

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA,

CRIMINAL DIVISION "W"  
CASE NO. 502010CF005829AXXXMB

vs.

JOHN B. GOODMAN,

Defendant.  
\_\_\_\_\_ /

FILED  
DEC - 3 PM 1:48  
CLERK OF COURT  
Palm Beach County, Florida

**ORDER DENYING WITHOUT PREJUDICE AGREED ORDER  
RESTRICTING EXTRAJUDICIAL COMMENTS  
OF LAWYERS AND WITNESSES PENDING A VERDICT**

**THIS CAUSE** came before the Court on the proposed agreed order of both Defendant and the State to restrict extrajudicial comments of lawyers and witnesses pending a verdict. On December 2, 2013, Defendant filed a memorandum of law in support of this request. At the hearing on December 2, 2013, the Court granted, without objection, Palm Beach Newspapers, Inc. and Scripps Media, Inc. motions to intervene in the proceeding to address the agreed request. After carefully examining and considering the request, the memorandum of law, the argument of counsel and intervening parties at the hearing held December 2, 2013, and all other pertinent pleadings and relevant case law, it is hereby **ORDERED AND ADJUDGED** as follows:

Defendant asserts that he does not seek a gag order on the media coverage of his case but only seeks a "narrowly tailored [o]rder restricting extrajudicial statements by the lawyers and listed witnesses in the case ...." (Mem. at 3.) During the hearing, the State acknowledged that

the gag order really only applies to one witness, the former assistant state attorney who prosecuted the case, Ellen Roberts.

The Florida Supreme Court has been clear on the issue of who wins in a battle between the interests of defendants and informing the public: “where a defendant’s right to a fair trial conflicts with the public’s right of access, it is the right of access which must yield.” *Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378, 380 (Fla. 1987). Any order putting in place a gag order as requested by the parties here requires “findings that it was necessary to ensure a fair trial.” *Rodriguez v. Feinstein*, 734 So. 2d 1162, 1164 (Fla. 3d DCA 1999). In *Florida Freedom Newspapers, Inc. v. McCrary*, 520 So. 2d 32, 36 (Fla. 1988), the Florida Supreme Court noted “[t] here is no constitutional impediment to a court prohibiting prosecutors, defense counsel, witnesses, and other interested parties involved in the case before the court from making prejudicial pretrial comments which are intended for publication.” Furthermore, Rule 4-3.6 of the Rules of Professional Conduct of the Florida Bar prohibits attorneys from making prejudicial extrajudicial statements that have a substantial likelihood of materially prejudicing an adjudicative proceeding. See R. Regulating Fla. Bar 4-3.6. Courts have also been consistent in holding that extensive publicity alone is insufficient to impair a defendant’s right to fair trial. See *Rolling v. State*, 695 So. 2d 278, 284-86 (Fla. 1997); *Skilling v. United States*, 130 S. Ct. 2896, 2915-17 (2010).

The Court finds a gag order for essentially one witness is unnecessary at this point in time. The Court finds the Rules of Professional Conduct provide adequate protection at this stage of the proceeding; however, should future prejudicial statements prior to the jury being

sworn come to light, either party may renew its request for a gag order. Accordingly, the Agreed Order Restricting Extrajudicial Comments is hereby **DENIED WITHOUT PREJUDICE**.

**DONE AND ORDERED**, in Chambers at West Palm Beach, Palm Beach County, Florida this 3 day of December, 2013.



JEFFREY COLBATH  
CIRCUIT JUDGE

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