COURT: Because I think there's a different --

15 MR. EISENMENGER: -- go forward with good cause  
16 right now, and we are prepared with that. But if the  
17 Court feels that the hearing is bifurcated, what I would  
18 ask for in terms of relief is an Order that would be  
19 effective until further Order of the Court, and that  
20 would always allow any party to come in and seek  
21 modification of that Order.

22 I also would point out, the Rolling case, which is  
23 a very interesting case and I had read it. It's a 1994  
24 case. This statute was enacted well after the Rolling  
25 case.

1           And again, the procedure that we're under right  
2 now, as Mr. Holmes indicated, is that we have filed our  
3 Motion to Intervene and are prepared to make a showing  
4 of good cause. I think some of it is fairly obvious,  
5 and again, I don't want to waste this Court's time and  
6 sort of reinvent the wheel. A lot of the good cause was  
7 demonstrated to Judge Crawford. And I think the Court  
8 can rely on the evidence that was introduced at that.

9           We are prepared to supplement it, but we are also  
10 happy with just an expansion of that Order with the  
11 language that nothing will be released until further  
12 Order of the Court. And then the media can ask for --  
13 or any party can ask for additional relief at or around  
14 the time of trial or post-trial.

15           THE COURT: Mr. Holmes, your response to that. I'm  
16 mindful of what you're saying. I do -- that is my  
17 understanding, as well.

18           MR. HOLMES: Right, and that's what Mr. Eisenmenger  
19 just said, is exactly what I thought he was attempting  
20 to do today, is to assert this interest, have the Order  
21 entered so that nothing gets released until this Court  
22 has an opportunity to decide what is appropriate for  
23 release, and the parties that may have an interest come  
24 before this Court and request.

25           The last thing in the world any of us want is one  
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1 of these items getting out there in the social media and  
2 all of that, and once it's out of control, it's out of  
3 control.

4 So, I have no objection to that process. And I  
5 think that's exactly what is being requested this  
6 morning. I have no objection to that.

7 That may be why the media is not here, because  
8 reading his Motion, that's exactly what I thought; this  
9 was a temporary, and the media understands right now,  
10 there's nothing they're going to get until this case is  
11 over with.

12 THE COURT: Okay. Mr. Nash, was there something  
13 else?

14 MR. NASH: Yes, Your Honor. Your Honor, I would  
15 respectfully disagree with what the State describes the  
16 statute says. The statute doesn't say anything about  
17 preliminary and later. The statute enables the affected  
18 party, the decedent's surviving spouse, to petition this  
19 Court to keep this record -- you know, the recordings,  
20 the pictures, being not a public record. It doesn't say  
21 anything about pretrial, jury trial or anything of that  
22 nature.

23 The media was noticed; they have an opportunity to  
24 be here. This is not a secret hearing. And they were  
25 at the last hearing.

1           And I don't think this is a temporary Order. The  
2 case cited by the State was a case that came out before  
3 the statute was enacted. The legislature was very  
4 clear, and I've given the Court before and I can give  
5 Your Honor today, the law passage that included the  
6 statement of intent. And the intent is very clear to  
7 balance the interests of the public to have disclosure  
8 of what goes on in a Court proceeding versus the  
9 interests of the family of somebody who's brutally  
10 murdered, to not go through the anguish of seeing this  
11 in the newspaper, radio, internet, etcetera.

12           There's only been one case that I'm aware of, Your  
13 Honor, that's come out since the statute was passed. It  
14 was over in Hillsborough County. I provided Judge  
15 Crawford with a copy of that Court Order. And also a  
16 copy of the PCA that came out of the 2nd DCA. And if  
17 you want, I can provide Your Honor with that again  
18 today.

19           THE COURT: I have -- I may have it.

20           MR. NASH: And I know the State already has this and  
21 Mr. Eisenmenger has it. But it's kind of interesting,  
22 Your Honor, because in the case in Hillsborough County,  
23 the State Attorney's Office was the advocate for the  
24 victim's family, and for some reason, I don't see that  
25 happening in this case. I'm somewhat shocked and

1 surprised.

2 We're here to protect the husband and the children  
3 and the daughter-in-law and the grandchildren of Deputy  
4 Pill. That's what we're here for.

5 There is nothing that's going to benefit the public  
6 to have the audio and video recordings and photographs  
7 that depicted her death made public, when you balance it  
8 against the impact it's going to have on her family.

9 And I believe this was already argued with a  
10 representative of the media present, Mr. Kirschenbaum,  
11 and Judge Crawford saw fit. And what happened at that  
12 hearing, also, Your Honor, was that Mr. Pill did not  
13 have an opportunity to be represented. I was here on  
14 behalf of the custodian of the records, Cheryl Parker.  
15 So, here Mr. Eisenmenger has moved to intervene so he  
16 can represent Mr. Pill and make out his case.

17 But I don't believe there's anything in the law  
18 that suggests this Order is a temporary. Again, people  
19 can always ask for this, that and the other in the  
20 future, but to me we're here balancing the interests of  
21 the family against the interests of the public to see  
22 that specific aspect of the incident.

23 THE COURT: Okay.

24 MR. NASH: Thank you, Your Honor.

25 THE COURT: Thank you, sir.

1           Okay. Mr. Lanning, on behalf of Mr. Bradley, do  
2 you wish to be heard?

3           MR. LANNING: Briefly.

4           THE COURT: Yes, sir.

5           MR. LANNING: At this point we're still in  
6 discovery. I agree that the Order should be entered,  
7 but to the extent that the Order would impact Mr.  
8 Bradley's due process rights, and we may need to come  
9 back to the Court to address dissemination to the extent  
10 that it protects his due process.

11           Because we're still in discovery.

12           THE COURT: If I say "until further Order of the  
13 Court," I think that would give you an opportunity to  
14 readdress it in the event you believe that his due  
15 process rights are being violated.

16           MR. LANNING: That's what we would ask.

17           THE COURT: You all had filed a motion -- actually,  
18 Kerchner had filed a Motion to Compel Discovery, and Mr.  
19 Bross -- that was noticed for today and I was going to  
20 address that. I assume that the audio and the video,  
21 that's what he's requesting. He was not given any  
22 digital -- he was given documentation but not digital  
23 media. So, I assume by entry of this Order, the State  
24 would be able to give him -- would be able to comply  
25 with the request.

1 MR. HOLMES: That's incorrect, Judge. All of the  
2 digital media was provided to the Defense, both to Mr.  
3 Bradley and to Ms. Kerchner's counsel.

4 THE COURT: Okay. Because he did file a Motion to  
5 Compel.

6 MR. HOLMES: It was before the items were provided.

7 THE COURT: Okay. So, I'm going to deny Kerchner's  
8 Motion to Compel Discovery. I'll deny that without  
9 prejudiced.

10 And then, Mr. Lanning, I think I've addressed your  
11 concern if I say "until further Order of the Court."

12 MR. LANNING: Yes.

13 MR. EISENMENGER: Would the Court like me to draft  
14 an Order and disseminate it?

15 THE COURT: I would, and if you'll send it to all  
16 parties before you send it to the Court; give them time  
17 to review it, and then send it to me.

18 MR. EISENMENGER: I will. Thank you.

19 THE COURT: Okay.

20 MR. NASH: Your Honor, are you allowing our clients  
21 to intervene in this matter as we requested in our  
22 motion?

23 THE COURT: Yes.

24 MR. NASH: Thank you, Your Honor.

25 THE COURT: Okay. Anything else need to be  
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1 addressed?

2 MR. EISENMENGER: I don't believe so. Thank you  
3 very much.

4 THE COURT: Okay. Thank you. Have a good day,  
5 everyone.

6 \* \* \* \* \*

7 (The audio proceedings were concluded)

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C E R T I F I C A T E

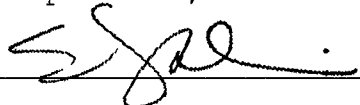
STATE OF FLORIDA )

COUNTY OF BREVARD)

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DATED this 27th day of September, 2014.



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Sheryl J. Dixon  
Transcriptionist  
Notary Public - State of Florida  
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