

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

STATE OF FLORIDA,)	CASE NO.: 18-1958CF10A
)	
Plaintiff,)	
)	JUDGE: SCHERER
v.)	
)	
NIKOLAS CRUZ,)	
)	
Defendant.)	

**ORDER ON DEFENDANT'S MOTION FOR PROTECTIVE ORDER
TO ENJOIN THE RELEASE OF THE DEFENDANT'S STATEMENT**

THIS CAUSE comes before the Court upon Defendant's June 6, 2018, "Motion For Protective Order to Enjoin Release of the Statement Made by the Defendant, or in the Alternative for *In Camera* Inspection by the Court to Limit Disclosure," the State's June 7, 2018, Response to Defendant's motion, Defendant's June 18, 2018, "Motion for Protective Order to Enjoin the Release of the Defendant's Statement and Request for Oral Argument" (superseding his motion of June 6), and the July 12, 2018, "News Media Parties' Memorandum in Opposition to Defendant's Motion for Protective Order on Defendant's Statement." Having considered Defendant's instant motions, the State's response, the News Media Parties' response, oral argument held before this Court during which all parties had the opportunity to present argument, applicable law, and being otherwise fully advised in the premises, this Court finds as follows:

The instant matter revolves around the potential public disclosure of the video and transcript of the statement given to police by Defendant, starting at 18:09:56 on the evening of February 14, 2018, and lasting until 05:13:07 the following morning (as time stamped on the video).

To begin, all parties are in agreement that Florida law exempts from public disclosure the substance of a confession of a person arrested until the case is fully resolved in the trial court. That is, pursuant to Section 119.071(2)(e), Florida Statute:

Any information revealing the substance of a confession of a person arrested is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

As such, no substance of any confession that Defendant made to police during the instant interrogation is subject to public disclosure at this juncture. However, portions of the statement remain which are subject to public disclosure, as not considered substance of a confession.

After the Defendant filed his motion of June 6th, and the State filed its motion of June 7th, this Court held a hearing on the matter on June 8, 2018. At that time, this Court took brief argument from the parties. It was further agreed that the State would provide to this Court both the full unredacted and the State's redacted versions of the transcript of Defendant's subject statement to police for *in camera* review. The State also provided to this Court the video of Defendant's statement to police.

This Court has since reviewed *in camera* both the original unredacted transcript of Defendant's statement to police, and the State's proposed redacted copy.

On July 16, 2018, after the filing of additional pleadings by Defendant and the News Media with regard to the instant matter, this Court held another hearing and allowed each party to present further argument.

At the July 16th hearing, counsel for Defendant argued that the Court should preclude the entire statement from being disclosed to the public, including those portions which are not exempt under Florida's public records law. The State stood by its proposed redactions submitted to the Court, and the News Media argued in favor of public disclosure

of the portions of the statement not considered 'the substance of a confession,' which it argued must be narrowly construed. At the hearing, this Court agreed that if it ordered the release of any portion of the subject statement, it would grant the parties ten days thereafter to decide whether to seek appellate review of the order. If no appeal was filed after the ten days, the State could release the portions of the statement as ordered, pursuant to any outstanding public records request.

I. Portions of Statement Not Subject to Public Disclosure

This Court now sets forth which portions of the subject statement shall *not* be subject to public disclosure. As the Second District Court of Appeal stated in *Times Publishing Company v. State*, 827 So. 2d 1020 (Fla. 2d DCA 2002):

Statutory exemptions to the public's right of access to records must be 'narrowly construed.'

...

The Times and the State cite to an Attorney General opinion for a narrow definition of 'substance of a confession.' See Op. Att'y Gen. Fla. 84-33 (1984). The Attorney General opinion defines 'substance of a confession' as 'the material parts of a statement made by a person charged with commission of a crime in which he or she acknowledges guilt of the essential elements of the act or acts constituting the entire criminal offense.'

Emphasis added. *Id.* at 1042.

Because this Court agrees with much of the State's proposed redactions, it hereby orders that all of the proposed redactions made by the State shall apply, subject to the following changes:

- Page 69, Line 22, starting at "If you..." through Page 69, Line 25 **shall not** be redacted;
- Page 107, Line 1, starting at "Do you do..." through Page 107, Line 20 **shall be** redacted;
- Page 109, Lines 15-17 **shall be** redacted;
- Page 111, Lines 19-25 **shall be** redacted;
- Page 112, Lines 1-25 **shall be** redacted;
- Page 123, Lines 17-24 **shall not** be redacted;
- Page 135, Lines 23-25 **shall be** redacted;

- Page 136, Lines 1-5, **and** Page 136, Lines 23-25 up until the word “Did” shall be redacted; the word “Did,” **shall not** be redacted.
- Page 168, Lines 5-25 shall be redacted;
- Page 195, Line 21, starting at, “This would...” through Line 25 shall be redacted;

This Court finds that the redactions proposed by the State, subject to the changes set forth above, constitute the ‘substance of a confession,’ and are exempt from public disclosure. As such, the State’s proposed redactions, *subject to the changes set forth above*, shall apply to the final copy of the transcript of Defendant’s statement which will be subject to public disclosure. The video associated with such redactions shall be edited as set forth herein, and the edited version will be subject to public disclosure.

II. Defendant’s Argument in Favor of Closure of Non-Exempt Portions of Statement

In Section (I) above, this Court has set forth which portions of Defendant’s statement are exempt from public disclosure under Florida law. With regard to the remaining portions of the statement, Defendant seeks closure of its entirety, arguing that the release of the remaining portion of the statement would result in prejudicial pretrial publicity, and would infringe on his constitutional right to a fair trial before an impartial jury.

When a party seeks to preclude disclosure of material which is not covered by an exemption under public records law, the parties agree that the court must apply the three-part test which was established by the Florida Supreme Court in *Miami Herald Publishing Co. v. Lewis*, 426 So. 2d 1 (Fla. 1982) and further referenced in *Florida Freedom Newspapers v. McCrary*, 520 So. 2d 32 (Fla. 1988). There, the Florida Supreme Court found that such an analysis includes consideration of 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.

See, Lewis, 426 So. 2d at 6.

Regarding the remaining portion of Defendant's statement, it is important to note that the 'substance of the confession' has been deemed exempt from public disclosure, and is not at issue. Moreover, "[T]hose seeking closure have the burden of producing evidence and proving by a greater weight of the evidence that closure is necessary, the presumption being that a pretrial hearing should be an open one." *Id.* at 8.

Defendant has failed to demonstrate that preventing public disclosure of statement is necessary to prevent a serious and imminent threat to the administration of justice. While it is true that this case has gained vast and widespread media coverage, this fact alone does not demonstrate that closure of the statement is required. The fact that the instant matter may be considered "high-profile," does not in itself give Defendant the right to close the flow of information to the public. No evidence was shown that public disclosure of the non-confession portions of the subject statement would result in a serious and imminent threat to the administration of justice in this case.

Next, Defendant has failed to show that no alternatives are available, other than change of venue, which would protect his right to a fair trial. First, Defendant has not demonstrated that release of the contents of the non-exempt portions of the statement would put his right to a fair trial at risk. Furthermore, as the Media correctly points out, the parties and this Court will undoubtedly have an opportunity to extensively question the venire on their specific knowledge of the case, and their abilities as individuals to fairly decide the issues in the case based on the evidence presented at trial. Defendant has failed to show that no alternatives are available, other than a change of venue, which would protect his right to a fair trial.

Finally, Defendant has failed to show that limiting public disclosure of the redacted statement would be effective in protecting his rights without being broader than necessary to accomplish this purpose. As the News Media correctly asserts in its pleading, extensive details about Defendant, his history, his behavioral history, and his actions during and after this incident, have already been widely reported. Withholding the non-confession, non-exempt portions of his statement from the public will not prevent further coverage of these proceedings.

This Court understands and holds solemn its obligation to ensure that Defendant receives a fair trial before an impartial jury. However, with respect to the non-confession portions of the statement at issue, this Court finds that Defendant has failed to meet his burden to demonstrate that closure is necessary.

For the reasons set forth herein, Defendant has failed to demonstrate that the portions of Defendant's statement which this Court, after an *in camera* review, deemed subject to public disclosure, should be subject to any closure. Rather, the State's redactions, subject to the changes noted by this Court in Part (I) of this order, shall be subject to public disclosure.

As noted, the State's proposed redactions, subject to the redactions and non-redactions set forth in Part (I) of this order, shall apply to the final copy of the transcript and video of Defendant's statement which will be subject to public disclosure. The State shall provide, forthwith, a copy the original transcribed statement including its initial proposed redactions (the same version it previously provided to this Court) to the defense, so it may readily assess, in conjunction with this order, what content of the statement will be subject to disclosure, and so it may further determine whether to seek appellate relief. This Court grants the parties ten days from the date of this order to decide whether to seek appellate

relief. During this ten day period, the State shall make the appropriate changes to the transcribed statement and video, as set forth herein, so that if no appellate review is sought by any party, both the redacted transcript of the statement, and the redacted video will be prepared and ready for release to the public.

This Court additionally notes, as an aside, that the instant order applies solely to the release of portions of the subject statement in compliance with the law on public records and disclosure, and does not bear on its admissibility at trial.

DONE AND ORDERED on this 26th day of July, 2018, in Chambers, Fort Lauderdale, Broward County, Florida.


ELIZABETH ANNE SCHERER
CIRCUIT JUDGE

Copies furnished to:

Office of the State Attorney
Office of the Public Defender
News Media Attorneys