

EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA

CASE NO.: 05-2020-CA-034489
DIV: CV-D

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

Plaintiff,

v.

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

Defendant.

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

Plaintiff THE COURIER-JOURNAL, INC., d/b/a FLORIDA TODAY newspaper ("FLORIDA TODAY"), through counsel responds to Defendant Wayne Ivey, Sheriff of Brevard County's ("BCSO") 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 filed on October 15, 2020 and states:

1. The extraordinarily high burden of proof for closure of access to court proceedings shall always be on the party seeking closure. *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. 1988). *See also Miami Herald Publ'g Co. v. Lewis*, 426 So. 2d 1, 7 (Fla. 1982); *Morris Communs. Co. v. State of Florida/Stephen Lee Edmonds*, 844 So. 2d 671 (Fla. 1st DCA 2003).

2. Pursuant to the Order on Plaintiff's Motion to Release the Gregory Edwards Jail Video to FLORIDA TODAY's Counsel and Expert, the parties have entered into a Confidentiality Agreement. BCSO's Motion to Close, Exhibit A. The Confidentiality Agreement and the

foregoing Order already place limitations and restrictions on FLORIDA TODAY's ability to display the video in open court.

3. BCSO requests not only that the courtroom be closed to the public during display of the video, but during testimony or argument that discloses its contents, or during discussion of the jail's security system. The request is overbroad as much of the already released public records and statements by BCSO and their personnel disclose the content of the video. The scope of BCSO's request would make the entirety of the proceedings closed to the public.

4. BCSO is not only requesting that the public be excluded from trial, but also requests that FLORIDA TODAY, the Plaintiff in this case, also be excluded during any discussion of what appears on the video or argument relating thereto.

5. BCSO is correct that *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. 1988) controls as to this Court's determination of whether Plaintiff and the public will be denied access to the trial).

6. BCSO's requested closure, however, is overbroad and granting the request without closer examination of specific evidence, testimony or argument would not achieve a closure narrowly tailored to accomplish the purposes to be served. Further, there is not a compelling government interest in precluding generalized testimony and argument regarding the content of the video. BCSO equates public display of the video with disclosing the content of the video but that is a false equivalence. BCSO has already specifically disclosed which security features are purported to appear in the video.¹ Testimony and argument regarding the content of the video will address:

¹ Defendant's Memorandum of Law Concerning Confidentiality and Exempt Status of the Requested Recordings Pursuant to Fla. Stat. §§ 281.301(1) and 119.071(3)(a); Pg. 5.

Specifically, production of the surveillance video footage would reveal several aspects of the Brevard County Jail Complex's security system including locations of surveillance cameras and control and monitoring of the system and facility; firesafety alarms and equipment; ventilation systems; equipment that can be utilized for weaponry; points of entry and exit from the Jail Complex; locations to conceal or retrieve contraband; location, movement and operations of corrections deputies; booking procedures and operation plans of BCSO; security monitors; locking mechanisms for cell doors and physical layout of the exterior and interior of the Brevard County Jail Complex; locations which are concealed

- a. Whether the purported security features appear in the video;
- b. Whether those purported security features which do appear in the video (i) were previously “revealed” to the public and are no longer secret, or (ii) no longer exist as they appear in the video; and
- c. Whether those purported security features can be redacted from the video to minimize or eliminate any impact disclosure of the video to the public would have on the public’s interest in maintaining secrecy in the security system.

7. Such argument and testimony, without more, do not rise to the same level as public display of the video itself and there is lacking a compelling government interest in barring the public and Plaintiff from the courtroom in this case under those circumstances.

8. BCSO’s overbreadth in the request as to the argument and testimony regarding content of the video is that it would effectively close the entirety of the trial. BCSO’s own criminal death investigation and staff services investigation reports are public records and discuss the content of the video. Any argument or testimony as to the appearance of Gregory Edwards on camera in the Brevard jail on December 9, 2018 would trigger BCSO’s requested closure.

9. BCSO’s desired result is no public disclosure of purported security features at the Brevard jail beyond what is already disclosed to the public, and that result can be achieved through alternative, narrower means.

10. FLORIDA TODAY’s counsel and expert have no intention of violating the Confidentiality Agreement or the Order under which access to the video was made available. BCSO has the burden of justifying closure of the courtroom and here such request is atypical in that it not only seeks to bar the public, but also a party to the litigation as well.

11. Notwithstanding the foregoing, FLORIDA TODAY will confer with counsel for BCSO to determine if BCSO can identify specific items that BCSO believes would justify closure,

from security surveillance view; the restricted area and pharmacy location in the Medical Unit; and of utmost concern—all aspects of the Booking area of the Brevard County Jail Complex.

and understands the Court must consider each request for closure narrowly in the context of the factors set forth in *Barron*. BCSO's prayer for alternative relief of a stay pending appeal is unnecessary as 1) FLORIDA TODAY will confer with opposing counsel to determine specific closure requests, and 2) the Court has authority to consider each closure request individually at the time each request is made and not prematurely.

WHEREFORE, FLORIDA TODAY respectfully opposes the full, undefined scope of BCSO's request for wholesale and premature closure of the trial as being overbroad, not narrowly tailored, and not in furtherance of a compelling government interest.

/s/Logan K. McEwen

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that the foregoing document was filed on October 19, 2020 through the Florida E-Portal filing system, which will serve a notice of filing and a copy of the foregoing upon:

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