

IN THE COUNTY COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA

v.

NIKOLAS CRUZ,
Defendant.

CASE NO.: 18-001958CF10A

JUDGE: SCHERER

**DEFENDANT'S REPONSE TO ORDER REQUIRING RESPONSE
AND
NEWS MEDIA'S MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF
OPPOSING REQUESTS TO LIMIT PUBLIC ACCESS**

The Defendant, NIKOLAS CRUZ, by and through the undersigned attorney, pursuant to the Court's Order Requiring Response, hereby alleges and states the following:

1. On February 20, 2018, Counsel for ABD, Inc., ALM Media, LLC, Graham Media Group, Inc., NBC Universal Media, LLC, Scripps Media, Inc., Univision Communications Inc., WFTV, LLC, and WPLG Inc., forwarded a three (3) page letter that asked the Court to (1) direct the Clerk of Court to provide public access to the complete docket and court file (with the exception of any records specifically made confidential) in this matter, (2) to provide to Media notice and an opportunity to be heard concerning any future requests for closure or records or proceedings in this matter, and (3) to unseal the motions requesting and orders authorizing the sealing so as to permit the Media to assess whether the closure of the underlying defense filing was warranted.
2. On February 20, 2018, this Court seemingly viewed this correspondence as a petition to intervene in this matter and entered an order requiring the Defendant and the State to respond the "Media Request Letter."
3. On February 20, 2018, Counsel for the Associated Press; Cable News Network, Inc.; Dow Jones & Company; the First Amendment Foundation; the Florida Press Association;

Gannett Co., Inc.; GateHouse Media, LLC; Los Angeles Times Communications LLC; The McClatchy Company; Nexstar Broadcasting, Inc.; The New York Times Company; Orlando Sentinel Communications Company, LLC; Reporters Committee for Freedom of the Press; Sun-Sentinel Company, LLC; Sunbeam Television Corporation; and TEGNA filed a “News Media Motion to Intervene for the Limited Purpose of Opposing Requests to Limit Public Access.”

4. The News Media’s Motion to Intervene seeks to (1) gain limited access to these proceeding, specifically to the motions requesting and orders authorizing the sealing of court records, and (2) demands that the Media be provided with notice in the future of any closures or restrictions sought.

5. On February 19, 2018, at a hearing in this matter, this Court indicated that it had an opportunity to review motions and pleadings under seal.

6. On February 19, 2018, during a morning hearing, this Court noted that it was not the Court’s intent to set aside the order purportedly placing motions and pleading under seal. (*Transcript of Hearing*, February 19, 2018, at page 5, line 12-14). The Court did however note that it disagreed with the order previously entered by another circuit court judge.

7. On February 19, 2018, at the afternoon hearing, this Court after thoroughly reviewing the materials, stated the motions filed under seal dealt solely with the Defense Counsel’s access to the defendant while he is held in the Broward County Jail. (*Transcript of Hearing*, February 19, 2018, at page 12, line 21-24). The Court further noted that the State had suffered no prejudice by keeping these matters confidential and under seal. (*Transcript of Hearing*, February 19, 2018 at page 12, line 25 through page 13, line 1-2).

8. The Court ruled that it would “leave everything the way it is” with respect to the motions and orders under seal. (*Transcript of Hearing*, February 19, 2018, at page 13, line 2-3). The

Court stated that an “order has already been entered. Again, I believe I made it clear on Friday that I didn’t feel it should be confidential, and said it for today. But what is done is done. Again, it deals solely with the public defender’s access – or defense’s access to their own client’s person, which had the state been noticed, I don’t think the state would have any objection or any standing to object to them accessing their own client. Because the issue is so very limited, as far as I can tell, I’m going to leave it the way it is.” (*Transcript of Hearing*, February 19, 2018, at page 13, line 13-23).

9. The sealed motions and orders that are the subject of the Media’s inquire should continue under seal and remain confidential to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice. Rule, 2.420(c) (9), Fla. R. Jud. Admin. (2018). The defendant has “a constitutional right to a fair trial by a jury, uninfluenced by matters or people outside the courtroom.” *Sarasota Herald-Tribune v. State*, 916 So. 2d 904 (Fla. Dist. Ct. App. 2005); See also, *State ex rel. Miami Herald Pub. Co. v. McIntosh*, 340 So. 2d 904, 909 (Fla. 1976).

10. Moreover, this Court cannot reverse the prior order of another circuit court judge. *Hewlett v. State*, 661 So. 2d 112, 115 (Fla. 4th DCA 1995), citing *Boeing Co. v. Merchant*, 397 So.2d 399, 401 (Fla. 5th DCA 1981), *rev. denied*, 412 So.2d 468 (Fla.1982). Even successor judges have only limited authority to issue orders inconsistent with a predecessor’s ruling “to avoid unseemly contests and differences.” *Hewlett*, 661 So. 2d at 115. If this Court were to vacate the order sealing documents and pleading it would be exceeding its authority and acting in an appellate capacity over another circuit court judge.

11. Therefore, the Defendant moves this Honorable Court to deny the Media's request to unseal the motion requesting and the order authorizing the sealing, as such would place this Court in an appellate position with respect to the orders entered by another circuit court judge.

12. The Defendant is without objection to the Media's request to have access to the complete docket and court file (with the exception of any records specifically made confidential) in this matter and, if the Court find that the Media has standing, to provide the Media through notice to Counsel an opportunity to be heard concerning any further requests for closure in this matter.

WHEREFORE, the Defendant respectfully requests this Honorable Court to grant this Motion for Continuance and set the Trial in this cause for a later date.

I HEREBY CERTIFY that this motion is being filed in good faith and not for purposes of delay.

Respectfully submitted,

s/ GORDON WEEKES

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney at courtdocs@sao17.state.fl.us, Broward County Courthouse, Fort Lauderdale, Florida; Deanna Kendall Shullman at dshullman@shullmanfugate.com, Shullman Fugate PLLC, 2101 Vista Pkwy Ste 4006, West Palm Beach, FL 33411-2706; and Dana J. McElroy at dmcElroy@tlolawfirm.com, 915 Middle

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601 South Boulevard, Tampa, FL 33606; and Jon M. Philipson at jphilipson@tlolawfirm.com,
601 South Boulevard, Tampa, FL 33606, this February 22, 2018.

HOWARD FINKELSTEIN
Public Defender
17th Judicial Circuit

s/ GORDON WEEKES

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