

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR DUVAL
COUNTY, FLORIDA

CASE NO.: 16-2012-CF-011572-AXXX-MA
DIVISION: CR-I

STATE OF FLORIDA

V.

MICHAEL D. DUNN,

Defendant.

MORRIS PUBLISHING GROUP, LLC, d/b/a
THE FLORIDA TIMES-UNION,

MULTIMEDIA HOLDINGS CORPORATION and
GANNETT RIVER STATES PUBLISHING
CORPORATION d/b/a WTLV/WJXX First Coast
News,

Intervenors.

**MOTION TO SET ASIDE ORDERS, TO DIRECT CLERK NOT TO SEAL
DOCUMENTS, UNSEAL AND UN-REDACT DOCUMENTS, AND TO
REFRAIN FROM FURTHER *EX PARTE* COMMUNICATIONS**

Morris Publishing Group LLC, d/b/a *The Florida Times-Union* ("*The Florida Times-Union*"), and Multimedia Holdings Corporation and Gannett River States Publishing Corporation, d/b/a WTLV/WJXX First Coast News ("*First Coast News*") (collectively, the "Intervenors"), hereby move the Court for continued access to public records pursuant to Chapter 119, Florida Statutes, and to: (1) set aside this Court's Orders of April 1, 2013 and August 1, 2013 (docketed on August 9, 2013), regarding restricted access to pre-trial discovery materials; (2) schedule an expedited hearing at which this Motion may be heard; (3) direct the Clerk of Court not to seal any documents without an order of the Court; (4) unseal all sealed documents in the record, and un-

redact all redacted documents in the record; and (5) refrain from *ex parte* discussions with the State Attorney and Defense counsel involving the rights of the press or any issues involving the media without counsel for the Intervenors being present. In support of their motion, Intervenors state:

1. On April 1, 2013, the Court entered an order sealing the names of witnesses revealed during discovery. The order was entered without notice to the media, an evidentiary hearing, or an opportunity for the media to respond to the requested closure of the record.

2. On August 1, 2013, the Court entered an order extending to the time of trial the April 1, 2013, Order, again without notice to the media, an evidentiary hearing, or an opportunity for the media to respond to the requested closure of the record.

3. On October 24, 2013, the Court entered an order restricting access by the public to discovery produced between the parties. The Order was entered *sua sponte*, without notice to the media, an evidentiary hearing, or an opportunity for the media to respond to the requested closure of the record.

4. Upon motion by Intervenors [Document 186, 10/28/2013], the Court granted the motion to intervene, but denied Intervenors' motion to vacate the October 24, 2013 Order. See Order of November 19, 2013 [Document 202].

5. Although the Court noticed a hearing on Intervenors' Motion to Intervene, to Vacate Restrictive Order, and for Continued Access to Public Records, it did not notice the pre-hearing held the same date during which the Court discussed the merits of Intervenors' Motion with the State and Defense, including how to rebut Intervenors' arguments. See Transcript of Proceedings on November 7, 2013, at 4-35.

6. Since the entry of the Orders of April 1, August 1, October 24, and November 19, 2013, the Clerk of Court has sealed or redacted documents filed with the Court by the parties, including:

Doc. #	Date	Description	Status
65	3/19/2013	CLERKS_MEMO_OF_TRIAL	Redacted
67	3/19/2013	STATES MOTION TO DENY BAIL	Redacted
70	3/27/2013	WITNESS SUBPOENA(S) DUCES TECUM ISSUED STATE	Sealed
101	5/3/2013	INDIGENT FOR COSTS AFFIDAVIT OF ATTORNEY FEES	Redacted
177	10/24/2013	ORDER TO TRANSPORT STATES WITNESS	Redacted
212	11/21/2013	MOTION - STATES- FOR PRETRIAL RULING REGARDING RELATIVES OF THE VICTIMS	Redacted
217	12/9/2013	DEFTS 1ST. SUPPLEMENTAL WITNESS LIST	Sealed
218	12/11/2013	MOT. IN LIMINE -DEFTS-RESPONSE TO REGARDING PRIOR ACTS	Sealed
229	12/13/2013	MOT. IN LIMINE -STATES REGARDING PRIOR ACTS	Sealed
234	12/18/2013	WITNESS LIST (AMENDED) -DEFTS. - SUPPELMENTAL	Sealed

7. On December 18, 2013, the First District Court of Appeal issued an order vacating this Court’s Orders of October 24 and November 19, 2013. See Exhibit A. In its Order, the First District Court of Appeal specifically held that before a court record can be closed, “the court is directed to immediately convene an evidentiary hearing, after providing appropriate notice to the Petitioner, for the purpose of determining whether closure (including, but not limited to, deferral of public access to pretrial discovery materials upon timely *in camera* review of such materials) in this cause is warranted by law.” The Order directs that “the trial court shall promptly enter an order, stating with specificity its findings of fact and its reasons for granting or denying closure in this matter.”

8. Inasmuch as the April 1 and August 1, 2013 Orders were entered without notice to the media, an evidentiary hearing, or specific findings of fact and reasons for ordering closure of the public record, those Orders should be vacated for the reasons set forth in Intervenor's prior motion and reaffirmed by the First District Court of Appeal in its December 18, 2013 Order.

9. Furthermore, the Clerk should be directed not to seal any documents without an order of the Court, any sealed documents in the record should be unsealed, and redacted documents should be un-redacted.

10. Intervenor also request the Court refrain from *ex parte* discussions with the State Attorney and Defense counsel involving the rights of the press or any issues involving the media without counsel for Intervenor being present. See Fla. Code Jud. Conduct, Canon 3B(7) and Commentary thereto; Rule 4-3.5, R. Reg. Fla. Bar; Wilson v. Armstrong, 686 So. 2d 647 (Fla. 1st DCA 1996); Hanson v. Hanson, 678 So. 2d 522 (Fla. 5th DCA 1996). During oral argument on December 17, 2013, Judge Scott Makar commented:

If I could ask you, counsel brought this up, and I do find it disturbing. When I was reading the transcript and supplemental filing, I was reading from page one forward, and I got to page ten, fifteen, twenty, thirty, and I'm thinking, "Where's the media?" There is this hearing going on, with all the merits of the vari-- of the motions being discussed and the details, factual details, being discussed between the trial judge, prosecutor, I think defense counsel was there. And I'm thinking, "Why am I reading this, because this isn't the hearing?" And then all of a sudden, it goes on the record and Petitioners show up and there is a hearing. Now I find it -- I don't know how to characterize it -- beyond just disturbing, that there was this pre-hearing that went on without the interested party being on notice of it and being present.

...

There was a more extensive discussion than what occurred at the hearing itself. More factual . . .

...

As we sit here, you know, I read that and I thought. . . this. . . I don't understand why this was all discussed without the affected party present.

The Honorable Scott Makar, First District Court of Appeal, Oral Argument on December 17, 2013, <http://oavideo.1dca.org/oalist.aspx>, at 37:35-38:25, 38:58-39:01, 39:16-39:24.

WHEREFORE, Intervenors respectfully request the Court grant continued access to public records pursuant to Chapter 119, Florida Statutes, and: (1) set aside this Court's Orders of April 1, 2013 and August 1, 2013 (docketed on August 9, 2013), regarding restricted access to pre-trial discovery materials; (2) schedule an expedited hearing at which this Motion may be heard; (3) direct the Clerk of Court not to seal any documents without an order of the Court; (4) unseal all sealed documents in the record, and un-redact all redacted documents in the record; and (5) refrain from *ex parte* discussions with the State Attorney and Defense counsel involving the rights of the press or any issues involving the media without counsel for the Intervenors being present.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 7TH day of January, 2014, via email to:

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