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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 2020-CF-002603-A-O

DIVISION 20

STATE OF FLORIDA,

Plaintiff,

vs.

SARAH BOONE,

Defendant.
_____/

MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF OPPOSING CLOSURE

WFTV-TV Channel 9 ("WFTV") moves to intervene in this action for the limited purpose of opposing closure of judicial proceedings. In support thereof, the WFTV states as follows:

1. WFTV has covered the murder of Jorge Torres and the arrest, investigation and prosecution of Defendant Sarah Boone. Reporters from WFTV attend court proceedings and rely upon state, county and local public records, as well as judicial records, as part of their newsgathering process.

2. This Court has set a physical viewing of the evidence for September 3, 2024, and is set to consider the media's attendance at the viewing during a hearing on August 14, 2024.

3. Any closure of the physical viewing directly affects the media's and the public's right to monitor this important criminal proceeding. As such, WFTV has standing to intervene

and oppose any requested closure. See, e.g., Miami Herald Publ'g Co. v. Lewis, 426 So. 2d 1, 7 (Fla. 1982).

4. WFTV would like to be heard in this matter and asserts that any requested closure should be denied.

5. Florida has traditionally served as a model for open government and courts. It is well-settled in this State that criminal court proceedings are presumptively open to the public. The Florida Supreme Court has stated that "a trial is a public event [and] [w]hat transpires in the courtroom is public property." Lewis, 426 So. 2d at 7 (quoting Craig v. Harney, 331 U.S. 367, 374 (1947)).

6. Therefore, when considering a request to close court proceedings, this Court "should begin its consideration with the assumption that a pretrial hearing be conducted in open court unless those seeking closure carry their burden to demonstrate a *strict and inescapable necessity* for closure." Id. at 8 (emphasis added). In order to justify closure, the moving party must meet an exacting standard and show:

a. Closure is necessary to prevent a serious and imminent threat to the administration of justice;

b. No alternative, other than a change of venue, would protect the defendant's right to a fair trial; and

c. Closure would be effective in protecting the rights of the accused, without being broader than necessary to accomplish this purpose.

Id. at 6-7.[1]

[1] This test also applies to requested closure of discovery materials, which are public record. See Florida Freedom Newspapers, Inc. v. McCrary, 520 So. 2d 32, 35 (Fla. 1988) ("we hold the factors set out in Lewis are relevant to a finding of cause and should be considered in determining whether public access to a judicial public records should be restricted or deferred"); Times Pub. Co. v. State, 903 So. 2d 322, 325 (Fla. 2d DCA 2005) (once discovery information is disclosed to a criminal defendant, that information becomes non-exempt public record).

7. First, closure is not necessary to prevent a serious and imminent threat to the administration of justice. Importantly, the fact that the proceeding will involve viewing evidence does not alter this Court's Lewis analysis. See State v. Lugo, 35 Med. L. Rptr. 1348 (Fla. 13th Cir. Ct. Sept. 19, 2006) ("The need to examine evidence for its admissibility is not one of the prongs set forth in Lewis, and is not sufficient to justify closure . . ."); State v. Kozma, 1994 WL 397438 (Fla. 17th Cir. Ct. Feb. 4, 1994) (suppressing a defendant's statement that included "potentially damaging admissions" but refusing to seal the statement because "[e]ven where pretrial publicity includes publication of inadmissible evidence or confessions, a defendant can still receive a fair trial.")

8. And any attendant publicity is not synonymous with prejudice. As the Supreme Court explained,

> [p]rominence does not necessarily produce prejudice, and juror impartiality, we have reiterated, does not require ignorance. Jurors are not required to be totally ignorant of the facts and issues involved; scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. Every case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits. A presumption of prejudice, our decisions indicate, attends only the extreme case.

Skilling v. U.S., 561 U.S. 358, 381 (2010) (citations omitted); See also Nebraska Press Assoc. v. Stuart, 427 U.S. 539, 554 (1976) ("Pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial"). As such, media attention alone is not a sufficient basis for closure. See Kozma, 1994 WL 397438 (noting "even massive pretrial publicity about a case is not enough to show a serious and imminent threat to the administration of justice or to the denial of fair trial rights").

9. Second, alternatives to closure exist to protect the Defendant's fair trial rights. For example, traditional techniques during jury selection can be used to insulate the jury from the consequences of publicity. See Lewis, 426 So. 2d at 7 (noting that when considering whether there is an imminent threat to a defendant's fair trial rights, a court should consider "whether traditional judicial techniques to insulate the jury form the consequences of such publicity will ameliorate the problem"); State v. Sharrow, 29 Med. L. Rptr. 2503 (Fla. 17th Cir. Ct. Aug. 13, 2001) (finding Defendant failed to meet burden to justify closure of suppression hearing, in part, because the court could effectively protect the defendant's right to a fair trial through the jury selection process and insulate an impaneled jury from additional coverage).

10. Finally, closure would be ineffective and broader than necessary to protect the Defendant's fair trial rights. When "prejudicial information already has been made public, there would be little justification for closing a pretrial hearing in order to prevent only the disclosure of details which had already been publicized." Lewis, 426 So. 2d at 8. Here, this matter has been public since its inception, and there is no need to close proceedings now. See State v. Bush, 31 Med. L. Rptr. 2194, 2199 (Fla. 9th Cir. Ct. Oct. 15, 2002) ("There is no doubt that in this particular case, the information has already been well publicized. Accordingly, this Court finds that Defendant cannot meet her burden under Lewis"); State v. Smith, 34 Med. L. Rptr. 2336, 2339 (Fla. 2d Cir. Ct. July 6, 2006) ("As to the third prong of the Lewis test, the Defendant failed to show that granting his motion would be effective in protecting against the perceived harm. Since much of this information has already been made public, there is little justification for granting the motion").

11. Rather than a hindrance to the administration of justice and Sixth Amendment rights, heightened public attention only increases the need for the "appearance of fairness so

essential to public confidence in the system." Press Enter. Co. v. Superior Court of Cal., 464 U.S. 501, 508 (1984). Publicity is vital to an open and accountable judicial system. As former Supreme Court Chief Justice Berger explained, "[w]ithout publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account." Id. at 509.

12. Closure of judicial proceedings should be ordered only when there is a serious and imminent threat to a Defendant's right to receive a fair trial. And even then, alternatives must be considered and restrictions must be narrow. In this case, there is no strict and inescapable necessity for closure and this Court should deny any such request.

WHEREFORE, WFTV requests that this Court allow it to intervene in this matter for the purpose of opposing closure and deny any requested closure of the September 3, 2024 proceeding.

Respectfully submitted,

SHULLMAN FUGATE PLLC
/s/ Rachel E. Fugate
Rachel E. Fugate
Florida Bar No. 144029
rfugate@shullmanfugate.com
100 South Ashley Dr., Suite 600
Tampa, Florida 33602
Tel: (561) 429-3619

Attorneys for WFTV

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has was filed with the Clerk of the Court this 12th day of August, 2024 by using the Florida Court E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Sarah Boone, #20005623, FDC-B4, P.O. Box 4970, Orlando, FL 32802-4970, by Regular U.S. Mail on this 12th day of August, 2024.

/s/ Rachel E. Fugate
Rachel E. Fugate