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

CASE NO. 12-CF-1083-A

STATE OF FLORIDA,

Plaintiff(s),

vs.

GEORGE ZIMMERMAN,

Defendant(s).

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ORDER ON THE STATE'S MOTION FOR PROTECTIVE ORDER AND THE MEDIA INTERVENERS' MOTIONS TO INTERVENE AND TO OPPOSE THE CLOSURE OF JUDICIAL RECORDS HEARD ON JUNE 1, 2012

This is a highly publicized case in which the Defendant is charged with second-degree murder. In compliance with this Court's April 30, 2012 order, the "State's Redacted Discovery Exhibit and Demand for Reciprocal Discovery" was filed with the Clerk of the Court on May 14, 2012 and a "Motion for Protective Order" setting forth the legal basis for the redactions was filed on May 24, 2012. The redactions included the witnesses' names and addresses. Since items provided in discovery generally become public records upon their disclosure to the Defendant, many of the reports, exhibits, and statements were also provided to the media. Some, though, have not yet been provided or have only been provided in redacted form. Both the State and the Defendant argue that the redacted records should remain closed. Several media interveners petitioned this Court to obtain disclosure of the complete documents. Those motions were heard by this Court on June 1, 2012.

Generally speaking, this Court must apply the three-part test established in *Miami Herald Publishing Co. v. Lewis*, 426 So. 2d 1 (Fla. 1982), and referenced in *Florida Freedom Newspapers v. McCrary*, 520 So. 2d 32 (Fla. 1988). The Court must make a careful analysis of the following factors before restricting the disclosure of information:

1) Restricting public access to discovery material is necessary to prevent a serious and imminent threat to the administration of justice;
2) No alternatives, other than a change of venue, would protect the Defendant's right to a fair trial; and
3) Closure would be effective in protecting the rights of the accused, without being broader than necessary to accomplish this purpose.

Lewis, 426 So. 2d at 6; *McCrary*, 520 So. 2d at 35. There are several categories of information that the parties are seeking to restrict prior to trial. Those categories are individually addressed below.

WITNESS IDENTITIES:

There were several witnesses who provided written and oral statements to law enforcement on the night of and in the days following the incident. Both the State and the Defendant argued that these witnesses should be protected. Their primary concern is that full disclosure of all records, statements, and evidence will make it virtually impossible to pick a jury or to provide a fair trial. Furthermore, they contend that the intense media scrutiny in this case will subject the witnesses to harassment. This will cause the unintended consequence of preventing other witnesses from coming forward with relevant information for fear that they will be stalked, threatened or otherwise harassed due solely to their status as witnesses.

The media interveners counter these claims by citing to the Florida Public Records Law, codified in chapter 119, Florida Statutes. They assert that the voir dire process is sufficient to remove any potential jurors who have been exposed to enough information that they can no longer fairly judge the case. With regard to the witnesses, any publicity surrounding their identities is merely delaying the inevitable, as they will be identified when they testify at trial. However, it should be noted that the State's discovery obligation set forth in Fla. R. Crim. P. 3.220 will necessarily include witnesses who will not be called upon by either party to testify. Disclosure of those witnesses at this stage would not be merely delaying the inevitable; it would be unnecessarily subjecting them to public scrutiny.[1]

Moreover, the media interveners finally point out the State makes the "unsupported assertion that witnesses have been harassed by the media and that witnesses may be scared to testify." Of course it is an unsupported assertion; their identities have not yet been disclosed. Prior experience and observations tell this Court that any person tangentially involved in this case will be contacted by numerous media outlets as soon as they are identified. Claims that these people will not be affected when their identities are exposed are misguided. Should innocent eyewitnesses be forced to have their names dragged through the mud and their entire lives investigated merely because they suffered the misfortune of living in the Retreat at Twin Lakes community on February 26, 2012?[2] If the witnesses are disclosed and they get harassed by the media and become scared to testify, it puts the judiciary in a Catch-22. The Court may not prophylactically restrict information because there can be no showing of danger, but once that danger

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[1] As noted below, there are those who have sought out the spotlight and have appeared in several news outlets to tell their version of events. Those persons obviously have given up their right to be free from media scrutiny.

[2] The media interveners continuously refer to the Casey Anthony case as proof that a fair trial can be had despite intense media scrutiny. But what of those witnesses whose lives have been irreversibly changed merely because of their involvement in the case? For example, the meter reader who found the victim's body was all but accused of the murder by the Defendant and he had his minor criminal history trumpeted to the world. If he had known then what he knows now, he might simply have made an anonymous call to Crimeline to tell authorities that the body was in the woods. He would also likely dispute the assertion that witnesses have nothing to fear from simply being associated with a high-profile case. Such consequences will assuredly impact the State's ability to prosecute notorious crimes in the future.

manifests and the requisite showing can be made, there is no way to remedy the situation. Common sense tells this Court that these witnesses should be entitled to remain anonymous until the time of trial.

The majority of the case law provided by the media interveners' predates the rise of the blogosphere, where the internet has made news and opinion instantly available twenty-four hours a day, seven days a week. Until recently, a change of venue would be sufficient to ensure that an impartial jury could be selected because the local print and television media would primarily focus on local news. Historically, with rare exceptions, the glare of the national news media quickly fades.[3] Based upon this Court's view from the bench, the world has changed. Local, national, and international organizations have called the court's staff seeking information, to the point where a Public Information Officer had to be dedicated to the case by court administration. News stories have routinely been disseminated presenting opinion and rumors as fact. Any person who has logged onto a news website in the last three months has at the least seen a headline relating to this case. As noted, common sense tells this Court that the full disclosure of information, as sought by the media interveners, will irreparably harm the Defendant's, and the State's, ability to receive a fair trial.

Despite this Court's feelings about the reality of the situation, the Court may not rely solely on common sense because chapter 119, Florida Statutes cannot be ignored. There are limits to public information that this Court believes should be respected, but it is not this Court's duty to rewrite the law. In considering the three part test described above, the Court makes the following findings with regard to the disclosure of witness identities:

1) Restricting public access to discovery material, specifically the names and addresses of the eyewitnesses, is necessary to prevent a serious and imminent threat to the administration of justice. The innocent witnesses who have performed their civic or moral duty by reporting what they observed to law enforcement should not have their lives turned upside-down for having done so;
2) No alternatives, other than a change of venue, would protect the Defendant's right to a fair trial. There is a strong probability that the previously undisclosed witnesses will become uncooperative. This would impair the Defendant's ability to receive a fair trial.
3) Closure would be effective in protecting the rights of the accused, without being broader than necessary to accomplish this purpose. Copies of the statements themselves have already been disclosed or shall be disclosed to the public upon issuance of this order. Only the identities of the witnesses are closed.

These findings apply only to previously unidentified witnesses. The media interveners may provide to the parties the name of any person who has voluntarily appeared or given a statement in a

[3] Only the O.J. Simpson case comes immediately to mind as a case where the spotlight never died down.

media outlet, including the time and date of the appearance or interview. The State shall, within fifteen days, provide the person's full identity as required by Fla. R. Crim. P. 3.220 and shall identify which statement in evidence was provided by that person. The State shall satisfy this burden by filing a Notice of Supplemental Discovery in the Court file. This requirement would not apply to witnesses who were filmed from afar on the night of the incident while speaking with law enforcement.

The above limitations apply also to audio or video recorded statements. The State may remove the speaker's name and address from the copy of the recording. In order to obtain these statements, the outlet seeking disclosure shall provide the proper type of blank recordable media (e.g. CD, DVD, videotape), as directed by the State. The State shall comply with the request within a reasonable time.

STATEMENT OF WITNESS #9

This statement shall be disclosed in accordance with the other witnesses' statements, as described above. The name of the speaker shall remain confidential, but the contents of the statement shall be provided.

DEFENDANT'S STATEMENTS TO LAW ENFORCEMENT

Fla. Stat. §119.071(2)(e) exempts, "information revealing the substance of a confession of a person arrested ... until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition." The substance of a confession is "the material parts of a statement made by a person charged with commission of a crime in which he or she acknowledges guilt of the essential elements of the act or acts constituting the entire criminal offense." *Times Pub. Co. v. State*, 827 So. 2d 1040, 1042 (Fla. 2d DCA 2002) (quoting Op. Att'y Gen. Fla. 84-33 (1984)). Upon an *in camera* review of the Defendant's statements, they do not qualify as confessions, as the Defendant does not acknowledge guilt of the essential elements of the crime. The only element conceded by the Defendant is that he shot and killed the victim, but he does not concede any other elements of second-degree murder. Fla. Stat. §119.071(2)(e) does not exempt the statements from the public record. Since the Defendant admitted at his bond hearing that he shot the victim, disclosure of those statements will not impact the Defendant's right to a fair trial. Consequently the second prong of the *Lewis* test is not met if these statements are disclosed. These statements should be released within fifteen days from the date of this order.

TESTS PERFORMED ON THE DEFENDANT:

The parties object to the release of tests performed on the Defendant on the basis that they may be unreliable or inadmissible. There is no valid statutory basis to restrict such information, nor does the *Lewis* test operate to keep these records sealed.

AUTOPSY AND CRIME SCENE PHOTOGRAPHS:

The media interveners concede that autopsy photographs and crime scene photographs that depict the victim's body are exempt from disclosure pursuant to Fla. Stat. §406.135. However, the other crime scene photographs and the autopsy report are not similarly exempt. The exception to disclosure encompasses only photographs that depict the body of the deceased victim. Any photographs showing the victim's body remain closed. The autopsy report and all other crime scene photographs should be released within fifteen days from the date of this order.

911 CALLS:

Based upon the information before this Court, all 911 calls have been disclosed to the media. Therefore, no further order mandating disclosure is necessary.

CELL PHONE RECORDS:

The Court has not been provided basis to find that the Defendant's cell phone records are relevant or should even be considered evidence. The persons contacted by the Defendant in the days surrounding the incident should not be connected to the case merely because their telephone numbers appear on the Defendant's bill. The State shall provide a list of dates and times that the Defendant contacted the Sanford Police Department, either on its non-emergency line or via 911. All other cell phone records should be exempt.

EMAILS TO THE SANFORD POLICE DEPARTMENT:

There is no authority for sealing these emails. A person contacting the Sanford Police Department to provide input on the handling of the case is not entitled to be shielded from disclosure. However, any email provided by a listed witness and providing facts or first-hand observations of the incident shall be disclosed with the writer's name and email address redacted.

RECORDED TELEPHONE CALLS FROM THE JAIL:

The State cited to excerpts of conversations held between the Defendant and his wife, Shelly Zimmerman, which were recorded while the Defendant was incarcerated at the jail. To the extent that those particular conversations have already been transcribed, the transcripts should be released. The State is under no obligation to transcribe any additional statements. If there are any confessions by the Defendant in those statements, as defined above, the State shall provide the transcripts to the Court for an *in camera* review. The transcripts should be provided within fifteen days of this order.

ORDERED AND ADJUDGED:

1. All materials previously provided in discovery shall be released in accordance with the terms of this Order within fifteen days of rendition of this Order. The release shall be accomplished by filing a Notice of Supplemental Discovery with the Clerk of the Court.
2. Unless other authority exists that was not cited by the parties, release of all future discovery will be in accordance with by this Order. However, the parties may continue to file redacted discovery exhibits with a contemporaneous Motion for Protective Order as directed in the April 30, 2012 order.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida this 12th day of June, 2012.

KENNETH R. LESTER, JR., Circuit Judge

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