

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

STATE OF FLORIDA,

CASE NO.: 2008-CF-15606-O

DIVISION: 10

Plaintiff,

vs.

CASEY MARIE ANTHONY,

Defendant.
_____ /

ORDER DENYING MOTION TO SEAL PENALTY PHASE DISCOVERY

THIS CAUSE came before this Court for hearing on December 20, 2010, on the Defendant's Motion to Seal Penalty Phase Discovery filed on December 3, 2010, pursuant to Florida Rule of Criminal Procedure 3.220(1). After carefully considering the Motions, arguments of counsel, and the law, the Court finds and determines as follows:

Counsel for the defense petitions this Court to enter a protective order pursuant to Florida Rule of Criminal Procedure 3.220(1), sealing or exempting from public access certain penalty phase discovery. Specifically, counsel for the defense wishes to preclude the release of the penalty phase witness list, which this Court ordered disclosed on November 30, 2010. Counsel for the *Orlando Sentinel* ("Sentinel"), a local daily newspaper granted standing by the Court, has filed a motion in opposition.

The issue thus presented is whether or not the Court must seal this discovery from public access in order to ensure the Defendant's right to a fair trial. For the reasons discussed *infra*, the Court finds that the requested action is not required.

Rule 3.220(1) provides that *upon a showing of good cause*, the Court may "order specified disclosures be restricted, deferred, or exempted from discovery." Fla. R.

Crim. P. 3.220(1). (Emphasis supplied).

Before court or public records may properly be closed on fair-trial grounds, this Court must specifically identify the factors that threaten the administration of justice and weigh all reasonable alternatives to mitigate the perceived threats. Only then, after development of a full record on these issues, may a court narrowly fashion a remedy that accommodates the public's interest alongside that of the criminal justice system.

Specifically, this Court must apply the three-part test referenced in *Florida Freedom Newspapers v. McCrary*, 520 So. 2d 32 (Fla. 1988), and established in *Miami Herald Publishing Co. v. Lewis*, 426 So. 2d 1 (Fla. 1982). Such findings can only be made after a careful analysis of the following factors:

- a. Restricting public access to discovery material is necessary to prevent a serious and imminent threat to the administration of justice;
- b. No alternatives, 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.

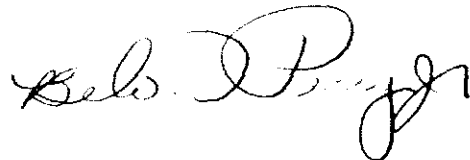
Lewis 426 So. 2d at 6; *McCrary*, 520 So. 2d at 35.

Bearing the preceding principles in mind, the Defendant's claim fails. As a threshold matter, the Court agrees with the Sentinel that the Defense bears the burden of proof in sealing this penalty phase discovery. It is well-settled that the party seeking closure has the burden of proving by the greater weight of the evidence that closure is necessary to prevent a serious and imminent threat to the administration of justice. *WESH Television, Inc. v. Freeman*, 691 So.2d 532, 534 (Fla. 5th DCA 1997).

Although the Defense claims that disclosure of the witness list has a potentially chilling effect, the Court agrees with the Sentinel that this bald assertion is insufficient. A finding of cause to restrict or defer disclosure of such records cannot rest in air. *McCrary*, 520 So. 2d at 35. In order to seal the entire penalty phase witness list, the Defendant must make a much more particularized showing. The Court agrees with the Sentinel that the three-pronged test has not been met in the case *sub judice*.

To the contrary, many potential penalty phase witnesses are presumably already known to the public at large and are already associated with this case. Release of any known individual's name could not possibly deprive the Defendant of her fair trial rights. Moreover, even for witnesses not known, counsel's conclusory assertion that some witnesses may be reluctant to come forward is insufficient to demonstrate a real threat to the Defendant's fair trial rights. Any penalty phase witness will testify in an open courtroom and be publicly identified with this case. If the unknown individuals on the Defendant's witness list are simply reluctant to be associated with this case, the Defendant has not shown how the delayed association of these individuals will protect her fair trial rights. Because the Defense does not satisfy its burden, the Motion to Seal Penalty Phase Discovery is DENIED.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida, this
7th day of January 2011.



BELVIN PERRY, JR.
Chief Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Denying Motion to Seal Penalty Phase Discovery has been furnished via U.S. Mail or hand delivery to **Ann E. Finnell, Esq.**, Finnell, McGuinness, Nezami, & Andux P.A., 233 E. Bay Street, Suite 601, Jacksonville, Florida 32202; **Jose A. Baez, Esq.**, The Baez Law Firm, 522 Simpson Road, Kissimmee, Florida 34744; **J. Cheney Mason; Esq.**, 390 N. Orange Ave., Suite.2100, Orlando, Florida 32801; **Linda Drane Burdick, Esq.**, State Attorney's Office, 415 N. Orange Avenue, Orlando, Florida 32801; and **Rachel E. Fugate, Esq.**, 400 N. Ashley Dr., Suite 1100, Tampa, Florida 33602, on the 24th day of Jan, 2011.


Judicial Assistant