

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

STATE OF FLORIDA

vs.

Case No.: 2020-CF-000149

ANTHONY JOHN TODT,

Defendant.

_____ /

**NEWS MEDIA'S MOTION TO INTERVENE FOR THE LIMITED
PURPOSE OF OPPOSING CLOSURE OF JUDICIAL RECORDS**

Pursuant to Florida Rule of Judicial Administration 2.420, Orlando Sentinel Communications Company, LLC, publisher of the *Orlando Sentinel*, and WFTV, LLC (collectively, "Intervenors") move to intervene in this case for the limited purpose of opposing the continued sealing of the affidavit for an arrest warrant and other judicial records. The arrest warrant affidavit in this case remains sealed after the warrant was executed and the Defendant was taken into custody. Such continued closure violates Article One, Section 24 of the Florida Constitution and Rule 2.420. Intervenors request an expedited hearing and expedited consideration of this Motion. In support of this Motion, Intervenors state:

BACKGROUND

1. On December 29, 2019, a relative of Defendant Anthony John Todt asked deputies in the area to check on the Todt family after being told they had the flu and not hearing from them for about two days. Law enforcement arrived at the Todt home, but no one answered the door and the deputy left after determining nothing looked suspicious.

2. On January 9, 2020, federal agents contacted the Osceola County Sheriff's Office regarding an investigation concerning a Connecticut fraud case involving the Defendant and

claims for falsified physical therapy services. Deputies made several attempts to reach the Defendant and the family but where unsuccessful.

3. On January 13, 2020, federal agents, with assistance from the Osceola County Sheriff's Office, attempted to serve the Defendant with a federal arrest warrant in connection to the Connecticut fraud case. To their surprise, the agents discovered the Defendant along with four bodies at the Todt home. According to statements made by Osceola County Sheriff Russ Gibson, the Defendant thereafter confessed to killing his wife Megan Todt, and their three children, Alek, Tyler and Zoe sometime in late December. He also confessed to killing the family dog, Breezy. The details regarding the murder remain shielded from the public.

4. On January 14, 2020, the Osceola County Sheriff's Office came before the Court on an *ore tenus* motion to seal the affidavit for a search/arrest warrant for Todt. The Court sealed the affidavit "until such time an Order unsealing the affidavit is issued..." A copy of the relevant order is attached hereto as Exhibit A. The order was entered without notice to the news media or an opportunity to be heard on the issue of closure. The order did not set forth findings of fact or conclusions of law to support the closure.

5. The Defendant was arrested on charges of first-degree murder and animal cruelty on January 15, 2020.

6. The Defendant's initial appearance occurred on January 16, 2020. The initial appearance information sheet also appears to be sealed and/or redacted in its entirety.

7. Intervenors are news organizations that have covered the arrest of the Defendant. The Intervenors continue to cover this prosecution. In their role as a surrogate to the public and keeping the public informed about this case, Intervenors attend court proceedings and rely upon

state, county and local public records, as well as judicial records, as part of their newsgathering process.

ARGUMENT

8. The news media has standing to intervene and challenge orders restricting access to judicial proceedings and records. *See Miami Herald Publ'g Co. v. Lewis*, 426 So. 2d 1 (Fla. 1983); *Miami Herald Publishing Co. v. McIntosh*, 340 So.2d 904, 908 (Fla. 1977).

9. Consideration of whether to conceal judicial records “must begin with the proposition that all civil and criminal court proceedings are public events, records of court proceedings are public records and there is a strong presumption in favor of public access to such matters.” *Sentinel Communications Co. v. Watson*, 615 So. 2d 768, 770 (Fla. 5th DCA 1993).

10. That presumption is codified in Rule 2.420, which in pertinent part recognizes that arrest warrants and supporting affidavits are to be made public upon execution. *See Fla. R. Jud. Admin. 2.420(c)(6)*. The arrest warrant in the above-captioned case has been executed and is no longer cloaked in confidentiality.

11. As a result, continued closure of an arrest warrant affidavit is proper only if the party requesting sealing has shown that complete closure is not broader than necessary to protect a compelling governmental interest, and that no less restrictive measures are available to protect that interest. *See Rule 2.420(e)(3)(G)* (applicable in criminal cases under Rule 2.420(f)(1), (3)); *Carter v. Conde Nast Publications*, 983 So. 2d 23, 26 (Fla. 5th DCA 2008) (“an order sealing court records must state, inter alia, the particular grounds for making the court records confidential, that the closure is no broader than necessary, and that there are no less restrictive measures available”).

12. The *ore tenus* request from the Osceola County Sheriff's Office and the subsequent sealing order do not comply with the strict mandates of Rule 2.420(f). In any event, since Defendant's arrest, no criminal investigative purpose is served by keeping the affidavit sealed and continued closure is not warranted.

The Arrest Warrant Affidavit and Related Judicial Records are Improperly Sealed

13. The arrest warrant affidavit in this case remains sealed after the Defendant's arrest and "until such time an Order unsealing the affidavit is issued . . ." Because the arrest warrant affidavit remains sealed past the time of execution, the Sheriff's Office request for closure and this Court's sealing order must comply with Rule 2.420(f).

14. There was no motion or public hearing to seal the arrest warrant affidavit. Fla. R. Jud. Admin. 2.420(e)(1), (2); Fla. R. Jud. Admin. (f)(1)(A). Nor does the public record indicate that a compelling interest was identified prior to closure, or that the only way to serve such interest was to indefinitely seal the entire arrest warrant affidavit. Fla. R. Jud. Admin. 2.420(c)(3)(G).

15. Likewise, it now appears other judicial records are being withheld without any justification. Indeed, the initial appearance information entered on January 16, 2020 is wholly redacted and unavailable on the public docket. Continued closure of this record violates Article One, Section 24 of the Florida Constitution and Rule 2.420.

The Arrest Warrant and Related Judicial Records Should be Unsealed

16. As noted above, Rule 2.420(c)(6)'s confidentiality protection for the arrest warrant affidavit expired January 15, 2020, and the judicial record is presumptively open and there is no compelling need to seal the search warrant affidavit.

17. As one court has noted in reversing the concealment of a search warrant application and supporting affidavit:

The bright glare of sunlight should be focused on the Court's records to insure that the respect enjoyed by the Courts will endure. Secrecy without articulable reasons can only diminish that respect. The state has an obvious and clear interest to protect its citizens while it is pursuing an ongoing criminal investigation. This interest must be balanced by the public's right of access to court proceedings and records.... Without some showing by the prosecutor that the revelation of the search warrant, its supporting affidavits and other materials would tend to hinder some other ongoing criminal prosecution or some other reasonable rationale, such a blanket rule limiting access must be considered unconstitutional.

Florida Freedom Newspaper, Inc., v. State, 32 Media L. Rep. 1734 (Fla. 14th Cir. Ct. March 2, 2004) (reversing county court's closure of search warrant materials and stating "It is illogical to call this case an ongoing criminal investigation, especially after the warrant has been executed, the person arrested and prosecuted in open court."); *see also State v. Wooten*, 260 So. 3d 1060, 1072 (Fla. 4th DCA 2018) (recognizing the right to access warrant documents as being "firmly rooted" in history and opining that "public access to documents filed in support of search warrants is important to the public's understanding of the function and operation of the judicial process and the criminal justice system..."). Similarly, in this case, good cause exists for releasing the arrest warrant affidavit and the initial appearance information sheet, and the public is entitled to access these records.

CONCLUSION

WHEREFORE, the Intervenors respectfully request that this Court conduct an expedited hearing on this Motion, allow them to intervene in this matter, unseal the affidavit and other judicial records in this case, and grant such further relief as the Court deems just and proper.

Respectfully submitted,

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Attorneys for the Intervenors

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic service from Florida Court's E-Portal this 21st day of January, 2020, to all parties and counsel of record.

/s/ Rachel E. Fugate

Attorney

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

2020 CF 149

ORDER

THIS CAUSE having come before this Court on the *Ore Tenus* Motion of Detective C. MILLER of the Osceola County Sheriff's Office for an Order sealing the affidavit for an Search/Arrest Warrant and the Court being fully apprised in the premise, it is

ORDERED AND ADJUDGED that the Clerk's Office shall seal the affidavit which corresponds to the Search Warrant issued by me on this date and that it shall remain sealed until such time an Order unsealing the affidavit is issued either by me or the judge having jurisdiction in the criminal proceeding.

DONE AND ORDERED this 14th day of Jan., 2020 in Osceola County.

Alicia L. Latimore

JUDGE

FILED IN OFFICE
CLERK OF COURT
OSCEOLA COUNTY, FL
2020 JAN 15 A 9:38
ARMANDO RAMIREZ
CLERK OF COURT
FELONY JUVENILE

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