

IMAGE DISPLAY

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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).

FILED IN OFFICE
MARYANNE MORSE
CLERK CIRCUIT COURT
2012 JUL 13 PM 12:02
BY SEMINOLE CO. FLA. J.C.

**ORDER DENYING DEFENDANT'S AMENDED MOTION FOR RECONSIDERATION OF
ORDER ALLOWING FOR PUBLIC DISCLOSURE OF CERTAIN STATEMENTS, FOR
CLARIFICATION OF THE COURT'S ORDER FOR RELEASE OF CERTAIN TELEPHONE
COMMUNICATIONS, FOR DELAY OF EFFECT OF THE ORDER TO ALLOW NON-
PARTIES AN OPPORTUNITY TO BE HEARD AND REQUEST FOR *IN CAMERA* REVIEW
WITH COUNSEL**

The Defendant is charged in this high-profile case with second-degree murder. At various points, several media outlets have petitioned this Court to intervene in the action for the purpose of releasing discovery materials to the public. At issue now is this Court's order, dated June 12, 2012, in which the Court required the disclosure of the statement made by "Witness #9" and the release of several telephone calls recorded while the Defendant was incarcerated at the Seminole County Jail. The Defendant asks this Court to reconsider or clarify those orders.

With regard to the statement by "Witness #9," the Court has noted its agreement with the Defendant's position from a judicial perspective. The Florida Supreme Court shared this Court's concern regarding public access to discovery materials in high-profile cases. It noted that,

the public does not have a universal right to all discovery materials. Depending on the circumstances and the subject matter, discovery may "seriously implicate privacy interests of litigants and third parties." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35, 104 S.Ct. 2199, 2208, 81 L.Ed. 2d 17 (1984). The purposes of criminal discovery are to narrow the issues of the case, to ascertain facts that will be relevant at trial, and to avail the parties of information that will avoid surprise tactics in the courtroom. *State v. Tascarella*, 580 So. 2d 154 (Fla. 1991). Discovery is not intended to be a vehicle for the media to use in its search for newsworthy information. This Court is wary of an outcome that will cause victims and witnesses to withhold valuable discovery information because they fear that personal information will be divulged without discretion. However, we also recognize that this state's open government policy requires that information be available for public inspection unless the information fits under a legislatively created exemption.

Post-Newsweek Stations, Florida Inc. v. Doe, 612 So. 2d 549, 553 (Fla. 1992). However, despite this language, the Florida Legislature has not limited the scope of the public's right to access the type of discovery materials at issue here. As the Court noted in *Post-Newsweek Stations*, items disclosed in discovery become public records when they are turned over to the Defendant unless they fit within a legislatively-created exemption. Witness #9's statement does not fit within any legislatively-created exemption.

Justice Kogan, in dissent, recognized that "the public records laws themselves allow courts to order that discovery documents be withheld if this is the only way to preserve other constitutional rights." *Id.* at 554 (Kogan, J., dissenting). Considering the intense scrutiny focused upon this case, common sense tells the Court that disclosure of all of the discovery materials, regardless of whether the information is relevant or admissible, may impact the Court's ability to select a fair and impartial jury. This Court believes that the Defendant's constitutional right to a fair trial, specifically guaranteed by the Fifth and Sixth Amendments to the United States Constitution, should trump the public's generalized right to know.

However, the relevant test to evaluate whether this information should be restricted was set forth 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). As noted in the June 12, 2012 order, 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. The Court did not specifically reference these factors in its original order regarding the disclosure of Witness #9's statement. The Defendant asserts that the statement is inadmissible and would serve no purpose but to disparage him. The State disagrees and claims that there is a reasonable possibility that the statement will become relevant and admissible during either cross-examination or rebuttal.

In this Court's opinion, application of the *McCrary* test requires the disclosure of this statement. The public discussion relating to this case indicates that the Defendant's attitude towards race may become an issue at trial. Adding this statement to the discourse will simply be another piece of the puzzle to be relied upon by those who want to believe there was a racial motive to the shooting, and will be dismissed by those who claim that there was no such motive. Its disclosure may have some small impact, but does not rise to the level of a "serious and imminent threat to the administration of justice." *McCrary*, 520 So. 2d at 35. As noted in the prior order, in the world we now live in, this court is dubious that a

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change of venue will be an effective way to ensure the selection of an impartial jury, but that remains so regardless of whether this statement is released. Finally, the third factor indicates that any limitation on disclosure must be narrowly-drawn. In order to limit any prejudicial effect, the Court finds that the Defendant shall not be precluded from disclosing the nature of his relationship with Witness #9, so long as Witness #9's actual identity is not disclosed. Upon consideration of all of the *McCrary* factors, this Court cannot ignore the Legislative directives and further restrict the disclosure of this statement.

With regard to the jail calls, this Court's order was clear. Any jail call that was disclosed during discovery became a public record upon it being furnished to the Defendant. Any call that was not turned over in discovery is not a public record and cannot be obtained by the media interveners directly from the jail. *Bent v. Sun-Sentinel*, 46 So. 3d 1047 (Fla. 4th DCA 2010). To the extent that recorded calls from the jail have been provided in discovery, they are public records and should be disclosed. Going forward, the State should not provide recorded calls unless they are subject to discovery under Fla. R. Crim. P. 3.220 to avoid the appearance of using those calls for an improper purpose.

Finally, there can be no legitimate argument on behalf of non-parties that they have a right to privacy in their telephone calls with the Defendant at the jail. They are specifically advised that their calls will be recorded. Thus, there is no reasonable expectation of privacy in the contents of those calls. Without a reasonable right to privacy, there is no legal basis for those parties to seek closure of these recordings. As such, there is no reason to restrict disclosure in order to give them time to file an action for a protective order.

ORDERED AND ADJUDGED:

The Defendant's Amended Motion for Reconsideration of Order Allowing for Public Disclosure of Certain Statements, for Clarification of the Court's Order for Release of Certain Telephone Communications, for Delay of Effect of the Order to Allow Non-Parties an Opportunity to be Heard and Request for *in Camera* Review is hereby denied.

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



KENNETH R. LESTER, JR., Circuit Judge

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Copies furnished this 10th day of July, 2012 to:

Mark M. O'Mara, Esquire
1416 East Concord Street
Orlando, FL 32803

Donald R. West, Esquire
Don West Law Group, P.A.
636 West Yale Street
Orlando, FL 32804

Bernie de la Rionda, Esquire
John Guy, Esquire
Office of the State Attorney
220 East Bay Street
Jacksonville, FL 32202-3429

Sanford L. Bohrer, Esquire
Charles D. Tobin, Esquire
Scott D. Ponce, Esquire
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, FL 33131

Rachel E. Fugate, Esquire
Thomas & Locicero PL
400 North Ashley Drive, Suite 1100
Tampa, FL 33602

Maury J. McAllister
JUDICIAL ASSISTANT