

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

STATE OF FLORIDA

vs.

NIKOLAS JACOB CRUZ,
Defendant.

CASE NO. 18001958CF10A

JUDGE: SCHERER

**ATTACHMENT/EXHIBIT TO EXHIBIT "B" TO DEFENSE'S MOTION TO
DISQUALIFY**

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, SHARI TATE, at courtdocs@sao17.state.fl.us,
Broward County Courthouse, Fort Lauderdale, Florida, this February 23, 2018.

HOWARD FINKELSTEIN
Public Defender
17th Judicial Circuit

s/ MELISA MCNEILL

MELISA MCNEILL
Florida Bar No. 475408
Assistant Public Defender
Attorney for the Defendant
discovery@browarddefender.org
(954) 831-6750

EXHIBIT "B"

AFFIDAVIT OF DEFENDANT

The undersigned affiant, Nikolas Cruz, under penalty of perjury, deposes and states on February 23, 2018, as follows:

1. I am the defendant in this case and charged with 17 counts of premeditated first degree murder.
2. The Law Office of the Public Defender was appointed to represent me on February 15, 2018.
3. My attorneys advised me of the following:
 - a. That they filed emergency motions following the confidentiality procedures set forth in Rule 2.420 Rules of Judicial Administration on February 16, 2018;
 - b. That on February 16, 2018, they repeatedly contacted this Court's office and were finally advised at 2:20 p.m. that the court would not hear the emergency motions until Monday, February 19, 2018;
 - c. That they then learned that the judicial assistant for Criminal Administrative Judge Andrew Siegel was on vacation;
 - d. That they believed these motions required immediate court attention and I would suffer prejudice if they were forced to wait until February 19, 2018, for a ruling.

- e. That they next contacted the Honorable Chief Judge Jack Tuter to intervene and assign a judge to hear the emergency confidential motions.
- f. That Judge Tuter instructed them to contact Judge Carlos Rebollo, the assigned duty judge on February 16, 2018;
- g. That Judge Rebollo held the emergency confidential hearing late afternoon February 16, 2018, and signed the orders finding the pleadings confidential at approximately 5:07 p.m.;
- h. That they attempted to cancel the hearing scheduled for Monday, February 19, 2018, only to be instructed by this Court's office that the hearing would not be cancelled and counsel must appear;
- i. That during the hearing the morning on February 19, 2018, the court *sua sponte*, without any request from the state, stated "I do intend to make the pleadings available to the state, unless you can give me some type of legal reason other than 3.220, which I don't believe applies, or any other law that you've cited in your motion that would justify an *ex parte*, confidential, closed, sealed hearing";
- j. That the Court further stated, again without any objection or argument from the state: "I just think that the state has a right to have notice and to be present" ;

- k. That the Court also stated “My concern is that I don’t believe there’s any legal authority that supports sealing these documents and sealing this record.”
- l. That the court disputed counsel’s good faith request to hold an *ex parte* hearing as authorized by the ruled and did not request the state’s input before becoming a participant in the proceedings and advocating for both the state and others to obtain access to the sealed records: “It’s not just the state. It’s the state and whoever wants to get it. I believe it’s public record as any pleading in a criminal case”;
- m. That Florida Rule of Judicial Procedure 2.420(j) specifically provides a procedure to obtain access to confidential court records.
- n. That access may be granted upon the filing of a written motion which must identify the records sought, the basis for seeking access, the legal authority for obtaining access and a certification that the motion is made in good faith and is supported by a sound legal and factual basis;
- o. That no motion was filed for access to confidential court records pursuant to Rule 2.420 (j) Rules of Judicial Administration at the time of the hearing and no objection was made by the state until well after the court advocated for the state’s access.

p. That the court established a policy that it would never hear any confidential motions outside the presence of the state” “ If there is a motion to keep something confidential, the motion, at the very least, is going to be heard by this court in the presence of all of the lawyers and the defendant.”

4. I have a reasonable belief that this Court left its role as a neutral and impartial arbiter as evidenced by its *sua sponte* statements that it intended to release records ordered confidential by another circuit court judge without a motion or request being filed by the state, even though this Court does not sit in an appellate capacity over another circuit court judge.

5. I have a reasonable belief based on the court’s advocacy for the state and “whoever wants to get it” that the court is biased in favor of the state and prejudiced against me and that I will not receive a fair trial in this matter.

6. I have a reasonable belief that this Court established a policy to never conduct an *ex parte* hearing to determine whether motions filed by my attorney are confidential court records.

7. I have read the Motion to Disqualification of Judge and certify that it is true and correct.

Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated are true.

Nikolas Cruz
Nikolas Cruz
Defendant