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IN THE CIRCUIT COURT FOR THE  
EIGHTEENTH JUDICIAL CIRCUIT IN AND  
FOR BREVARD COUNTY, FLORIDA  
Case No 2012-CF-35337-A

2012 MAR 27 P 12:46  
CLERK OF  
BREVARD CO. FL.  
MICHAEL E. EDELMAN

STATE OF FLORIDA

Plaintiff,

vs

BRANDON LEE BRADLEY

Defendant

**OBJECTION TO AND MEMORANDUM OF LAW IN OPPOSITION TO  
DEFENDANT'S MOTIONS TO PRECLUDE THE STATE OF FLORIDA  
AND ITS AGENTS FROM DISCLOSING PRE-TRIAL  
DISCOVERY TO THE PUBLIC**

Movant/Intervenor, CAPE PUBLICATIONS, INC , d/b/a FLORIDA TODAY (hereinafter referred to as "FLORIDA TODAY") to protect its constitutional and statutory right of access to public courtrooms, public information and public records, objects to the Motions to Preclude filed by the Defendant and files this Memorandum of Law in Support thereof

FLORIDA TODAY is a newspaper and media outlet which publishes and distributes a daily and weekend newspaper in Brevard County and in east central Florida. It additionally posts its news on its website

This case concerns the alleged murder of a Brevard County Sheriff's Deputy and is a matter of great public interest and has been and will be, the subject of articles and editorials in both FLORIDA TODAY as well as all other



media outlets in Florida FLORIDA TODAY has been served with Defendant's Motions to Preclude the State of Florida from disclosing pre-trial discovery to the public and as such, they constitute motions seeking to restrict the public's and the media's access to public courtrooms, public information and court records

The Defendant is seeking an unconstitutional order of prior restraint, a "gag" order and an order closing public records and preventing the reporting of statements made in open court

FLORIDA TODAY has sought to intervene in this proceeding to object to the entry of any order which would grant, in whole or in part, the Motions of the Defendant Florida courts have recognized that the news media have standing to challenge orders such as those sought by the Defendant in this case *State of Florida v McIntosh*, 340 So 2d 940 (Fla 1976) Further, FLORIDA TODAY is entitled to be heard on the issues raised by the Motions brought by the Defendant as any order entered may constitute an illegal and unconstitutional prior restraint or a "gag" order *Florida Freedom Newspapers, Inc v McCrary*, 520 So 2d 32 (Fla. 1988) *Miami Herald Publishing Company v McIntosh*, 340 So 2d 904 (Fla 1976). The order sought by the Defendant would apply to any and all comments made by the people and categories of people, against whom the order is sought, whether or not such statements are prejudicial and the sought order does not provide necessary limitations with regards to the duration of the order *Florida Freedom Newspapers, Inc vs McCrary supra, Stanfield v. Florida Department of Children and Families*, 698 So 2d 321 (Fla 3<sup>rd</sup> DCA 1997)

Additionally, the order sought by the Defendant seeks to prevent the release of pre-trial discovery materials to the public and the media. In the instant case, the documents sought to be “sealed” and not turned over to the public and the media include discovery materials to be turned over to the Defendant. Therefore, when delivered, they are clearly public records subject to disclosure under Chapter 119 Florida Statutes. *WESH Television, Inc., v Freeman*, 691 So 2d 532 (5<sup>th</sup> DCA 1997). Therefore, the burden is on the Defendant to demonstrate his Sixth Amendment rights to receive a fair trial and to obtain an impartial jury in Brevard County would be abridged.

In *Miami Herald Publishing Company v Lewis*, 426 So 2d 1 (Fla 1982), our Supreme Court adopted a three prong test by which the trial court can best balance between the need for open government and public access through the media to the judicial processes and the paramount right of a Defendant in a criminal proceeding to a fair trial before an impartial jury. This test of course, requires that the court find that closure is necessary to prevent a serious and imminent threat to the administration of justice, that there are no alternatives available other than change of venue which would protect the Defendant’s right to a fair trial and that closure would be effective in protecting the rights of the accused without being broader than necessary to accomplish the purpose. *WESH Television, Inc v Freeman*, 697 So 2d (5<sup>th</sup> DCA 1997), *Miami Herald Publishing Company v Lewis*, 426 So 2d 1 (Fla 1982)

The three part test contemplates an evidentiary hearing. At that hearing, the party seeking closure has the burden of proving by the greater weight of the evidence, that closure is necessary.

In *Morris Communications v State*, 844 So 2d 671 (1<sup>st</sup> DCA 2003), the Defendants sought a closure order and the trial court found that the documents sought were “so graphic, shocking, damning and distressing so as to cause grave concern that the Defendant will have any chance of receiving a fair trial.” The trial court also found the disclosure of the documents would aggravate the adverse publicity already in the media and be potentially damning. The Appellate Court found that the record did not support a finding that the release of the requested materials would pose “a serious and imminent threat to the administration of justice under *Lewis*” and therefore, quashed the order of the trial court.

The media is not unmindful of contemporary means of dissemination of information and the possibility that graphic images, if released to the public and the media, might find their way to world wide distribution via the internet. However, the Defendant can present no evidence that the disclosure of the pre-trial discovery documents, videos, photographs and other materials would impair his right to find an impartial jury in Brevard County to provide him a fair trial guaranteed by the Sixth Amendment. Likewise, no evidence can be presented demonstrating that a “gag order” is needed.


WHEREFORE, the Intervenor moves that this Court deny the Motions filed by the Defendant.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been provided to the following via facsimile and U.S. Mail on this 26 day of March, 2012 to Michael Mario Pirolo, Esquire, Assistant Public Defender, 2725 Judge Fran Jameson Way, Building E, Viera, Florida 32940, Wayne Holmes, State Attorney's Office, 2725 Judge Fran Jameson Way, Bldg, C, 3, Viera, Florida 32940, and Michael Bross, Esquire, A Michael Bross, P A , 997 S Wickham Road, Melbourne, Florida 32904 and Charles Ian Nash, Esquire, 440 S. Babcock Street, Melbourne, Florida 32901.

GRAYROBINSON, P.A

By   
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