

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

STATE OF FLORIDA,

Plaintiff,

vs.

TERRILL JAMAR LEWIS,

Defendant.

CASE NO.: 2012-CF-013235-A-O
DIVISION: 11

**ORDER ON MOTION FOR PROTECTIVE ORDER,
DEFENDANT'S MOTION FOR STATEMENT OF PARTICULARS,
AND DEFENDANT'S MOTION TO COMPEL DISCOVERY**

This cause, came before the Court on the Alleged Victim/Confidential Informant's (hereinafter the "victim") Motion for Protective Order dated October 15, 2012, filed through counsel pursuant to Florida Rule of Criminal Procedure 3.220(1) and (m) and the Defendant's ensuing Motion for Statement of Particulars dated January 22, 2013 and Motion to Compel Discovery dated January 25, 2013. The Court, having heard the argument of counsel at hearings on October 16, 2012, November 26, 2012, February 15, 2013, and February 19, 2013, reviewed the Court file, reviewed discovery to be produced by the State *in camera*, and being otherwise duly advised, hereby finds as follows:

Factual Summary

According to the arrest affidavit dated October 9, 2012, and the factual assertions set forth by the State at the February 19, 2013 hearing, Defendant is charged with one count of extortion arising out of an alleged sexual offense that occurred in Los Angeles, California on August 27, 2012. Specifically, the victim, who ultimately became a confidential informant, asserts that on August 27, 2012, he used on an online service to hire an escort known as

“Dream.” Dream, who was later identified to be Defendant, arrived at the victim’s hotel room on August 27, 2012. Upon meeting Defendant, the victim believed Defendant to be a transsexual and advised Defendant that he was no longer interested in pursuing Defendant’s services. However, the victim compensated Defendant for Defendant’s travel to the hotel and paid him the agreed amount. The victim asserts that at no time did he engage in any consensual sexual activity with Defendant.

Instead, the victim asserts that after he gave Defendant money, Defendant and the victim had a conversation in the hotel room, during which the victim drank wine and Defendant drank an unknown beverage which Defendant brought with him to the hotel room. During the conversation, the victim excused himself on at least two occasions to use the restroom and then returned to the conversation. The victim does not recall any other details from the evening of August 27, 2012. At the hearing on February 19, 2013, the State asserts that the victim was drugged and unconscious and had no memory of what transpired the remainder of the night on August 27, 2012.

On August 28, 2012, the victim awoke in his hotel room with a “hang-over like he has never imagined, his anus was sore, and he found two used condoms in the bathroom of his hotel room.” *See* Arrest Affidavit at p. 2. Defendant was no longer present, but the victim found a text message from his phone to Defendant’s phone stating “thanks it was a great time.” *See id.*

Thereafter on September 14, 2012, the victim began receiving numerous text messages and phone calls from Defendant demanding the immediate payment of \$100,000 from the victim to Defendant, or Defendant would share compromising videos of the Defendant and the victim engaged in sexual act(s). The victim initially a paid Defendant \$4,000 through Greendot cards and ultimately agreed to meet Defendant in Orlando, Florida and give him \$100,000 in exchange

for Defendant's promise of silence and agreement not to circulate or disseminate any videos, images, or other details of the events that allegedly transpired on August 27, 2012.

The victim, through his attorney, then contacted the Metropolitan Bureau of Investigation to report Defendant's actions. The victim met with MBI Agents and arranged for a controlled meeting with Defendant in Orlando, Florida. The meeting was recorded and monitored by MBI Agents. Based on the recorded statement of Defendant during this meeting, Defendant was arrested by MBI on charges of extortion.

The victim now seeks a protective order exempting the audio, email, text messages, and the identity of the victim from public records disclosure under Chapter 119 during the pendency of these proceedings. Due to this pending request, the State has not provided the defense with copies of the relevant discovery in this matter. The defense objects to the victim's request for a protective order and demands the immediate disclosure of all discovery in this matter. Trial of this matter is scheduled for the two week trial period beginning March 4, 2013.

Analysis

In the case at bar, the victim filed a Motion for a Protective Order asking that the court file and his identity be kept confidential pending trial. The filing of this Motion, which was supported by the State, effectively prohibited the State from producing the requested documents to the defense until the Motion was heard and ruled upon. The defense objects to the Motion.

Florida Rule of Criminal Procedure 3.220(m) allows any person, including a non-party, to move for an order denying or regulating the disclosure of sensitive matters. In so doing, "[o]n a showing of good cause, the court shall at any time order that specified disclosures be restricted, deferred, or exempted from discovery...or make such other order as is appropriate to protect a witness from harassment, unnecessary inconvenience, or invasion of privacy...." Fla. R. Crim. Pro. 3.220(l)(1).

In accordance with Florida Rule of Criminal Procedure 3.220(m) and at the request of the victim through his attorney, this Court conducted an *in camera* review of the discovery documents, excluding any audio, video, or images, to be produced to the defense in this matter. In reviewing these materials, this Court conducted a balancing test as set forth by the Florida Supreme Court. *See Post-Newsweek Stations, Florida, Inc. v. John Doe, et al.*, 612 So. 2d 549 (Fla. 1992); *see also Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988). In so doing, the Court was tasked with balancing the privacy interests of the victim with the public's need to know the information. As reasoned by the Florida Supreme Court,

This Court is wary of an outcome that will cause victims and witnesses to withhold valuable discovery information because they fear that personal information will be divulged without discretion. However, we also recognize that this state's open government policy requires that information be available for public inspection unless the information fits under a legislatively created exemption.

Post-Newsweek, 612 So. 2d at 553.

Under the Public Records Act and Article I, Section 24 of the Florida Constitution, all public records are open to public inspection unless specifically exempted by law. *See* Ch. 119, Fla. Stat. (2012); Art. I, §24, Fla. Const. "It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person." § 119.01(1), Fla. Stat. (2012). The Legislature, however, created some limited and specific exemptions to this policy. *See Tribune Co. v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986). These exemptions include, but are not limited to, ongoing and active criminal investigations by the State. *Id.*; *see e.g.* § 119.071(2), Fla. Stat. (2012).

However, once the investigatory documents are disclosed to a defendant or his counsel, the documents are no longer exempt—*unless* these documents identify victims of sex crimes or child abuse. In such instances, documents identifying the victims of sex crimes must be kept in

confidence pending trial as a matter of law. *See* §§ 119.011(3)(c)(5), 119.071(2)(h)(b), Fla. Stat. (2012).

Upon the *in camera* review of the discovery documents and even the arrest affidavit, which is a public record, it is apparent to the Court that the victim claims to be a victim of a sexual offense, specifically sodomy on an unconscious individual. The fact that the Defendant was not charged with a specific criminal sexual offense is immaterial to this Court's analysis.¹ *See e.g.* § 918.16(2), Fla. Stat. (2012) (requiring that the courtroom be cleared of all persons upon the request of a victim of a sexual offense in any criminal or civil proceeding). Rather, the issue turns on whether the individual seeking protection qualifies as an alleged victim of sexual offense. In the instant case, the alleged sexual offense gave rise to the images, information and consideration for the extortion. In short, but for the alleged underlying sexual offense of sodomy on an unconscious individual, the extortion would not have arisen.²

As an alleged victim of a sexual offense, the victim is entitled to privacy as a matter of law. Florida law is replete with numerous privacy protections and exemptions for victims, including *alleged* victims, of sexual offenses. For example, pursuant to section 119.07(h), Florida Statutes, "any information which may reveal the identity of a person who is a victim of any sexual offense..." and "a photography, videotape, or image of any part of the body of the victim of a sexual offense...regardless of whether the photography, videotape, or image identifies the victim" are exempt from disclosure. § 119.071(h)(1)(b), (c), Fla. Stat. (2012). Indeed, it is even unlawful for a public employee or officer to disclose the identity, much less

¹ As the alleged sexual offense occurred in California, the State of Florida is without jurisdiction to pursue charges against Defendant related solely to the sexual offense that is alleged to have occurred on August 27, 2012.

² In the instant case, although the victim met Defendant through an escort services, presumably for the purpose of prostitution, the victim contends he did not have consensual sex with Defendant. Had the victim engaged consensual sex with Defendant, this Court's analysis and decision would have been different in accord with the holding in *Post-Newsweek*.

photographs, video or images, “of a person who is alleged to be the victim” of a sexual offense. § 794.024, Fla. Stat. (2012); *see also* § 794.026, Fla. Stat. (2012) (providing the victim with a civil right of action against the state for willfully communicating the identity of a sexual crime victim). In sum, based on the numerous statutory protections in place for alleged victims of sexual offenses, it is evident that the “Legislature intended to make the identity of a victim of a sexual crime confidential in a court record or proceeding.” Op. Atty’ Gen. Fla. 2003-56 (2003).

While Florida’s Public Records laws are to be “liberally construed in favor of open government to the extent possible in order to preserve our basic freedom, without undermining significant governmental functions such as crime detection and prosecution,” where a specific exemption lies, this Court is compelled to honor it. *Tribune Co.*, 493 So.2d at 483.


Based on the foregoing, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. Based on the arrest affidavit, the statements of the attorneys, and the Court’s *in camera* review of the discovery in this matter, the Court finds the victim is the victim of an alleged sexual offense.
2. As a result, the victim is entitled to the protections afforded by Florida law, including, but not necessarily limited to, those protections set forth in Chapters 119, 794 and 960, Florida Statutes.
3. Therefore, the victim’s Motion for a Protective Order is **granted**.
4. The Clerk of the Court is hereby ordered to immediately identify the court file for the instant case as a Sex/Abuse Crime, which is a non-public record pursuant to section 119.07, Florida Statutes.
5. The attorneys and all parties and non-parties, including their agents, representatives, and assigns are hereby ordered to comply with all aspects of section 119.07, Florida Statutes, and all relevant privacy rights afforded by law to victims of sexual offenses.

6. Defendant's Motion to Compel Discovery is **granted**. The State shall deliver to Defendant's counsel copies of all requested discovery by **12:00 p.m., E.S.T. on Monday, February 25, 2013**.

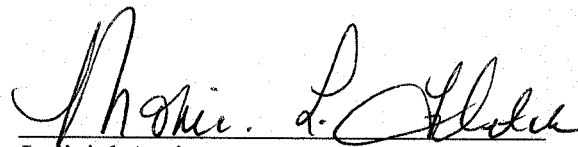
7. Defendant's Motion for Particulars is **granted**. The State shall file its response under seal within five (5) days from the date of this Order.

DONE and ORDERED in Chambers at Orlando, Orange County, Florida, on this 22 day of February, 2013.


Heather Pinder Rodriguez
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished via U.S. Mail or had delivery to **Suzanne Race, Esq.**, Assistant Public Defender, 435 North Orange Avenue, Suite 400, Orlando, Florida 32801, **Robert Welch, Esq.**, Assistant State Attorney, 415 North Orange Avenue, Post Office Box 1673, Orlando, Florida 32801, **The Honorable Lydia Gardner, Clerk of Courts**, 425 North Orange Avenue, Orlando, Florida 32801, and **Robert Leventhal, Esq.**, 220 North Rosalind Avenue, Orlando, Florida 32801 on this 22 February, 2013.


Judicial Assistant