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

STATE OF FLORIDA

VS.

CASE NO.: 2012-001083-CFA
SA NO: 1712F04573

GEORGE ZIMMERMAN
_______________________/

FILED IN OFFICE
MARYANNE MORSE
CLERK CIRCUIT COURT
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SEMINOLE CO. FL
BY D.C.

STATE'S MOTION FOR PROTECTIVE ORDER

The State of Florida, by and through the undersigned Assistant State Attorney, pursuant to Rule 3.220 (l)(1), Florida Rules of Criminal Procedure, and Chapter 119, Florida Statutes, moves this Honorable Court to enter an order prohibiting the public release of the documents described below. As grounds therefore the State asserts as follows:

1. This case has already received extensive pretrial publicity in the print and television media, and on the internet.
2. This case continues to be of great interest to the media as demonstrated by the number of media representatives present at prior court proceedings.
3. The State and Defendant wish to be able to receive a fair trial and try this case in the courtroom and not in the media.
4. Publication of certain discovery materials described below by means of print media, internet, and/or television news will result in this matter being tried in the press rather than in court, and an inability to seat a fair and impartial jury in Seminole County.
5. Additionally, publication of specific discovery material, such as the names, addresses and telephone numbers of potential witnesses will hamper both parties' ability to conduct a fair and independent investigation, and present witnesses at trial. The State is aware of witnesses who have been harassed by media representatives. There are also witnesses who are scared and reluctant to testify for fear of personal and private information being disclosed to the public.
6. Under the separation of powers doctrine, it is the responsibility of the judicial branch to ensure that the parties receive a fair trial. A right to a fair trial has been construed by Florida courts to include the right to an impartial jury in the county in which the alleged crime was committed.

7. A trial court has the inherent power to control the conduct of the proceedings before it. State ex rel. Miami Hearld Pub. V. McIntosh, 340 So. 2d 904, 909 (Fla. 1976). This Court has both the right and the affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity, and is obligated to take protective measures "even when they are not strictly and inescapably necessary" to insure that Defendant (and the State) can receive a fair trial. *See* Estes v. Texas, 381 U.S. 582, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965); Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966).
8. Active criminal investigative and intelligence information only loses its exempt and confidential status during the discovery process, and only when the defendant triggers that process. Absent a notice to participate in discovery, these materials remain privileged and non-public until the trial.
9. In this case Defendant has filed for discovery under Florida Rules of Criminal Procedure, and after initially requesting the State to delay providing discovery, has now asked for the discovery.
10. Just because Defendant is entitled to receive information during discovery about the case doesn't automatically mean the media gets everything provided to Defendant. While there is a constitutional right for a defendant to have a fair trial, there is no First Amendment protection for the public and the press to have access to pretrial hearings.
11. Pursuant to Chapter 119, Florida Statutes, the public is granted access to certain documents produced by the State to defendants in criminal cases. See Florida Freedom Newspapers v. McCrary, *520* So.2d 32 (Fla. 1988). The standard to determine whether closure is appropriate or restriction on the production of documents has been set out in Miami Herald Publishing Company v. Lewis, 426 So.2d 1 (Fla. 1982).
12. In Lewis the Florida Supreme Court confronted the issue of what circumstances warrant closure of a pretrial suppression hearing. The Court upheld the trial court's exclusion of the media from a suppression hearing upon the trial court's finding that an open hearing would pose a "reasonable probability of prejudice on these defendants." *Id.* at 5.
13. In Lewis the Court modified a three-prong test for closure of judicial proceedings: "1) Closure is necessary to prevent a serious and imminent threat to the administration of justice; 2) No alternatives are available, other than change of venue, which would protect a 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." Id at 6.

14. In Florida Freedom Newspapers v. McCrary, 520 So.2d 32 (Fla. 1988), the Supreme Court of Florida was faced with the issue of whether a trial court could restrict disclosure to the media of pretrial discovery material which was furnished to the defendant pursuant to Rule 3.220, Florida Rules of Criminal Procedure. The trial court, after an *in camera* inspection of the discovery materials entered orders prohibiting release of the existing discovery materials and future discovery materials, pending an *in camera* inspection. The orders were based on findings that "the discovery material was graphically incriminating, containing materials which may not be admissible at trial, and that the prosecutor, sheriff, and other persons had made public statements prejudicial to the defendants". *Id.* at 33.
15. In McCrary, the trial court utilized Rule 3.220(h) to authorize its protective order, and concluded that closure of pretrial discovery materials was necessary because there had been prior pretrial publicity, that public disclosure of this material would further aggravate the prejudicial publicity and that closure was the only measure available to the court until a jury could be selected and sequestered. The Court held that these were essentially the same factors as those set forth in the Lewis three-prong test, and held that those factors stated in Lewis are relevant to a finding of cause and should be considered in determining whether access to a judicial public record should be restricted or deferred. *Id.* at 35. In so holding, the Court recognized the Lewis test strikes the proper balance between the public's statutory right of access and a defendant's fair trial and due process rights. Id. at 36.
16. Similarly, in *Post-Newsweek Stations Florida, Inc. v. Doe,* 612 So.2d 549 (Fla. 1992), the Court gave a non-party witness a right to privacy in criminal discovery material and held the witness may obtain a protective order.
17. In Palm Beach Newspapers, Inc. v. Burk, 504 So. 2d 378 (Fla. 1987), the Court was confronted with the certified questions of whether the press is entitled to notice and the opportunity and right to attend pretrial discovery depositions in a criminal case, and whether the press was entitled to access pretrial discovery depositions in a criminal case which may have been transcribed but not filed with the court. The Florida Supreme Court answered both questions in the negative, holding the press does not have a qualified right under the First Amendment, under the Florida rules of Civil or Criminal Procedure, or under the Public Records Law to attend pretrial discovery depositions in a criminal case or to obtain copies of un-filed depositions. The Court stated: Discovery Rules permit extensive intrusion into the affairs of both parties and non-parties and discovery may be judicially compelled. Liberal discovery produces information

which may be irrelevant to the trial and which, if publicly released, would be damaging to the reputation and privacy of both parties and non-parties. The parties are granted discovery rights as a matter of legislative or judicial grace. Non-parties do not possess discovery rights and cannot compel the disclosure of information. There is no independent right outside the trial process to the information sought. Society in general and the courts specifically, have a substantial interest in preventing abuse of judicially compelled discovery. Id. at 382.

18. For these reasons this Honorable Court has the right and affirmative constitutional duty to restrict release of specific discovery material to the media cited below and highlighted in discovery materials attached to this motion, and the State requests this Court enter such an Order.
19. Defendant's attorney has also informed the State that he will join in the State's request and will be filing motions requesting this Court to further limit what discovery materials are provided to the media.
20. The State requests the following discovery materials be sealed:
    - Names, addresses, telephone numbers and other identifying information of witnesses detailed in police reports and other documents furnished to Defendant, and listed in Discovery reply under Civilians: W1 --- W22. See cases previously discussed. See Discovery reply and police reports provided to this Court under seal on 5/14/2012.
    - Any and all crime scene photos, autopsy photos or other photos showing the Victim's body. Said photos are exempt under Section 406.135 and 406.136, Florida Statutes.
    - The 911 telephone recording of the murder. Said recording is exempt under Section 406.136(2), Florida Statutes.
    - Certain statements made by Defendant to law enforcement officers. Defendant has provided law enforcement with numerous statements, some of which are contradictory, and are inconsistent with the physical evidence and statements of witnesses. Defendants statements are admissible and in conjunction with other statements and evidence help to establish Defendant's guilt in this case. Pursuant to the provisions of Section 119.071(2)(e), Florida Statutes, the public records law does not require the disclosure of a confession of a defendant. The State asserts that this provision includes an admission of a defendant that could be used against him at trial, in the State's case-in-chief or in cross-examination of Defendant; or be the subject of a hearing to determine

its admissibility. See attached police reports and CD's of Defendant's recorded statements provided to the Court under seal on 5/14/2012.

- Tests performed on Defendant on 2/27/12 by Officer Ervin, SPD, described in documents tendered in discovery to Defendant and provided to this Court under seal on 5/14/2012. Any testing performed and findings in this case have not gained such reliability and scientific recognition as to warrant its admissibility. Case law to be provided at hearing.
- Cell phone records of the Victim, the witness identified in Redacted Discovery Reply as W8, and the Defendant. The telephone records would identify witness W8, the Victim's parents, and other innocent people whose telephone numbers are listed in said records. Additionally, the dissemination of such information would subject all of them to potential harassment and concerns for their safety. See Section 119.071(5)(d) and cases already cited.
- The audio-recorded statements (two CDs) of witness identified as W9 taken on 3/20/12 by SAO-Sanford Investigators Post & Rick. The subject matter deals with an allegation made by witness W9 regarding an act committed by Defendant. This material may or may not be relevant or admissible in this case, but was provided as part of discovery because W9 provided other information as to Defendant's bias against black persons. I assume that Defendant would object to release of this information and at this time would agree that it should not be disseminated to the public subject to the Court ruling on its admissibility.

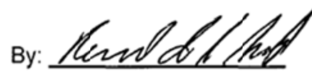
*Please note that on 5/14/2012, the State filed a similar Motion under Seal based on this Court's Order (4/30/2012), which the State understood required the motion be sealed and only provided to the Court and Defense Counsel. Therefore, the State is filing this Motion with the Clerk's Office and providing attorneys for the media (Media Intervenors) a copy.

WHEREFORE, the State requests this Honorable Court Grant this Motion.

CERTIFICATE OF SERVICE

I HERBY CERTIFY that a copy of the foregoing has been furnished by email or facsimile to Mark O'Mara, Esq., the Honorable Judge Kenneth R. Lester Jr. (Judicial Assistant Marilyn McAllister), and Scott Ponce, Esq., Rachel E. Fugate, Esq., and David Bralow, Esq., this 23rd day of May, 2012.

ANGELA B. COREY
STATE ATTORNEY

By: 

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