

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO: 09-CF-007933

v.

RICHARD ANTHONY MCTEAR,
Defendant.

DIVISION: E

**ORDER DENYING DEFENDANT'S VERIFIED MOTION FOR TEMPORARY
PROTECTIVE ORDER WITH RESPECT TO DISCOVERY MATERIAL BECOMING
SUBJECT TO CHAPTER 119 AND TO PROHIBIT AGENTS AND EMPLOYEES OF
THE HILLSBOROUGH COUNTY STATE ATTORNEY'S OFFICE, THE
HILLSBOROUGH COUNTY SHERIFF'S OFFICE, THE HILLSBOROUGH COUNTY
CLERK'S OFFICE, THE PUBLIC DEFENDER'S OFFICE, THE HILLSBOROUGH
COUNTY MEDICAL EXAMINER'S OFFICE AND THE FLORIDA DEPARTMENT OF
LAW ENFORCEMENT FROM MAKING EXTRAJUDICIAL COMMENTS AND
MOTIONS FOR EVIDENTIARY HEARING, REQUEST FOR JUDICIAL NOTICE AND
IN CAMERA REVIEW AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

THIS MATTER comes before the Court on this 17th day of June, 2009, on the Defendant's Verified Motion for Temporary Protective Order with Respect to Discovery Material Becoming Subject to Chapter 119 and to Prohibit Agents and Employees of the Hillsborough County State Attorney's Office, the Hillsborough County Sheriff's Office, the Hillsborough County Clerk's Office, the Public Defender's Office, the Hillsborough County Medical Examiner's Office and the Florida Department of Law Enforcement from Making Extrajudicial Comments and Motions for Evidentiary Hearing, Request for Judicial *in camera* Review and Memorandum of Law in Support Thereof (the "Defendant's Motion"), filed pursuant to Florida Rule of Criminal Procedure 3.220, on June 11, 2009.

In his motion, the Defendant requests that this Court enter a protective order limiting the availability of discovery under the Public Records Act, Chapter 119, Florida Statutes (the Public

Records Act). Defendant requests that no discovery be permitted to become subject to the Public Records Act either:

1. Until it has been reviewed *in camera* and found by the Court to be non-prejudicial to Defendant's constitutional rights;
2. Until such time as the criminal charges against Defendant are finally determined by adjudication, dismissal, or other final disposition; OR,
3. Until such time as a jury has been selected and sequestered.

The Defendant also requests that the Court issue a gag order. More specifically, Defendant requests the Court order the agents and employees of the Hillsborough County State Attorney's Office, the Hillsborough County Sheriff's Office, the Hillsborough County Clerk of Court's Office, the Public Defender's Office, the Hillsborough County Medical Examiner's Office and the Florida Department of Law Enforcement to refrain from making any extrajudicial comment concerning this cause, the parties, or any issue related to these matters during the pendency of this matter and until such time as the case is finally determined by adjudication, dismissal, or other final disposition. The Court having considered the motion and attachments, the court file and record, as well as the argument of counsel for the State of Florida, this Defendant as well as the various local media, finds as follows:

The Defendant in this cause was arrested on May 5, 2009, for Murder in the First Degree, Kidnapping, Aggravated Child Abuse, Burglary of a Dwelling, Felony Battery, False Imprisonment, Burglary of a Dwelling with Assault or Battery, and Battery. The Defendant was indicted in Case No. 09-CF-7933, and arraigned on May 20, 2009, for Murder in the First Degree, Burglary of a Dwelling with Assault or Battery, Aggravated Child Abuse, Kidnapping with Harm or Terrorizing, and Battery Second or Subsequent Offense. By and through Counsel, the Defendant pled not guilty to all charges in 09-CF-7933 and demanded discovery from the Office of the State Attorney pursuant to Rule 3.220, Fla.R.Cr.P.

The Court notes the extensive electronic and print media coverage of the events surrounding these criminal allegations against this Defendant.

The Public Records Act was enacted by the legislative and executive branches of this state government to ensure that the public receives virtual total access to matters which are part of the public record. Discovery materials in the possession of the State become available to the media and the public under the Public Records Act when they are furnished to a defendant. See Satz v. Blankenship, 407 So. 2d 396 (Fla. 4th DCA 1981).

The Defendant's requested protective order would constitute a prior restraint on speech which bears the presumption of constitutional invalidity. See, State ex. rel. Miami Herald Pub. Co. v. McIntosh, 340 So. 2d 904, 908 (Fla. 1977). A member of the press, under certain circumstances, may be properly considered a representative of the public and both the public and the press have both a constitutional and statutory right to see and know what occurs within their courtrooms. See McIntosh, id. This Court has long noted the absolute responsibility of the Judiciary as the third "separate but equal" branch of our state government to ensure the rights of all citizens of this great State. As such, the Court must consider the rights of the public to full knowledge of the activities involved within these proceedings. It is only through such public scrutiny and supervision that any branch of government can effectively and honestly function consistent with our obligation and oath to perform our duties as a government of, by, and for the people. It is this transparency with respect to all judicial activities and action that leads to public trust and confidence in these pre-trial and trial proceedings. It is ultimately this public trust and confidence which ensures fundamental fairness for this Defendant. Against these concerns, a court must balance the rights of a criminal defendant to a fair trial, which include a fair and impartial jury.

The Defendant argues that the publicity in this case has been pervasive and prejudicial to his constitutional rights. He argues that the potential jury pool might become tainted with

additional adverse publicity. He states that his ability to receive a fair trial in this county stands in danger of being prejudiced without the requested protective order and a gag order.

In reviewing the motion, this Court has carefully considered and balanced the factors set forth in Miami Herald Pub. Co. v. Lewis, 426 So. 2d 1 (Fla. 1983). These factors require that this Court consider the following: 1) whether the restriction is necessary to prevent a serious and imminent threat to the administration of justice; 2) whether there are other alternatives available, apart from a change of venue, which would protect a defendant's right to a fair trial; and, 3) whether the restrictions would be effective in protecting the rights of the accused.

At this point in these proceedings, it is premature to characterize the current adverse publicity as a serious and imminent threat to the administration of justice. It has not been shown that Defendant's right to a fair trial is in any reasonable way threatened by the reports surrounding the trial and the parties. The argument that members of the public will lack impartiality due to the existence of adverse reports in the news is not compelling. Moreover, this Court has the responsibility to ensure the fundamental fairness of these proceedings and possesses the inherent authority to take any means necessary to ensure such fairness.

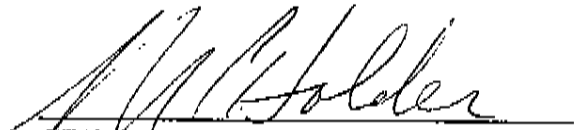
For some members of the public, these matters are an important event and are worthy of public discussion. This does not imply the partiality of these individuals; merely their interest and their absolute right to be informed of these proceedings and this process. For others in the community, the events giving rise to this case may have been noted and dismissed. And yet, for some members of the community, even these reports noted by the Defendant, have drawn no interest or attention. Ignorance of such publicity may yet ensure their impartiality. Testing the impartiality of potential jurors in this case is ultimately best left to the process of voir dire. The fact that new evidence or opinions can be expected to arise during the discovery process does not militate against this conclusion. Further, it is axiomatic that this case will not reach trial in the

near future due to the protracted nature of discovery and pretrial matters in cases carrying even the potential of the ultimate penalty.

The Court finds that *in camera* review of discovery is not required to ensure that this Defendant receives a fair trial before an impartial jury. The Court likewise finds that a protective order prohibiting discovery from becoming subject to the Public Records Act is not necessary to ensure that Defendant receives a fair trial before an impartial jury. As for the gag order, the Court notes that Rule 4-3.6 of the Rules Regulating the Florida Bar specifically prohibits an attorney and an attorney's agents or employees from making any prejudicial extrajudicial statements. A gag order is, quite simply, unnecessary at this time as this Court fully expects and hereby Orders all Officers of this Court to meet their professional obligations consistent with their Oath to God, when sworn as members of The Florida Bar.

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Defendant's Motion is hereby **DENIED**.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this 17 day of June, 2009.


GREGORY P. HOLDER, Circuit Judge

Copies provided via hand delivery to:

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