

EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY,  
FLORIDA

CASE NO.: 05-2020-CA-034489

THE COURIER-JOURNAL, INC., d/b/a;  
FLORIDA TODAY newspaper,

Plaintiff,

v.

WAYNE IVEY, SHERIFF OF BREVARD  
COUNTY, in his official capacity,

Defendant.

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**DEFENDANT'S MOTION TO CLOSE THE COURTROOM DURING DISPLAY OF  
SECURITY VIDEO AND DURING TESTIMONY OR ARGUMENT AS TO ITS  
CONTENT, AND ALTERNATIVE MOTION FOR STAY OF PROCEEDINGS**

Defendant Brevard County Sheriff Wayne Ivey, by and through undersigned counsel, hereby moves the Court for entry of an Order which closes the Courtroom in a narrow range of circumstances to prevent disclosure of the jail security video or its contents. In the alternative should the Court deny that relief, Defendant requests that the Court enter a stay of proceedings pending an appeal of the Court's ruling on this matter. As grounds, Defendant states:

1. The Court has previously held that the Sheriff's withholding of the subject video from disclosure under Ch. 119 is in good faith pursuant to the exemption in §119.071(3)(a), Fla. Stat. The primary issue to be tried is whether the "good cause" exception to the exemption applies so as to require release of the video pursuant to a public records request from the Plaintiff.

2. Over Defendant's objection, the Court has ordered that copies of the video be produced to Plaintiff's counsel and to Dr. Roy Bedard, who Plaintiff will proffer as an expert at trial. The videos have been provided.

3. However, the Court has recognized that counsel and Dr. Bedard must strictly maintain the confidentiality of the video and may not disclose the video or its contents to anyone. Counsel and Dr. Bedard have also signed a strict confidentiality agreement which further memorializes the need to maintain the confidentiality of the video in all respects through trial of this matter, including their agreement not to disclose its contents to anyone other than their own immediate staffs. See Exhibit A.

4. It is anticipated that at trial the Plaintiff will seek to elicit testimony from Dr. Bedard or defense witnesses as to matters shown in the video, may even play portions of the video for the Court, or otherwise comment on or argue concerning what the video displays. Similarly, it is anticipated that witnesses who have seen the video or are otherwise aware of the security features of the jail overall, and including the security video monitoring and recording system, will testify as to secure aspects of the system and of the facility, generally.

5. Given the Court's prior Order, the confidentiality agreement, and the breach of the statutory exemption that would arise during any public or media disclosure of the video and related security matters at trial, Defendant moves the Court for entry of an Order which closes the courtroom to anyone other than Court, Court personnel, the Defendant, Plaintiff's counsel and Defense counsel, during display of the video or during testimony or argument that discloses its contents, or during discussion of the jail's security system.

6. The issue of closing a courtroom to the public or the media arises most frequently in the criminal context. See e.g. *Kovaleski v. State*, 103 So.3d 859 (Fla. 2012) (affirming closure of courtroom during testimony of the victim of a sex offense pursuant to statute). In the civil context the lead case is *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988).

7. *Barron* identifies five factors for the Court to consider. *Id.* at 118.

First, there is a strong presumption in favor of open courtrooms;

second, both the public and the media have standing to challenge any closure order and the burden is on the movant to prove it is justified;

third, closure is justified only when necessary “(a) to comply with established public policy set forth in the constitution, statutes, or case law; (b) to protect trade secrets; (c) to protect a compelling government interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matter protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed;”

fourth, the Court must find that there are no alternative methods to accomplish the desired result and closure must be done narrowly to accomplish the purposes to be served; and,

fifth, the burden to justify closure continues through the appellate process.

8. Here, showing or disclosing of the contents of the video during trial would *itself* violate the exemption and undermine the purpose of the Court’s prior Order and the confidentiality agreement entered into regarding production of the video. Closure during only those parts of the trial where the video is shown, its contents disclosed or argued, or security features of the jail discussed, would narrowly protect the exemption but allow public or media attendance at other times. There are no effective alternatives.

9. Florida courts also require that in criminal cases at least one member of the media must generally be given notice of a motion for closure of a criminal proceeding and be given an

opportunity to be heard on the motion. *Miami Herald Publ'g Co. v. Lewis*, 426 So. 2d 1, 7-8 (Fla. 1983). Here, to the extent that the rule applies to this civil case a member of the media – the Plaintiff - is on notice of the defense request to close the courtroom and may be heard on the matter.

10. The evidence and testimony in this case concerns a prior incident. In the event that the Court rules that the “good cause” exception applies so as to overcome the exemption, and such Order is sustained on appeal, at the conclusion of the litigation the video would be produced. Thus, closing the courtroom at select times of the trial would only have a temporary effect. On the other hand, without closure the exemption will be breached during the trial and there is no remedy should this Court or the appellate court find that good cause does not merit release of the video. Thus, should the Court deny this motion and allow public or press access to the trial during such time as the video is displayed, its contents revealed, or testimony or other evidence considered as to security features of the jail, Defendant respectfully submits that the statutory exemption requires that he file an interlocutory appeal, such as a Petition for Writ of Certiorari, and so the Defendant would request a stay of the proceedings, including trial, to undertake the appeal in those circumstances.

WHEREFORE, Defendant Sheriff Ivey moves the Court for an Order closing the Courtroom to everyone except the Court, Court personnel, the Defendant, and Plaintiff's counsel and Defense counsel, when the following occurs: the jail's security video is displayed; a witness testifies as to the content of the jail security video; a witness testifies as to the capabilities of the jail security system; or argument or discussion is heard as to either the contents of the video or the jail's security system. In the alternative, should the Court deny this motion, Defendant moves the Court for a stay of proceedings for the taking of an interlocutory appeal.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15th day of October, 2020 I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts eFiling Portal and served via electronic mail on: Edward L. Birk, Esq., *elb@marksgray.com*, Marks Gray, P.A., Post Office Box 447, Jacksonville, Florida 32201; Jessica J. Travis, Esq., *jessica@travislaw-brevard.com*, The Travis Law firm, PLLC, 1370 Bedford Drive, Suite 104, Melbourne, Florida 32940; Laura Moody, Esq., *laura.moody@bcso.us*, Brevard County Sheriff's Office, 340 Gus Hipp Blvd., Rockledge, Florida 32955 and Keith S. Kromash, Esq., *kskefile@n-klaw.com*, Nash & Kromash, LLP, 440 South Babcock Street, Melbourne, Florida 32901.



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EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY,  
FLORIDA

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DIV: CV-D

THE COURIER-JOURNAL, INC., d/b/a;  
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COUNTY, in his official capacity,

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**CONFIDENTIALITY AGREEMENT REGARDING DISCOVERY OF JAIL VIDEO**

WHEREAS, the Parties to the above-captioned action are engaged in discovery proceedings, which include, among other things, production of documents; and

WHEREAS, the Court has ordered production of the in-custody jail surveillance video of Gregory Edwards taken December 9, 2018, and submitted to this Court for *in camera* inspection, over Defendant's objections; and

WHEREAS, the production encompasses certain information relating to the Brevard County Jail Complex that WAYNE IVEY, in his official capacity as the SHERIFF of BREVARD COUNTY, deems confidential and has legitimate concerns regarding the disclosure of such information;

IT IS HEREBY STIPULATED AND AGREED, by the Parties hereto, through their undersigned counsel, that in order to facilitate the disclosure of the Brevard County Jail Complex Surveillance Video footage (hereinafter "BCSO Video") as set forth in Judge Dugan's Order dated

October 9, 2020, the parties to this action, by their undersigned attorneys, have entered into this Confidentiality Agreement.

### AGREEMENT

1. Any and all information obtained by the Plaintiff during the inspection of the Brevard County Jail Complex and the BCSO Video shall be deemed “Confidential Material” subject to the requirements of this Agreement.

2. The BCSO Video shall be designated Confidential Material and shall be clearly and conspicuously marked as “Confidential Pursuant to Agreement in THE COURIER-JOURNAL, INC. d/b/a FLORIDA TODAY, et al., Case No.: 05-2020-CA-034489, Brevard County Circuit Court,” or identifying the material with similar language referencing this Agreement and indicating that the material contains information claimed to be confidential within the meaning of the Agreement. The use of the word “confidential” shall be sufficient to trigger the terms of this Agreement.

3. Confidential Material subject to this Agreement may be used for purposes of this litigation only, and shall not be copied or disseminated or disclosed by the parties to anyone other than those listed in Paragraph 4 except by prior written agreement of the parties or by order of the court.

4. Confidential Material and the contents thereof may only be disclosed to the following individuals under the following conditions:

- a. Attorneys of record;
- b. Secretarial, paralegal, and clerical employees operating solely under the direction of the Attorneys.
- c. The court and court personnel under conditions deemed appropriate by the Court;

- d. Plaintiff's expert, Roy Bedard, provided he has signed this Confidentiality agreement ;
- e. Any deponent may be shown or examined on any Confidential Material if it appears that the witness authored or received a copy of it, was involved in the subject matter described therein, is currently employed by and/or was employed by the party who produced the Confidential Material, or if the producing party consents to such disclosure;

5. Confidential Material, copies thereof, and information contained therein may only be used by individuals listed in Paragraph 4, and shall not be copied, downloaded, disseminated or the contents disclosed in any manner to any other individual unless and until counsel for the Brevard County Sheriff's Office waives the claim of confidentiality. Counsel for the Plaintiff may confirm for the client that production of the video complies with the Order, but may not reveal the contents contained therein. This Confidentiality agreement shall last in perpetuity.

6. Where a deposition involves the disclosure of BCSO's Confidential Material, the parties will confer regarding whether portions of the transcript are to be designated Confidential. The deposition transcript portions designated as Confidential shall not be disclosed to anyone other than the deponent and individuals listed in Sections 4(a)-(e) above, and no individual attending the deposition shall disclose the contents thereof to anyone other than individuals listed in Sections 4(a)-(e) above. Upon being informed that portions of a deposition are to be designated Confidential, all parties shall immediately and appropriately mark each copy of the transcript in its custody or control, and shall limit disclosure of that transcript in accordance with Paragraphs 3 and 4.



7. Any party wishing to disclose Confidential Material during trial or at any hearing in this litigation may do so only as directed by the court after giving notice to the producing party.

8. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential Material that should have been designated as such shall not be deemed to waive BCSO's claim of confidentiality, in whole or in part, either as to the specific Material disclosed or to other Material concerning the same or related subject matter. Inadvertent or unintentional disclosures may be rectified by written notification given within a reasonable time after disclosure to counsel for all parties receiving the Material that the Material should have been designated Confidential. Such notice shall constitute a designation of the Material as Confidential under this Order.

9. This Agreement does not deprive any party of its right to object to discovery or further production of the video by any other party or on any otherwise permitted ground. This Agreement is entered without prejudice to the right of any party to move the court for modification of or relief from any of its terms. Additionally, this Agreement does not deprive any party of its right to object to the admissibility of the Material at trial.

10. This Agreement survives the termination of this litigation and remains in full force and effect in perpetuity unless modified by order of the court or by written stipulation of the parties filed with the court.

11. Pursuant to the Order of the Court dated October 9, 2020, each party or other individual subject to this Agreement shall assemble and return all original and unmarked copies of Confidential Material to the originating source as directed, and shall not make or retain any copies of Confidential Material; provided, however, that counsel may retain complete copies of all transcript and pleadings, including any exhibits attached thereto, for archival purposes subject to

the provisions of this Agreement. To the extent a party requests the return of Confidential Material from the court following final conclusion of this litigation, including the exhaustion of all appeals therefrom and all related proceedings, the party shall file a motion seeking such relief.

DATED: \_\_\_\_\_

**Edward L. Birk** Digitally signed by Edward L. Birk  
Date: 2020.10.09 16:22:50 -04'00'

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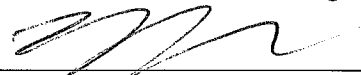
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