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

CASE NO.: 16-2017-CF-00539-AXXX
DIVISION: CR-H

STATE OF FLORIDA,

v.

GLORIA B. WILLIAMS,
Defendant.
_____/

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR TEMPORARY ORDER OF PROTECTION

This matter came before the Court on Defendant's "Motion for Temporary Order of Protection" ("Motion"), filed by and through counsel on January 4, 2018, pursuant to Amendment VI of the United States Constitution; Article I, Section 16 of the Florida Constitution; Florida Rule of Criminal Procedure 3.220; Chapter 119, Florida Statutes; and applicable case law. The Court heard argument from Defendant and Multimedia Holdings Corporation d/b/a WTLV/WJXX First Coast News ("FCN"); Graham Media Group, Florida, Inc., d/b/a WJXT-TV4 and NEWS4JAX.COM ("WJXT-TV4"); and Cox Media Group Jacksonville ("WJAX") (collectively, "Intervenors"), in open court on January 19 and 29, 2018. The State was present at the hearings but did not provide argument. Having considered the motions, evidence, arguments, and authorities presented by counsel, and being otherwise fully advised in the premises, the Court finds and rules as follows:

I. BACKGROUND AND PROCEDURAL HISTORY

This is a highly publicized case in which Defendant is charged with Kidnapping (Count One) and Interference with Custody (Count Two) arising out of an incident which occurred in

1998 and which received extensive media coverage at that time. Since Defendant's arrest in 2017, this case has regained the public's attention. Defendant has pleaded not guilty and trial is scheduled to commence on February 12, 2018.

On January 16, 2018, FCN and WJXT-TV4 each filed a motion to intervene and oppose Defendant's Motion; these motions were granted the same day. On January 18, 2018, WJAX also filed a motion to intervene and oppose Defendant's Motion. On January 19, 2018, the Court granted WJAX's motion to intervene and held a hearing to address Defendant's Motion and the Intervenors' opposition thereto. At the hearing, Defendant requested that approximately 1,000 pages of discovery documents be reviewed *in camera* and protected from public access. To afford Defendant the opportunity to narrow the scope of items requested to be reviewed *in camera*, as well as to provide specific reasons supporting closure of same, the Court continued the hearing.

On January 26, 2018, Defendant filed her "Memorandum of Specific Objections," "Notice of Supplemental Authority," and "Notice of In-Camera Review." Defendant's Memorandum set forth seven categories of discovery which she asserted should be protected: 1) reports; 2) photographs; 3) video taken on January 10, 2017; 4) video taken on January 11, 2017; 5) audio taken on January 13, 2017; 6) personal records; and 7) jail calls. On January 29, 2018, the hearing continued. The parties and Intervenors came to an agreement that certain listed items would either not be publicized or would be redacted,[1] thereby further reducing the items to be reviewed *in camera*. The items reviewed by the Court were portions of three reports, totaling thirty-two pages; sixty-nine photographs; portions of videos taken on January 10 and 11, 2017;

[1] It was agreed that: under category 2) photographs of Defendant's banking and other private information would be redacted and photographs of Defendant's medical records would not be published; under category 6) Defendant's personal records would not be published. Defendant agreed to withdraw her objections under category 7), subject to redaction.

and audio recorded on January 13, 2017.

II. ANALYSIS

In the instant Motion, Defendant seeks to temporarily restrict disclosure of certain discovery materials, until a jury has been selected and sequestered. In support thereof, Defendant alleges there has been "extensive pretrial publicity in the form of print, television, website articles, and social media both locally and nationally." Def.'s Mot. Temp. Order Protec. ¶ 3. Defendant further maintains that the publicity this case has received has been "substantially adverse or hostile to the defendant, as well as the alleged victims." Def.'s Mot. ¶ 6. As such, Defendant argues that closure of the discovery materials at issue is necessary to protect her right to a fair trial in Duval County.

Discovery material in possession of the State becomes public record when given, or required to be given, to a defendant. See § 119.011(3)(c)(5), Fla. Stat. (2017); Fla. R. Crim. P. 3.220; Florida Freedom Newspapers, Inc. v. McCrary, 520 So. 2d 32, 34-35 (Fla. 1988). Notwithstanding the public disclosure laws, the court has a duty to protect a defendant's right to a fair trial. McCrary, 520 So. 2d at 34. Before restricting the disclosure of public information, however, the court must find that the party seeking closure has met its burden of establishing by a greater weight of the evidence that closure is necessary. Miami Herald Pub. Co. v. Lewis, 426 So. 2d 1, 7-8. In making this determination, the court must apply the three-part test established in Lewis and referenced in McCrary, carefully analyzing the following factors:

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.

Lewis, 426 So. 2d at 6; McCrary, 520 So. 2d at 35.

Defendant argues that Duval County has been saturated with coverage of this case, and that accordingly, alternatives to closure, such as individual voir dire would be insufficient to protect Defendant's right to a fair trial. At the hearing on January 19, 2018, Defendant presented Ryan Hannon, an investigator retained by Defendant to conduct a media search of this case. Hannon testified that his Internet search revealed two "closed" Facebook pages dedicated to this case and 235 news articles, many of which were duplicative of content but that included unique comments. After review of the evidence, the Court finds that there has been extensive publicity surrounding this case; however, Defendant has not established that such publicity has been, thus far, overwhelmingly adverse. Additionally, Defendant presented no evidence showing how many of the Facebook pages members or news article commenters would be part of the jury venire such that no alternatives to closure would protect Defendant's rights.

A. Reports

After an *in camera* inspection of the reports included in category one, the Court finds that nothing contained in these reports is so shocking, hostile, or inflammatory that if released, would pose a serious and imminent threat to Defendant's right to receive a fair trial. These reports shall be released in their entirety.

B. Photographs

Of the category two photographs reviewed *in camera*, the Court finds the following exempt pursuant to section 119.071, Florida Statutes, or confidential pursuant to Florida Rule of Judicial Administration 2.420: any pediatric medical bills and medical records of the alleged victim; any health insurance records of the alleged victim; any school records of the alleged victim as a minor; any social security cards; and any documentation of a potential unrelated

criminal offense for which the alleged victim in this case may have been an alleged victim in another case as a minor. The remainder of the photographs in category two shall be released.

C. Video taken on January 11, 2017

The possibility of unfavorable publicity does not, alone, justify closure of public records. After an *in camera* review of the video in category four, taken on January 11, 2017, the Court finds that although some of the video may cast Defendant in an unfavorable light, it is not so shocking, hostile, or inflammatory that if released, would pose a serious and imminent threat to Defendant's right to receive a fair trial. The category four January 11, 2017 video shall be released in its entirety.

D. Video taken on January 10, 2017 and Audio taken on January 13, 2017

Pursuant to section 119.071(2)(e), Florida Statutes, "[a]ny information revealing the substance of a confession" is exempt from public disclosure. After the Court's *in camera* review of the category three video recorded on January 11, 2017, and the category five audio recorded on January 13, 2017, the Court finds that portions of these recordings contain materials which reveal the substance of a confession. These portions, described in detail below, are therefore, exempt from disclosure.

Additionally, the Court finds these same portions of the recordings to be confidential under Florida Rule of Judicial Administration 2.420. "[C]onfessions or admissions by a defendant are blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight." Miami Herald Media Co. v. State, 218 So. 3d 460, 465 (Fla. 2d DCA 2017). Accordingly, public disclosure of such information presents a serious and imminent threat to Defendant's right to receive a fair and impartial jury.

The Court has considered whether less restrictive measures are available to protect

Defendant's right, should this confidential information be released. However, Defendant's confessional statements are highly prejudicial because once heard or viewed, they are not likely to be forgotten. Alternatives, such as individual voir dire, peremptory challenges, sequestration, and admonition of the jury are sufficient to protect Defendant's right as it pertains to the records, non-confidential photographs, and January 11, 2017 video discussed above. However, such alternative measures will not protect Defendant's right to receive a fair trial where her confessional statements are concerned. If Defendant's trial were not yet scheduled, the Court's analysis of this issue may be different. However, Defendant's trial is scheduled to begin on February 12, 2018, under two weeks from the date of this Order. Should Defendant's confessional statements be released at this time, the public's memories would be fresh with the information. See Bundy v. State, 455 So. 2d 330, 338 (Fla. 1984) (a balancing test between the right of public access and a defendant's right to a fair trial must be applied so as to recognize the weightier considerations of the defendant).

This limitation on access through the restriction of portions of the category three and five recordings will be effective in protecting Defendant's fair trial rights. This protected information may be released at such time as Defendant's criminal case is finally determined by adjudication, dismissal, or other final disposition.

The Court finds the following recordings reveal the substance of a confession and are therefore exempt from public disclosure and confidential:

a) Of the category three video recorded on January 10, 2017: Time stamps: 12:47-19:49; 20:28-20:45; 21:50-27:40; 29:50-30:37; 32:25-38:22; 1:35:30-1:37:20; 1:39:37-1:43:10; and 1:43:33-1:44:10. Also: Time stamp: 45:00-45:32, pursuant to 119.071(2)(j), Florida Statutes.

b) Of the category five audio recorded on January 13, 2017: Time stamps: 2:19-3:00; 11:15-11:40; and 15:20-16:55.

In view of the above, it is:

ORDERED AND ADJUDGED that Defendant's "Motion for Temporary Order of Protection," filed on January 4, 2018, is hereby **GRANTED** to the extent that exempt and confidential materials contained within categories two, three, and five of "Defendant's Memorandum of Specific Objections" as detailed by the Court in the body of this Order, shall not be released to the public; Defendant's Motion is otherwise **DENIED**.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida this _____ day of _____, 2018.

ORDER ENTERED

FEB 02 2018

MARIANNE L. AHO
Circuit Judge

/S/ MARIANNE L. AHO

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