

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

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

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON BRADLEY,

Defendant.

ORIGINAL

TRANSCRIPT OF DIGITALLY RECORDED
HEARING

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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 27th day of March, 2012,
before the Honorable Charles G. Crawford.

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A P P E A R A N C E S

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Appearing for the
Plaintiff

MICHAEL PIRROLO, ESQUIRE
MARK LANNING, ESQUIRE
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2725 Judge Fran Jamieson Way
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Appearing for the
Defendant

Brandon Bradley, Defendant, present

ALSO PRESENT:

CHARLES NASH, ESQUIRE
Nash & Kromash
440 South Babcock Street
Melbourne, FL 32901

JACK KIRSCHENBAUM, ESQUIRE
Gray Robinson, P.A.
1795 West NASA Boulevard
Melbourne, FL 32901

A. MICHAEL BROSS, ESQUIRE
997 South Wickham Road
Melbourne, FL 32904

P R O C E E D I N G S

1
2 THE COURT: Everybody that's involved in Brandon Lee
3 Bradley come forward, please, all the attorneys.

4 MR. PIRROLO: Judge, may we approach?

5 THE COURT: Sure.

6 (Bench conference as follows:)

7 MR. PIRROLO: Judge, we've discussed the matter of
8 Mr. Bradley, and for purposes of this hearing we're
9 going to ask that he not be brought into the courtroom.

10 He acknowledges that and he has no objection to
11 that, but just for this hearing, keep him in the holding
12 cell.

13 THE COURT: Okay. That's what we'll do.

14 MR. PIRROLO: The second issue, Judge, my concern
15 that at some point during this hearing, the Court may
16 ask specific questions of me, and I think it's a moot
17 point for me to answer some of those questions if the
18 media is in here.

19 I'm not asking that the media to be taken out of
20 the courtroom. What I'm asking is, if we come to that
21 point when Court asks me a specific question and I have
22 to give the Court a specific answer that would deal with
23 potentially what's in the photographs, what's in the
24 video, I'm going to ask that I answer the question in
25 chambers with counsel present.

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1 But I think it defeats the purpose of having this
2 hearing, and me getting into what is depicted in the
3 photographs and in the videotape with the media present.

4 THE COURT: And you can describe it as it relates to
5 the case law and the statute without actually saying
6 specific graphic content. So, do the best you can as
7 far as that's concerned.

8 And I understand your want, need and desire not to
9 be terribly specific, and I echo that.

10 Is there anybody next door? There's a point in the
11 hearing we're going to have to go next door. And that's
12 the only way I can do it, because I've got to have it
13 recorded, so I can't go to chambers because I don't have
14 any ability to record.

15 But is anybody going to have an objection if there
16 is something that needs to be described specifically you
17 don't want in front of the media, if we go --

18 MR. KIRSCHENBAUM: I would make this objection, Your
19 Honor, I think it all has to be in open court.

20 And I think, Your Honor --

21 THE COURT: It's open court. But I'm not going to
22 let him describe specifics on the video in front of the
23 media, because that defeats the purpose of the motion
24 until I've ruled on it.

25 MR. KIRSCHENBAUM: Well, I would like to make that
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1 objection on the record when it's time, because --

2 THE COURT: Well, it's on the record now.

3 MR. KIRSCHENBAUM: If I might, Your Honor --

4 THE COURT: Sure, sure.

5 MR. KIRSCHENBAUM: -- I'm Jack Kirschenbaum for the
6 Florida Today Newspaper.

7 The descriptions of whatever is on the video, I
8 don't think the Court can close to the public or the
9 press. I think the Court can instruct counsel not to be
10 specific, as the Court has done, but I don't think that
11 it is permitted to close open court --

12 THE COURT: Are those objections specific that
13 suggest I can't close the courtroom to the media?

14 MR. KIRSCHENBAUM: I think I did, Judge.

15 THE COURT: Okay. When it's talking about the
16 graphic details that he is trying to keep from the
17 media?

18 MR. KIRSCHENBAUM: Yes, I do, Your Honor. I think
19 that the Court can --

20 THE COURT: (Unintelligible) the in-camera hearing
21 as it relates to the case law on this particular issue?

22 MR. KIRSCHENBAUM: I think the Court can view that
23 which is at issue in-camera. But I think the discussion
24 of it has to be in open court.

25 THE COURT: Well, then I'm Ordering all of y'all not
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1 to discuss the specifics. Okay. You're going to talk
2 in generalities, and if anybody violates that Order,
3 I'll close the courtroom and we will have all of this
4 in-camera.

5 Does that make sense? I'm not going to --

6 MR. PIRROLO: Yes, sir.

7 THE COURT: -- obviously some of it you're going to
8 have to describe. But I mean any elicit, specific
9 details that would in any way, shape or form violate the
10 in-camera inspection first, before I make my ruling,
11 let's do what we can not to disclose any of that.

12 Obviously generalities have to come out. We all
13 know what they are, and the media has already explained
14 a lot of it. So, I don't think a lot of it's a
15 surprise, anyway, as far as specifics.

16 MR. PIRROLO: Judge, last thing is a Second Amended
17 Motion. I emailed a copy to your J.A., courtesy copy.
18 I'm not sure if you have that courtesy copy.

19 THE COURT: When did you do it?

20 MR. PIRROLO: It was last week.

21 THE COURT: I do have that.

22 MR. PIRROLO: It's titled Second Amended --

23 UNIDENTIFIED SPEAKER: Your Honor, since this is
24 going to be an in-camera inspection of the discs, I have
25 all four discs and they are -- you can view them on a

1 computer. Can I present them to the clerk and have them
2 marked as Court's Exhibits for purposes of this hearing?

3 THE COURT: And they would be returned from the
4 record, though?

5 UNIDENTIFIED SPEAKER: These are copies. They would
6 be up to the Court at the end whether they remain in the
7 Court record, and probably you will need to do that in
8 case there is an appeal of this.

9 And of course, I think the motion encompasses that
10 the clerk, if the Court rules that they're sealed from
11 public inspection, that would also apply to
12 (Unintelligible).

13 THE COURT: Yeah. You can label them. Thank you.

14 UNIDENTIFIED SPEAKER: Okay. Is that agreeable with
15 everybody?

16 UNIDENTIFIED SPEAKER: No objection.

17 MR. NASH: Your Honor, Charlie Nash, general counsel
18 for the Sheriff, custodian of these items. I just want
19 to make sure you did receive my response.

20 THE COURT: I did.

21 MR. NASH: Thank you, Your Honor.

22 THE COURT: I read it yesterday. Thank you.

23 Okay. Let's do it.

24 (Bench conference concluded)

25 THE COURT: You want to mark those first. Get them
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1 pre-marked so we can.

2 COURT DEPUTY: Just to let you know, next door is
3 available if we need to.

4 THE COURT: Okay. It looks like we're not going to
5 need it.

6 And you guys know to leave him where he is. We're
7 not bringing him out.

8 All right. We're here in State of Florida versus
9 Brandon Lee Bradley, CF-2012-35337-A. Defense motion.

10 MR. PIRROLO: Yes. Good morning, Judge.

11 THE COURT: Good morning.

12 MR. PIRROLO: Judge, this is actually a Second
13 Amended Motion that I had filed and believe the Court
14 has a copy of it. Date of my motion is March 22nd.

15 Judge, there are essentially four items that we're
16 asking the Court to instruct the State, State Attorney's
17 Office and its agents, including Brevard County
18 Sheriff's office, from precluding them to distributing
19 them, publishing them to the public and the media, as
20 well.

21 The four items, Judge, is a video that was captured
22 from a camera that was mounted on Deputy Pill's patrol
23 vehicle. The second item is a video that was captured
24 from the patrol camera of Deputy Troups patrol vehicle,
25 T R O U P.

1 There was also photographs were taken by law
2 enforcement at the hospital, of Deputy Pill.
3 Photographs were taken by the Brevard County Sheriff's
4 Office and the Melbourne Police Department. They were
5 all taken at the same place.

6 And Judge, finally what I added on my Second
7 Amended Motion was a video-recording of Mr. Bradley's
8 interrogation. We have never been told that that
9 exists. My understanding is that doing these cases, it
10 very well does exist. And we don't want that published,
11 as well.

12 Judge, the motion that I've set forth in front of
13 the Court is obviously we're asking the Court not -- to
14 instruct and to direct the State and its agents from not
15 publishing it, not publishing the videos to the public,
16 to the media, not publishing stills of the videos, not
17 publishing any of the photographs.

18 And in addition, Judge, what I've asked is that
19 they be precluded from commenting on what's on the
20 video. Now obviously, if the public, and specifically
21 the media, does not have a copy of the video or the
22 photographs, then they cannot comment on what's in it
23 because they have not seen it.

24 If for some reason, though, they do obtain a copy
25 of the photographs or the video or stills from the

1 video, I'm asking that the Court preclude them from
2 making comments on what is depicted, even if they don't
3 necessarily publish those still.

4 And Judge, I would have case law on that point that
5 gives the Court authority to do that. Judge, I cited
6 statutes and a case in my motion. I also have copies of
7 that here for the Court, if I could approach.

8 THE COURT: Yes.

9 MR. PIRROLO: Judge, I have a copy for the State and
10 for Mr. Kirschenbaum and for Mr. Nash, as well.

11 Judge, firstly, what I have provided is Florida
12 Statute 119.011. It's the definition section of the
13 Public Records Act. Specifically 3-A and B, talks about
14 what criminal intelligence information is and what
15 criminal investigative information is.

16 Specifically it is obviously material that is
17 compiled during the course of a criminal investigation.
18 It includes lab tests, reports of investigators and any
19 type of surveillance.

20 I would indicate to the Court that a video or
21 videos mounted on -- stemming from a patrol vehicle is
22 surveillance. And photographs of that would be the
23 same, as well. Or it would be reports of investigators
24 because they're relying on those photographs and videos
25 to make their reports.

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1 Secondly, I've provided Florida Statute 119.071.
2 These are the general exceptions to the public records.
3 Specifically subparagraph 2, it gets into criminal
4 intelligence investigations, which I would submit to the
5 Court this is. And further 2(c)1 specifically gets into
6 active criminal investigations and information that is
7 deemed -- or collected during a criminal investigation.

8 Also 2(e) basically excludes any information
9 relating to the substance of, what someone might call,
10 quote unquote, a confession of a criminal defendant.
11 That is excluded from public records. That goes to the
12 fourth item in our motion.

13 Basically any statements by a criminal defendant
14 while the case is pending, should be excluded from the
15 public, and definitely excluded from the media and from
16 the media publishing such, either direct quotes or at
17 least a summary of what the person allegedly said to law
18 enforcement.

19 Judge, in addition what I provided to the Court is
20 a Florida Supreme Court case, it's Florida Freedom
21 Newspapers versus McCrary, M C C R A R Y. It's a 1988
22 case, it's still good law. It's found at 520 So.2d 32.
23 In this particular case, the Supreme Court approved the
24 Orders. There were two specific Orders in this case.
25 One was that there was temporarily denied public access

1 to pretrial discovery material, which is what we're
2 asking the Court to do here. And in addition, there was
3 an Order prohibiting comment, was not improper prior
4 restraint on publication or broadcast.

5 And that goes to the second, essentially what we're
6 asking for the Court to do. Is not only to preclude the
7 actual items, but any comment what's included in the
8 items. And the Florida Supreme Court said that is
9 proper and it's not an improper prior restraint.

10 Within that case, Judge, there's a United States
11 Supreme Court case which I have also furnished a copy to
12 the Court and to the State and Mr. Nash and Mr.
13 Kirschenbaum. That's from 1976, it's still good law,
14 Supreme Court of the United States, Nebraska Press
15 Association versus Stuart, S T U A R T. That is found
16 at 427 US 539. Again, that's the case that essentially
17 -- one of the cases the McCrary Court relied on.

18 And Judge, what we have here is, you have Mr.
19 Bradley, who has a fundamental right to a fair trial
20 that includes an impartial jury, the right to an
21 impartial jury, and within that, it includes a right to
22 be tried in the county in which the crime is accused to
23 have occurred. There is no question that the Court I'm
24 sure is well aware of the publicity already involved in
25 this case.

1 And Judge, what I also have for the Court is --
2 it's not all the articles that have been published so
3 far, otherwise I'd be giving a novel to the Court. And
4 if the Court wants me to supplement I can do that.

5 But what I have essentially is about a dozen or so
6 articles, and the articles stem from all over Central
7 Florida, as far south as Miami, as far west as Corpus
8 Christi, Texas, and as far north as New Jersey. They've
9 all made comments on this case.

10 They have published the case to the Associated
11 Press, they've published the articles regarding Mr.
12 Bradley and Ms. Kerchner. They've gone into certain
13 facts, which my guess is they've taken from at least
14 some of the officers that investigated the case earlier
15 on. So, there's widespread publicity.

16 Any publishing of any of the materials we've listed
17 would further aggravate the publicity, Judge, and would
18 guarantee that Mr. Bradley is not going to get a fair
19 trial.

20 One of the points that the McCrary Court speaks
21 about and it gets that ruling, as well, from other cases
22 cited, specifically Supreme Court cases, that change of
23 venue is not an alternative method. Can't say, well,
24 worst case scenario, we'll just change the venue, we'll
25 go somewhere else. That is not something the Court

1 should look at.

2 What I believe Mr. Kirschenbaum's going to rely on
3 and what the Supreme Court case in the Nebraska also
4 looked at, and the McCrary case, is a three-prong test,
5 Judge, and that would come from the Lewis case, and I
6 believe it's a case that Mr. Kirschenbaum has cited in
7 his response to our motion. And my understanding is I
8 anticipate he's going to rely on this case with his
9 argument. That is Miami Herald versus Lewis, it's a
10 Supreme Court of Florida case.

11 And Judge, that case is different than our case
12 because that had to do with -- the lawyers in that case
13 wanted to close the courtroom to the media during a
14 Motion to Suppress. They did not want the media to hear
15 a video being published. And one of the rationales
16 obviously the Court looked at as well, you know, the
17 attorneys in a Motion to Suppress are usually just
18 arguing constitutional violation, whether it's Miranda,
19 whatever, and you don't need to preclude the media from
20 that argument. It's a different argument, then, if it's
21 obviously actual contents from the video.

22 But the three-prong test that they essentially look
23 at, Judge, is first that the closure is necessary to
24 prevent a serious and immediate threat to the
25 administration of justice. And I've just already said

1 that. If closure does not happen in this case, Mr.
2 Bradley's rights to a fair trial, to an impartial jury
3 and to a trial in Brevard County will be violated.
4 There's no question about that.

5 I have not lived in Brevard County that long, but I
6 can't tell the Court the last time a police officer was
7 killed in the line of duty. And this is going to be a
8 case that carries an unfathomable amount of publicity
9 currently and will as long as this case is pending.

10 Second, I know alternatives are available. Other
11 than change of venue, which would protect the
12 Defendant's right to a fair trial, the Lewis case later
13 on talked about that a change of venue should not be
14 considered as an alternative to closure. And that's all
15 this Court's going to be left with, or whichever Court
16 winds up with the trial in this case. They're only
17 going to be left with a change of venue. And the Court
18 is saying that that's not an option.

19 Lastly, closure would be effective in protecting
20 the rights of the accused without being broader than
21 necessary to accomplish this purpose. Judge, again,
22 we've gotten very specific. We're not telling the media
23 that they can never comment about this case. Or that we
24 don't want the public knowing every little thing about
25 this case.

1 We have gotten very specific. We have talked about
2 and we're asking that two videos be precluded, be
3 closed. Talking about photographs; I believe there's a
4 total of 42 photographs. Eight photographs taken by the
5 Brevard County Sheriff's Office, and I believe 34 taken
6 from Melbourne Police Department. I'm sure Mr. Nash and
7 Mr. Holmes will correct me on that if I'm wrong as to
8 the number of photographs. And a video depicting Mr.
9 Bradley's interrogation. We've gotten very specific.

10 Judge, at this time I would like to -- well, Judge,
11 I'm not going to get into anything else. I think the
12 motion speaks for itself. I think we've been very clear
13 in what we're asking the Court to do. I think it's very
14 clear why we need to do it, both on a legal aspect and
15 on a public aspect with the amount of coverage that this
16 case has already garnered since March 6th of this year.
17 It's only going to continue to add to that.

18 There was an article in Saturday's paper regarding
19 this very motion that was filed. And there was an
20 article I believe in Sunday's paper regarding
21 outstanding warrants. And they specifically take Mr.
22 Bradley's picture away from all the other outstanding
23 warrants in Brevard County for the last year or so, and
24 specifically focus on him.

25 I could provide that as a supplement to the Court,
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1 as well. But I think the media is specifically focused
2 on Mr. Bradley and this case, and it will violate his
3 rights to a fair trial in this matter. And what we're
4 going to be left with whenever trial time comes is what
5 the Courts don't want to do, and that's the Court be
6 forced to a change of venue.

7 THE COURT: Since we're going to be dealing with the
8 impact of publicity on the prospective jurors in Brevard
9 County, I'm going to need all those cases from Florida
10 Today that you're talking about.

11 MR. PIRROLO: I can supplement that.

12 THE COURT: Because I don't want to speculate on
13 what they say. I want to have them made part of the
14 record.

15 MR. PIRROLO: Judge, I have I believe a couple in
16 this pack and I will supplement the other articles to
17 the Court, specifically the ones from Saturday and
18 Sunday.

19 THE COURT: If there are any other media outlets,
20 any video that you want to present, I'll need that, as
21 well, to be made part of the record.

22 MR. PIRROLO: Yes, sir, I can do that.

23 THE COURT: All right. Can I hear from the State?

24 MR. HOLMES: Good morning, Your Honor. I was around
25 when the last officer killed in the line of duty

1 occurred, and that was 1987. I handled that case. We
2 had a similar motion in front of the Court at that time.

3 And the problem that is presented for the Defense
4 and the Court is, under the current law in 119.011
5 Subsection 2(c)5. Once the Defendant is given an item
6 or they have a lawful right to receive it, it becomes a
7 public record for public disclosure, and any agency that
8 has that item must disclose it upon request.

9 And so, what we're coming up to is that point in
10 time when the State is in the process of seeking formal
11 charges in this case and the Defendant's right to
12 discovery comes into effect. And once that occurs,
13 unless this Court takes action, these items would
14 automatically be released if requested, and the agencies
15 would be bound under law to do that and could suffer
16 even criminal penalties if they did not disclose those
17 items.

18 There is a new statute that went into effect last
19 year that does not really help us here except to show
20 and demonstrate the magnitude of this issue and how
21 serious it can be, and that's Florida Statutes 406.136.
22 At the present time, there is an obligation on the
23 sheriff's office to keep these items confidential, and
24 if released under certain circumstances, it could even
25 expose them to criminal liability.

1 However, Subsection 5(c) says, a criminal or
2 administrative proceeding is exempt from this section.
3 And so, the legislature left this issue strictly in the
4 hands of the Court in an appropriate case. So, once the
5 case does come to a criminal or an administrative
6 proceeding, it actually opens these items up for
7 disclosure if they're otherwise required to be disclosed
8 under 119.

9 So, that is the reason why it is important for the
10 Court to be addressing these issues at this time and
11 there be given an adequate opportunity for the Court to
12 receive the information it needs.

13 Of course, the Court could temporarily -- if the
14 Court needed additional time once discovery got started,
15 the Court could do a Temporary Order until an
16 opportunity to fully review it. And of course the
17 obligation on the Court set out in the McCrary case is
18 the Court must decide this based on evidence that is
19 presented.

20 And of course putting it more formally on the
21 record now, the State has introduced the four DVDs to
22 the Clerk, and the Court as I understand is accepting
23 those as Court's Exhibits for purposes of this hearing.
24 That contains the video of the car cameras, as well as
25 the still pictures. It does not include the alleged

1 confession video.

2 As to the confession video, it's the State's
3 position that there is no need for the Court to rule on
4 that item. There is a specific provision of Florida
5 Statutes 119.071 that already covers that, and that's
6 under 2(e), where it says that the substance of the
7 confession cannot be disclosed until after the finality
8 of the proceedings.

9 So, it is already a practice and the law that when
10 we're request for public records, if there is a
11 confession, we do not disclose that. We also go into
12 other documents that may specifically quote portions of
13 that confession and delete those, exempt those from it.

14 So, it's the State's position there's no need for
15 the Court to rule on that item because the law clearly
16 covers that particular aspect and the Defendant is
17 already protected by that law.

18 THE COURT: And the media would have access to that
19 at trial.

20 MR. HOLMES: The media could have that access
21 because it's an open proceeding, and of course that is
22 the concern that the legislature addressed, is that if
23 you publish a confession in advance of trial, that
24 clearly is something that could prejudice the
25 Defendant's right to a fair trial. So, it's made where

1 they have to be here in open court. Sometimes they may
2 see it as part of a Motion to Suppress or something like
3 that. But whatever's occurring is under the Court's
4 control, so that you're assuring the Defendant's right
5 to a fair trial.

6 The only part of the -- or other part of the Motion
7 that the State would specifically object to, and that is
8 any type of gag order up on the State or up on law
9 enforcement.

10 The State's position is, Defense has not come
11 anywhere close to demonstrating to the Court that there
12 is any need for such a position. The State Attorney's
13 Office, we are attorneys, we're governed by the ethical
14 rules. We know what we are allowed to discuss and not.
15 We also know, for example, the contents of the
16 confession, that is not something that we should be
17 discussing to the media or outside of a courtroom
18 setting.

19 As to what the content of the photographs or the
20 videos may be, it is not so much a description of what
21 is there, it's the actual visual depiction that is
22 there. And one of the concerns the State has in this
23 regard in terms of the Defendant receiving a fair trial
24 and being able to remain in this jurisdiction for trial,
25 is not just the traditional mainstream media, who may

1 take steps to be more respectful of a person's life in
2 other circumstances, but in these days and times, once
3 it's a public record, it is out there to anyone and
4 everyone and their different social media sites, as
5 we've seen from the matter going on in Seminole County
6 right now, they take on a life of their own. And these
7 are out there played over and over and over again.

8 Also, because these are in a digital format, the
9 receiver of these can manipulate them in different ways
10 that can heighten the prejudice to even a greater
11 extent, because they can slow motion, they can enhance
12 voice, they can enlarge sections of it. As well in the
13 digital world, they can also manipulate and actually
14 falsify and create false images of what may be depicted
15 or not. Which again can be very detrimental to the
16 Defendant.

17 So, once the cat is out of the bag, per se, it's
18 out of the bag and the Court is completely out of being
19 able to control the situation for the rights of the
20 Defendant.

21 And so for that reason, the State would agree, and
22 it's the State who brought these matters to the
23 attention of the Defense so they'd have an opportunity
24 to address them with the Court, because the State also
25 has an interest in the Defendant receiving a fair trial

1 in this jurisdiction if that is in fact possible.

2 Because that not only relates to the victim's (sic)
3 rights, but that also relates to the victims' rights to
4 be here in this county, to be present in the courtroom,
5 that they not have to go through special efforts to be
6 able to assert their rights as victims in this case, and
7 we want them to have that full access to this Court,
8 just as the Defense wants that full access for their
9 client to this Court.

10 Thank you, Your Honor.

11 THE COURT: Thank you. Mr. Nash.

12 MR. NASH: Yes. Thank you, Your Honor.

13 Your Honor, I want to take a little bit of
14 exception to what Mr. Holmes said, and I would like to
15 approach and provide you some documents that I've
16 already provided to Mr. Holmes, Mr. Pirrolo and Mr.
17 Kirschenbaum.

18 THE COURT: Yes, sir.

19 MR. NASH: Thank you, Your Honor.

20 What I don't agree with is what the relatively
21 recent provision in Florida Law 406.136 says. It does
22 say, Your Honor, that in general, the restrictions
23 placed on the dissemination of these type of materials
24 is regulated in this section, and it does provide that
25 it's exempt in criminal proceedings.

1 But it does go on to say in Subsection 6, paragraph
2 C, provided however that this section does not prohibit
3 a Court in a criminal or administrative proceeding upon
4 good cause shown from restricting or otherwise
5 controlling the disclosure of a killing, crime scene or
6 similar photograph or video or audio recordings in a
7 manner prescribed herein.

8 Now in this section, Your Honor, it does provide
9 that this Court upon the showing of reasonable cause can
10 restrict the dissemination, the viewing or copying of
11 photographs, video recordings or audio recordings that
12 depict the killing of another person.

13 And the factors are set out in Subsection 4(b),
14 that include whether such disclosure is necessary for
15 the public evaluation of governmental performance, the
16 seriousness of intrusion into the family's right to
17 privacy and whether such disclosure is the least
18 intrusive means available and the availability of
19 similar information in other public records regardless
20 of form.

21 I would submit to you, Your Honor, that if the
22 photographs, video images or audio recording of the
23 killing of Deputy Sheriff Barbara Pill was made public,
24 it would create very severe hardship to her surviving
25 husband, her two sons, her step-son, her daughter-in-law

1 and her grandchild, and future family members that will
2 be born later into this world.

3 There is a case, Your Honor, I've given you a copy
4 of it and again I've provided copies to other counsel,
5 the only case I'm aware of that's ever dealt with this
6 new section, since it only was signed into law effective
7 July 1st of 2001, though viewed by the legislatures
8 remedial in nature, thus having retroactive effect, was
9 State versus Schenecker. It was in Hillsborough County.
10 Your Honor does have a copy of the Order that granted
11 the motion for reconsideration, signed by Circuit Judge
12 Ashley Moody, back in August 3rd of 2011, in which Judge
13 Moody did restrict the dissemination of these types of
14 materials based on this new statute.

15 The media did seek an appeal with the 2nd Circuit,
16 and I did provide Your Honor with a copy that
17 establishes that the cert was denied by the 2nd Circuit
18 in an unpublished decision. But Your Honor does have
19 this material, again provided to other counsel.

20 I know that Mr. Kirschenbaum is going to talk to
21 you about a 2nd DCA case that was decided in 2005, that
22 deals with a different statute, which is 406.135, having
23 to deal with autopsy photos. But I would submit to you
24 that that was a different statute and did not have the
25 same availability that this statute has to Your Honor in

1 terms of recognizing the effect this would have on the
2 family. Even in a criminal proceeding Your Honor can
3 restrict the dissemination of these materials. And I
4 would ask you to do so.

5 I think to make a final decision on that, though,
6 Your Honor would have to take evidence. So, it might be
7 that the family of Deputy Pill would need to appear
8 before Your Honor and testify as to what their concerns
9 and feelings are relative to this matter.

10 In a normal situation, if somebody came to the
11 Sheriff as custodian of these records and requested to
12 view them or to copy them, under the normal Public
13 Records Provision, they would have to bring a petition
14 before the Court and give notice to the family members.
15 That is in the statute, which obviously hasn't occurred
16 in this proceeding as of yet.

17 As to the concept of restricting the ability of law
18 enforcement personnel to continue their investigation,
19 as requested by the Public Defender's Office, I would
20 submit to this Court that our personnel has been very
21 professional in their handling of this investigation.
22 They have not done anything that I've seen the Public
23 Defenders's Office being able to cite to that would
24 require the Court to consider restricting the
25 availability of law enforcement to continue their

1 investigation. Because in the course of the
2 investigation, they are going to speak to members of the
3 public to interview them, to see if they could obtain
4 additional facts to determine the guilt of the accused
5 or anybody else that might have participated in this
6 horrendous crime.

7 So, I would ask the Court until the Public
8 Defender's Office could bring forth any allegations of
9 misconduct or unprofessional behavior on behalf of law
10 enforcement, that the Court not grant that relief sought
11 by the Public Defender.

12 But as to all the photographs, video recordings,
13 audio recordings that depict the killing of Deputy Pill
14 and the breadth of that definition as in the Statute,
15 that the Court direct that nobody can view or copy any
16 of the photographs, video recordings or listen to or
17 record any of the audio recordings, except members of
18 the State Attorney's Office, the law enforcement
19 involved in the investigation, the Public Defender's
20 Office, and to allow the Public Defender at least to
21 allow his client to view or listen to but not copy any
22 of these items in allowing the Defendant to be able to
23 participate in his Defense, until further Order of the
24 Court.

25 Thank you, Your Honor.

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1 THE COURT: Mr. Kirschenbaum.

2 MR. KIRSCHENBAUM: Thank you, Your Honor. May it
3 please the Court. My name's Jack Kirschenbaum, and if
4 it's okay, I've got all my stuff spread out here, I'll
5 stand at counsel table.

6 THE COURT: Sure.

7 MR. KIRSCHENBAUM: I'm from Gray Robinson, I
8 represent the Florida Today Newspaper. I have, Your
9 Honor, in case anyone wishes, copies of the cases cited
10 in our brief for ready reference. I won't pass those
11 out until we need them.

12 But let me first address this issue with regards to
13 406.136. This statute is inapplicable for the
14 proceedings today. As a result of the Dale Earnhardt
15 cases and controversy, the legislature adopted 406.135
16 regarding autopsy reports. And it provided for the
17 exact same language that the new 406.136 provides.

18 And that prior statute, that 135, has been reviewed
19 in a case. And that is the case of the Sarasota Herald
20 Tribune versus State. If I may approach the Court, Your
21 honor.

22 THE COURT: Thank you.

23 MR. KIRSCHENBAUM: And there's a discussion here
24 about the constitutional implications, the public
25 records implications, as well as the statutory

1 provision. And on the bottom of Page 7 on the right-
2 hand column, it says, thus the statute expressly exempts
3 criminal court proceedings from its application. The
4 legislature directs the reader to Chapter 119, to
5 determine whether it may provide some other applicable
6 exemption. Although Section 406.135 may not prohibit a
7 Court in a criminal proceeding upon good cause shown
8 from restricting or otherwise controlling the disclosure
9 of an autopsy, crime scene or similar photographs or
10 video or audio recordings in the matter prescribed by
11 that statute, as we will soon discover the regulation of
12 the Trial Court in this function is controlled by Rule
13 2.051, which establishes different tests.

14 The point, Your Honor, of this case as well as this
15 portion of my argument is that Section 406.136 doesn't
16 apply to these proceedings.

17 What we have, Your Honor, is a situation, as the
18 State Attorney has pointed out, once the Defense has a
19 right to these materials, once the Defense receives
20 these materials, but for the confession, all of these
21 materials are public records and must be disclosed to
22 the media or the public, unless the Court, under the
23 constitutional provisions allowing the Defendant a
24 guaranteed right to an impartial jury and a fair trial
25 as provided in the Sixth Amendment, uses the Lewis test

1 to determine whether the release of these materials
2 would create an imminent threat to the administration of
3 justice. And then, the Lewis test kicks in.

4 The Lewis test contemplates an evidentiary basis
5 for either a restriction of the release of public
6 records or a restriction on the right of court
7 personnel, police officers, witnesses to speak.

8 The Florida Courts have consistently said unless
9 there are extra judicial statements that are prejudicial
10 in nature, unless that already exists, the imposition of
11 a gag order is inappropriate. There does not appear yet
12 to be this issue. Defense Counsel hasn't made public
13 statements, the State Attorney hasn't made public
14 statements, the sheriff's office hasn't made public
15 statements. No one that I'm aware of has pointed to any
16 public statements extrajudicial in nature that are
17 prejudicial in any way. And therefore, the imposition
18 of any type of gag order at this point in time would be
19 premature and inappropriate.

20 With regards to the release of the video tapes and
21 the photographs, Your Honor, the Florida Today and the
22 media are well aware of the current state of technology
23 and the ability to disseminate instantaneously around
24 the world any document that is released. And we're well
25 aware, as well, that the Defendant has an absolute right

1 to a trial in this venue. But the Court must utilize
2 the three-part test to determine if the release of these
3 documents, these video tapes, would impact first of all
4 the Defendant's right to a fair trial and to receive an
5 impartial jury.

6 The case law is also clear that any restriction has
7 to have limitations, including limitations on when the
8 Order would terminate. I'd submit to the Court, other
9 than a few articles, other than a few broadcasts, there
10 has been no blanket coverage of this incident yet, and
11 therefore there is no evidence yet available that the
12 Defendant would not be entitled to receive a fair trial
13 if they were released.

14 Now, I can speak for my client only, and suggest to
15 the Court that it would not have any intent to
16 broadcast, put up on its website or publish these
17 documents from what we've heard so far.

18 However, I believe other cases have resolved this
19 issue by allowing the media to view these documents in a
20 controlled setting so that as to allow the public's
21 right to know, be made available.

22 I have one case, Your Honor, it is a Trial Court
23 case in the Rolling matter. The Court may be familiar
24 with it. This is the State of Florida versus Danny
25 Rolling, July 27th, 1994, from Alachua County, where the

1 Court after hearing arguments regarding -- if I might
2 approach the Court --

3 THE COURT: Thank you.

4 MR. KIRSCHENBAUM: This, Your Honor, came to the
5 Court after the conviction of Mr. Rolling, when efforts
6 were made to see the evidence that had been admitted
7 with regards to the killings in Gainesville. And the
8 Court after examining all matters, including considering
9 the privacy rights of the decedent's family, decided
10 that it would be appropriate under a controlled setting
11 to allow some members of the media to view but not copy
12 the evidence.

13 Now, that is a post-trial setting, while the appeal
14 was pending, I believe, not pretrial, and so the right
15 of the Defendant to obtain a fair trial was not
16 implicated in this case, but the solution was one that
17 balanced the public's right to know through the media
18 with the rights of privacy of the decedent's family.

19 Finally, Judge, the Lewis test applies not only to
20 the gag order, not only to excluding from the courtroom,
21 the public or the media, but it also applies to the
22 closing and sealing of Court records. And I would
23 submit respectfully to the Court that at this point in
24 time there is no evidence that closure is necessary to
25 prevent a serious and imminent threat to the

1 administration of justice. There is no evidence that
2 the closure would be effective in protecting the rights
3 of the accused without being broader than necessary to
4 accomplish that purpose.

5 And for those reasons, Your Honor, we'd request
6 that the Court enter an Order being ever so restrictive
7 with regards to the documents that are being sought.

8 I would finally point out that the media has not
9 brought this to the Court, and would only have brought
10 it to the Court had they sought these public records
11 once they became public records when the Defendant had
12 the right or actually received the discovery materials.
13 And so, we haven't had the opportunity to view them, we
14 don't know what they are, and so we're protecting now a
15 process and a right as opposed to seeking these
16 documents specifically because we haven't seen them, we
17 don't know what they are.

18 Thank you, Your Honor.

19 THE COURT: Thank you. Anybody else have any
20 further comments?

21 MR. PIRROLO: Judge, can I comment? Mr. Nash had
22 brought up, and I'm not suggesting that we're asking the
23 Court to preclude the sheriff's office from conducting
24 an investigation. That's not what we're asking for.

25 Regarding the comment portion of our Motion is that
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1 what we are concerned with is that at a press conference
2 or some other interview that they are part of, they will
3 divulge what's in the video, by saying, well, we have
4 possession of a video or we have possession of a
5 photograph, and the photograph depicts X,Y,Z, or the
6 video depicts X,Y,Z. That's what we're trying to
7 prevent from happening.

8 Clearly they have a right to conduct an
9 investigation and they will conduct an investigation.
10 Whether it's talking to other law enforcement personnel,
11 witnesses and so forth, we're not asking that they be
12 precluded from doing that. Our concern is on a public
13 standpoint in terms of an interview or some sort of
14 press release, that they then get specific on what their
15 evidence, specifically on the videos and the photographs
16 depict.

17 That's what we're asking the Court to preclude, and
18 I think under the McCrary case, the Court has that
19 authority. Very last paragraph of the McCrary case, at
20 least the opinion which was on Page 4, very last
21 paragraph, says there is no First Amendment right of
22 access to pretrial discovery material. There is in
23 Florida statutory right of access to such material when
24 it becomes a public record, but that statutory right
25 must be balanced against a constitutional right to a

1 fair trial and due process. There is no constitutional
2 impediment to a Court prohibiting Prosecutors, Defense
3 Counsel, witnesses and other interested parties involved
4 in the case before the Court from making prejudicial
5 pretrial comments which are intended for publication.

6 I think the Court has the authority to say, to
7 direct the sheriff's department, Melbourne Police
8 Department, any law enforcement agency, the State
9 Attorney's Office, I think the Court can direct them,
10 you will not make any prejudicial pretrial comments that
11 are intended for publication. I think the Court can do
12 that.

13 I don't think the intent is we got to wait until
14 that happens, the jury pool gets tainted, and then we
15 come forward and say, Judge, we can't have anymore of
16 these comments happening. I think it has to happen from
17 the beginning so it doesn't happen.

18 And Mr. Nash is correct, and I believe Mr. Holmes
19 had addressed it, too, the sheriff's department, as far
20 as I'm aware of, has not made any such comment, or we
21 would have included that in some other motion. Nor do
22 we believe the State Attorney's Office has made any such
23 comment.

24 But the purpose of our motion is to make sure it
25 doesn't happen. Because once it happens, the bell's

1 been rung, you can't unring (sic) it.

2 I just wanted to clarify, Judge, those two points.
3 Thank you.

4 THE COURT: Thank you.

5 All right. The media has been extensive. There
6 have been no inappropriate comments that I'm aware of,
7 nor do I expect that to happen. All the agencies and
8 all the entities have been nothing but professional.

9 I will issue a Temporary Order, because I have to
10 review the evidence. I was involved early on with some
11 of the warrants, but I did not see the videos or any of
12 the photographs involved. I did have descriptions told
13 to me as is required through the warrants.

14 But I'll need to review the evidence, and that's
15 the evidence that I'm going to look to to determine
16 whether or not it meets the Lewis test in addition to
17 what was said today.

18 The Temporary Order will be as follows: State
19 Attorney's Office, Public Defender's Office, any
20 associated law enforcement agency and the Defendant, may
21 view the videos and photographs.

22 Obviously the agencies may use them for any
23 investigative purpose they see fit. No agency shall
24 issue a press release or disclose to any media specific
25 descriptions of any of the videos or photographs, other

1 than in an investigatory manner.

2 Anybody have any questions about that?

3 MR. HOLMES: Your Honor, the only additional thing,
4 I know Mr. Bross is here today representing the Co-
5 defendant, and I don't know that he specifically joined
6 in this motion or how it impacts.

7 Granted it would have an impact just ruling in the
8 Bradley case, but if he is joining in that motion, I
9 think it's an appropriate time for the Court to
10 incorporate that case, also. If he's not, I think the
11 Court needs to be aware of that.

12 THE COURT: Well, the disclosure would apply to
13 these four items, at least the four items that we have
14 right now, across the board in any case, but I can
15 certainly include your client specifically, as well, in
16 the Order if you'd like, that they not be disclosed.

17 MR. BROSS: Your Honor, good morning, Michael Bross
18 on behalf of Andrea Kerchner in this matter.

19 Judge, of course my client as the alleged companion
20 with Mr. Brandon Bradley is concerned about the Court's
21 ruling; however, I had requested that she be transported
22 here in order to be here for the hearing, which I think
23 is material in this case.

24 She has not been transported; as such then, Judge,
25 we do not join in the motion currently. We'll bring it

1 before Judge Reinman and ask Judge Reinman to make
2 decisions, as well, regarding this matter.

3 So, we would ask for another hearing and to have
4 her transported at that time.

5 THE COURT: All right. She has deferred this to me
6 because she was unavailable. So, as far as it relates
7 to these specific items, that will apply obviously to
8 any case, any party on the planet, and any agency
9 associated with it that currently has custody of copies
10 of it or the original. So, I think the blanket Order
11 will include everybody.

12 I don't think a gag order is necessary. There's
13 been no proof provided today that any of the agencies
14 should be under such order, other than what I stated,
15 and that is the restriction on making public disclosures
16 about the specifics and the descriptions in the video
17 and the audio to any media outlet. But other than that,
18 the agencies can use them as they see fit in whatever
19 investigative manner they need to use it for.

20 All right. And I'll --

21 MR. KIRSCHENBAUM: May I inquire as to one issue,
22 Your Honor?

23 THE COURT: Yes.

24 MR. KIRSCHENBAUM: I have not, and I don't know if
25 anyone yet knows whether or not these documents have

1 become a public record, because I don't know the status
2 of discovery. And so if the Court would consider that
3 in its Order, it would assist us belated proceedings.

4 THE COURT: My understanding is right now, it has
5 not been disclosed and it is not a public record.

6 MR. NASH: My understanding, it has not been
7 disclosed, Your Honor.

8 MR. HOLMES: Your honor, until the Defendant is
9 formally charged, and of course in a first-degree murder
10 there must be an indictment, the earliest that can
11 possibly occur is sometime next week. Then the
12 Defendant, if they have filed a demand for discovery,
13 and with the Public Defender's Office, we have automatic
14 demands for discovery, from a technical legal sense, it
15 would be a public record as soon as the formal charge is
16 filed, because at that point they would have a legal
17 right to those. Now physically it may take a few more
18 days for them to get it. We have, of course, 15 days to
19 respond to their demand for discovery. But the time
20 clock is ticking fairly quickly as to when this will be
21 a public -- or would be a public record under 119, but
22 for the Court's intervention.

23 THE COURT: And I'll give you a ruling before April
24 3rd.

25 MR. HOLMES: Thank you, Your Honor.
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1 MR. NASH: Your Honor, you said it was a Temporary
2 Order. Are you going to then allow an evidentiary
3 hearing to determine whether at any point in the future
4 these photographs or video or audio recordings would be
5 made available so that the victim's family can testify?

6 THE COURT: Well, the evidentiary hearing is going
7 to be based on my initial ruling before April 3rd. And
8 whether or not they're going to be disclosed to the
9 media will be based on the evidence that's been
10 presented. And those are the documents themselves.
11 I've taken argument on that.

12 The evidence from the family members may become
13 appropriate at some point in the future, if that's what
14 you're asking for.

15 MR. NASH: Well then, I'm understanding then, Your
16 Honor, you're ruling is none of these items will be made
17 available, and they will be restricted until a future
18 hearing is held.

19 THE COURT: Well, until I make my ruling prior to
20 April 3rd. If I need to hear from the family before
21 that, then I will let you know.

22 MR. NASH: Thank you, Your Honor.

23 THE COURT: But the evidence that I'm looking for is
24 what's been presented as the Court's Exhibits today.
25 For now, anyway.

1 MR. KIRSCHENBAUM: Your Honor, just for the ease of
2 the Court's research, if the Court seeks, I have cases I
3 recited for you.

4 THE COURT: I appreciate that. Thank you.

5 All right. We're in recess.

6 MR. PIRROLO: Judge, I'm sorry, the media that I
7 have currently, do you want me to submit it to the Court
8 is a composite exhibit?

9 THE COURT: Yes.

10 MR. PIRROLO: And we can still supplement additional
11 (Inaudible).

12 * * * * *

13 (The audio proceedings were concluded)

14 * * * * *

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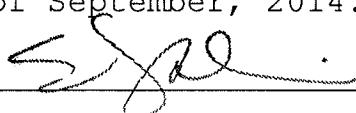
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