IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

STATE OF FLORIDA.

Plaintiff,

vs.

CASE NO. 14-00216-CFAES

CURTIS J. REEVES,

Defendant.
_____/

FILED IN OPEN COURT
THIS 4 DAY OF February, 2014
PAULA S. O'NEIL, CLERK & COMPTROLLER
PASCO COUNTY, FLORIDA
BY [redacted] D.C.

TIMES PUBLISHING COMPANY'S MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF BEING HEARD ON STATE'S MOTION FOR DECLARATORY JUDGMENT ON DISCOVERY AND PUBLIC RECORDS WITH INCORPORATED MEMORANDUM OF LAW

Times Publishing Company, publisher of *The Tampa Bay Times* (the "Times"), by and through the undersigned counsel, moves to intervene in these proceedings for the limited purpose of being heard on the matter of the State's Motion for Declaratory Judgment on Discovery and Public Records. In support of this motion, the Times states as follows:

I. The Times Has Standing To Intervene.

The Times is publisher of the daily newspaper of general circulation the *Tampa Bay Times*. It is well established that, as member of the news media, the Times has standing to intervene and be heard on issues affecting public access to judicial records and proceedings and the validity of restrictions on the availability of information generally. *See, e.g., Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 118 (Fla. 1988); *Miami Herald Publishing Co. v. Lewis*, 426 So. 2d 1 (Fla. 1982); *Miami Herald Publishing Co. v. McIntosh*, 340 So. 2d 904 (Fla. 1977). This right extends to those circumstances involving judicial limits on disclosure of the State Attorney's records. *See Florida Freedom Newspapers v. McCrary*, 520 So. 2d 32 (Fla. 1988) [McCrary II].

II. Discovery materials are presumptively open to the public.

As a general proposition under Florida law, once discovery materials are provided to a criminal defendant, they become public records and therefore open to the public and the news media. *See* §119.011(3)(c)(5), Florida Statutes (2013); *Times Publishing Co. v. State*, 827 So. 2d 1040 (Fla. 2d DCA 2002).

Certain discovery materials, however, may be subject to statutory exemptions, which limit disclosure for other reasons as defined by the legislature.

III. Certain discovery materials may be exempt from disclosure.

In its request for declaratory judgment, dated February 3, 2014, the State seeks guidance regarding how to handle certain video recordings from surveillance cameras in the movie theater. It appears from the State's filing that the videos have been released to Defendant's counsel on February 3, 2014.

The State correctly cites to § 406.136, Florida Statutes, which shields from public disclosure photographs or video or audio recording that depict or record the killing of a person. The statute defines the term "killing of a person" to mean "all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." §406.136(1), Fla. Stat. (emphasis added)

The Statute limits disclosure to the surviving spouse, parent or adult child. However, the Statute also provides that:

> (4)(a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording that depicts or records the killing of a person or to 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.

(b) In determining good cause, the court shall consider:
1. Whether such disclosure is necessary for the public evaluation of governmental performance;
2. The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
3. The availability of similar information in other public records, regardless of form.

§406.136(4)(a)-(b), Fla. Stat.

Section 406.136, Florida Statutes, is relatively new statute – enacted in July 2011 – which has not been subject of appellate court interpretation. However, it is axiomatic that in interpreting a statute, courts are to look first to the statute's "plain meaning." *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So. 2d 898, 900 (Fla. 1996). It is also well-settled that Florida's public records law is to be liberally construed in favor of access. *See e.g. Times Publ'g Co. v. City of St. Petersburg*, 558 So. 2d 487, 492 (Fla. 2d DCA 1990). Exemptions are to be narrowly construed so they are limited to their stated purpose. *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1206) Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010). Any doubt as to the applicability of an exemption should be resolved in favor of disclosure rather than secrecy. *Tribune Co. v. Pub. Records, P.C.S.O. No. 79-35504 Miller/Jent*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986); *Dade County Aviation Consultants v. Knight Ridder, Inc.*, 800 So.2d 302 (Fla. 3d DCA 2001).

It is unclear from the State's request how much of the video it seeks a judicial interpretation on or if the State believes only portions of the video are subject to the exemption. The Times submits that the Public Records Law requires this Court to construe any exemption narrowly and in favor of disclosure. Only those portions of the video that fit squarely within the definition provided by §406.136(1), Fla. Stat., can be exempt from disclosure. Thus, only the

acts or events "immediately preceding or subsequent to" the killing should be excluded from public disclosure.

IV. Judicial records and judicial proceedings are presumptively open.

Although not yet at issue and premature at this time, it is important to note that the State has stated its intent to display the video at a hearing on February 5, 2014. If so, the video becomes part of a judicial proceeding and is subject to another level of scrutiny in favor of access.

When dealing with the closure of judicial proceedings, not only are statutory rights of public access at issue, but so are the qualified privileges under the First Amendment and the common law rights to observe criminal proceedings. The United States Supreme Court consistently recognizes that the press and the public have a presumptive First Amendment right of access to judicial proceedings in criminal case. "[A] presumption of openness inheres in the very nature of a criminal trial under our system of justice." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573, 100 S. Ct. 2814, 2825, 65 L. Ed. 2d 973 (1980).

The public should generally have unrestricted access to all judicial proceedings. *State ex rel. Miami Herald Publishing Co. v. McIntosh,* 340 So.2d 904, 908 (Fla. 1977). This right extends not only to the trial itself, but also to other integral parts of the trial process such as voir dire proceedings and preliminary hearings. *See e.g. U.S. v. Ochoa-Vasquez,* 428 F.3d 1015, 1030 (11th Cir. 2005).

In considering a motion to deny access to judicial proceedings, any "analysis must begin with the proposition that all civil and criminal court proceedings are public events, records of court proceedings are public records, and there is a strong presumption in favor of public access

to such matters." *Sentinel Communications Co. v. Watson,* 615 So.2d 768, 770 (Fla. 5th DCA 1993) (citing *Barron v. Florida Freedom Newspapers, Inc.,* 531 So.2d 113 (Fla.1988))

The "legitimacy of our court system and the strength of our democracy is fostered when the public has broad access to court proceedings." *Sarasota Herald-Tribune v. State*, 916 So. 2d 904, 907 (Fla. 2d DCA, 2005). The public has the right, through news gathering organizations, to unfettered access. *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113 (Fla. 1988); *Miami Herald Publ'g Co. v. Lewis*, 426 So. 2d. 1 (Fla. 1982); *U.S. Const. Amend. 1.* The burden of proving that access should be denied always lies with the party seeking closure. *Barron* at 118.

The burden necessary to close criminal court proceedings is an exacting one. Generally, a court may not close a criminal proceeding unless the court specifically finds that: (1) the requested limitation on access 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) the requested limitation on access is not broader than necessary to be effective in protecting those fair trial rights. *Miami Herald Publ'g Co.,* 426 So. 2d. at 3, 8. In order to satisfy this burden, the party seeking closure must do more than offer the argument of counsel; the proponent of closure must come forward with evidence on which the Court can make findings of fact supporting closure. *See id.* at 7-8.

V. Conclusion.

WHEREFORE, the Times Publishing Company respectfully requests that this Honorable Court issue an order (1) allowing the Times to intervene and be heard on the matter of public access to discovery materials; (2) declare the surveillance videos to be open for public inspections and/or narrowly construe any exemption in favor of public access.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been provided via email service this 3rd day of February 2014 to:

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Respectfully submitted,

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