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

CASE NO 2012-CF-35337-A

STATE OF FLORIDA,

Plaintiff,

vs

BRANDON LEE BRADLEY,

Defendant

2012 MAR 26 P 3 14
CLERK OF CIR CT
BREVARD CO FL

**RESPONSE TO AMENDED MOTION TO PRECLUDE THE STATE OF FLORIDA
AND ITS AGENTS FROM DISCLOSING PRE-TRIAL DISCOVERY TO THE PUBLIC**

COMES NOW, J R "JACK" PARKER, in his capacity as Sheriff of Brevard County, by and through his undersigned counsel, and files this response to the Defendant's Amended Motion to Preclude the State of Florida and its Agents from Disclosing Pre-Trial Discovery to the Public, and as grounds therefore states

1 Section 406 136, Florida Statutes, exempts the photographs or video or audio recordings that depict or record the killing of a person from the provisions of Section 119 07(1), Florida Statutes, pertaining to public records Fla Stat §406 136(2)

2 Section 406 136, Florida Statutes, provides that the custodian of any photograph or video recording or any audio recording that depicts or records the killing of a person, or his or her designee, may not permit any other person to view or copy any such photograph or video recording or listen to or copy any such audio recording without a court order Fla Stat §406 136(3)(c)

3 This court, upon the showing of good cause, may issue an order that authorizes any person to view or copy a photograph or video recording that depicts or records the killing of a person or 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 Fla Stat §406 136(4)(a)

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4 In determining whether good cause exists, this court should consider whether such disclosure is necessary for the public evaluation of governmental performance, the seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available, and the availability of similar information in other public records, regardless of form Fla Stat §406 136(4)(b)

5 In all cases in which this court determines that good cause exists to enable a person to view or copy a photograph or video recording that depicts or records the killing of a person, or listen to or copy an audio recording that depicts or records the killing of a person, that viewing, copying, listening to or other handling of these items, must be under the direct supervision of the custodian of the record or his or her designee Fla Stat §406 136(4)(c)

6 Florida law also requires that the surviving spouse of the decedent is to 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 that depicts or records the killing of a person Fla Stat §406 136(5)

7 Florida law prescribes criminal sanctions on any custodian of any photographs or video or audio recording that depicts or records the killing of a person who willfully and knowingly violates the provisions of Section 406 136, Florida Statutes Fla Stat §§406 136(6)(a) and (6)(b)

8 This Court also has the authority upon good cause shown, to restrict or otherwise control the disclosure of a killing, crime scene or similar photograph, video or audio recording Fla Stat §406 136(6)(c)

9 In enacting Section 406 136, Florida Statutes, it was the intent of the Florida Legislature to protect the immediate family of the deceased from trauma, sorrow, humiliation and emotional

injury due to the highly sensitive nature of the medium that captures the death. The legislative intent is set forth in Section 2 of Chapter 2011-115, Laws of Florida, which provides, in pertinent part, as follows:

The Legislature finds that [it] is a public necessity that photographs and video and audio recordings that depict or record the killing of any person be made confidential and exempt from the requirements of section 119.07(1), Florida Statutes, and Section 24(a) of Article I of the State Constitution. The Legislature finds that photographs or video or audio recordings that depict or record the killing of any person render a visual or aural representation of the deceased in graphic and often disturbing fashion. Such photographs or video or audio recordings provide a view of the deceased in the final moments of life, often bruised, bloodied, broken, with bullet wounds or other wounds, cut open, dismembered, or decapitated. As such, photographs or video or audio recordings that depict or record the killing of any person are highly sensitive representations of the deceased which, if heard, viewed, copied or publicized, could result in trauma, sorrow, humiliation, or emotion injury to the immediate family of the deceased, as well as injury to the memory of the deceased.

The Legislature further recognizes that there continue to be other types of available information, such as crime scene reports, which are less intrusive and injurious to the immediate family members of the deceased and which continue to provide for public oversight. The Legislature further finds that the exemption provided in this act should be given retroactive application because it is remedial in nature.

10 Due to the seriousness of the intrusion into the right of privacy of the family of the decedent, this court has the authority to limit the viewing of, handling of and listening to the video recording and audio recording made of the killing of the decedent to the Office of the State Attorney for the Eighteenth Judicial Circuit, the Office of the Public Defender for the Eighteenth Judicial Circuit, the law enforcement personnel involved in the investigation of the crime for which the DEFENDANT is accused, and the Medical Examiner's Office for the Eighteenth District.

11 Furthermore, the photographs, video recordings and audio recordings that depict the killing of Brevard County Deputy Sheriff Barbara Ann Pill are active criminal investigative information which are exempt from the provisions of Section 119.071(1) and Section 24(a), Article I of the Constitution of the State of Florida. Fla. Stat. §119.071(2)(c)1

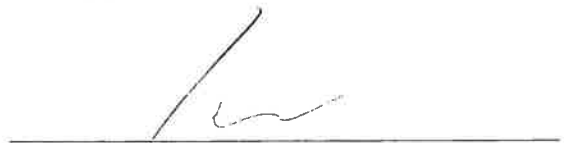
12 The law enforcement personnel, both sworn and civilian, involved in investigating the

crimes committed or alleged to have been committed in connection with this criminal proceeding have conducted themselves in an ethical and professional manner. Thus, with respect to Movant's request that employees of the Office of Sheriff J R "Jack" Parker not communicate about this criminal proceeding with members of the public, Respondent believes that any restraint on the ability of the law enforcement personnel, both sworn and civilian, from continuing to engage in investigating the crimes committed or alleged to have been committed in connection with this criminal proceeding, including interviewing potential witnesses, would unduly hamper the ability of Brevard County Sheriff J R "Jack" Parker from carrying out his legal duties as required under the constitutional and statutory provisions of the State of Florida. There has been no allegation by Movant that Respondent has acted in a way that would prejudice DEFENDANT's ability to receive a fair trial.

WHEREFORE, J R "JACK" PARKER, in his capacity as Sheriff of Brevard County, and as custodian of the video and audio recordings, respectfully requests that this Court enter an Order that specifically prohibits any employee of the Office of the State of Attorney for the Eighteenth Judicial Circuit, any employee of the Office of the Public Defender for the Eighteenth Judicial Circuit, any employee of the Office of Sheriff J R "Jack" Parker, and any employee of the Office of the Medical Examiner for the Eighteenth District, from providing copies of any photograph, video recording or audio recording that depicts or records the killing of the late Deputy Barbara Ann Pill, or allowing anyone to view any such photograph or video recording or to listen to any such audio recording, provided, however, that the Office of the Public Defender can allow the DEFENDANT to view any such photograph or video recording or to listen to any such audio recording for the purpose of allowing the DEFENDANT to participate in his defense, but does not prevent the law enforcement personnel involved in the criminal investigation relative to this criminal proceeding from carrying out their constitutional and statutory duties in a professional manner.

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to MICHAEL MARIO PIROLO, ESQ , Assistant Public Defender, 2725 Judge Fran Jamieson Way, Building E, Viera, Florida 32940, WAYNE HOLMES, ESQ and TOM BROWN, ESQ , Office of the State Attorney, 2725 Judge Fran Jamieson Way, Building D, Viera, Florida 32940, JACK KIRSCHENBAUM, ESQ , Gray Robinson, P A , 1795 W Nasa Blvd , Melbourne, Florida 32901, and A MICHAEL BROSS, ESQ , Bross Thomas & Savy, LLC, 997 S Wickham Road, Melbourne 32901, and by facsimile to the HONORABLE CHARLES CRAWFORD, Circuit Court Judge Florida 32901, this 26th day of March, 2012



CHARLES IAN NASH, ESQUIRE
Florida Bar No 0296619
NASH & KROMASH, LLP
440 South Babcock Street
Melbourne, FL 32901
(321) 984-2440
Fax (321) 984-1040
General Counsel for Brevard County Sheriff's Office