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**45 Med.L.Rptr. 1418**  
**Harrouff v. State**  
**Florida District Court of Appeal**  
**Fourth District**

No. 4D17-0575

February 27, 2017

2017 BL 70374

**AUSTIN HARROUFF, Appellant-Petitioner v. STATE OF FLORIDA and SCRIPPS MEDIA INC., Appellees-Respondents**

## Headnotes

### NEWSGATHERING

[1] Access to records — Judicial — Criminal — Pre-trial/discovery (▶38.1503.04)

Statutory right of access — State open records acts (▶44.17)

Trial court applied correct standard of review to determine that restricting media access to video of homicide defendant being interviewed

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for "Dr. Phil" show is not necessary to protect defendant's right to fair trial, and thus certiorari will not be granted; defendant has no privacy interest in interview, since he gave it for publication on television.

### Case History and Disposition

Petition for writ of certiorari from the Florida Circuit Court, Martin County, Mirman, J.; 45 Med.L.Rptr. 1415.

Criminal prosecution, in which media party sought to intervene and obtain access to video of defendant being interviewed for television. Trial court granted media's motions; intervenor moved to expedite, and defendant petitioned for emergency writ of certiorari, and moved to extend stay.

Motion to expedite granted; petition for certiorari and to extend stay denied.

### Attorneys

Nellie L. King, West Palm Beach, Fla, for appellant-petitioner.

Deanna K. Shullman, of Thomas & LoCicero PL, Lake Worth, Fla.; Rachel E. Fugate, of Thomas & LoCicero PL, Tampa, Fla., for appellee-respondent Scripps Media Inc.

### Judge

Before Warner, May and Levine, judges.

## Opinion Text

### Opinion By:

Per curiam.

BY ORDER OF THE COURT:

ORDERED that respondent's (Scripps Media, Inc.) February 27, 2017 motion to expedite is granted; further,

[ 1 ] The petition for writ of certiorari is denied. The trial court did not apply the incorrect standard of review. See *Florida Freedom Newspapers, Inc. v. McCrary*, 520 So. 2d 32 [14 Med.L.Rptr. 2374] (Fla. 1988). *Post-Newsweek*

*Stations, Florida Inc. v. Doe*, 612 So. 2d 549 [20 Med.L.Rptr. 2089] (Fla. 1992), involves non-parties, not parties to a criminal case. The criminal defendant is claiming that restricting media access to the video interview in this case is necessary to protect his right to a fair trial. Therefore, the *McCrary* factors are appropriate considerations. See *Times Pub. Co. v. State*, 903 So. 2d 322, 325 (Fla. 2d DCA 2005) (granting certiorari from an order that allowed a defendant to assert the privacy rights of non-parties as a basis for restricting public access *Morris Communications Co., LLC v. State*, 844 So. 2d 671, 673 [31 Med.L.Rptr. 1583] (Fla. 1st DCA 2003) (recognizing that the *McCrary* factors are appropriately considered when determining whether to restrict access to pretrial discovery). Moreover, the defendant has no privacy interest in the interview, as he gave it for publication on television.

The trial court appropriately considered the *McCrary* factors in determining that restricting public access to this public record was not necessary to protect defendant's right to a fair trial. The court reviewed the video in camera and explained that it was not prejudicial to the defendant and would not change the status quo in defendant's ability to get a fair jury. The court stated "without reservation" that the video would not materially impact the situation "whatsoever" and commented that "the material is simply not inflammatory or prejudicial at all."

Petitioner has not shown a departure from the essential requirements of law; further,

ORDERED that petitioner's February 27, 2017 emergency motion to extend stay is denied.

- End of Case -