IN THE
SUPREME COURT OF FLORIDA

Case No. 67,482

PALM BEACH NEWSPAPERS, INC.,
SCRIPPS-HOWARD BROADCASTING COMPANY,
THE MIAMI HERALD PUBLISHING COMPANY,
and THE NEWS AND SUN SENTINEL COMPANY,

Petitioners,

vs.

THE STATE OF FLORIDA,

Respondents.

On Petition for Discretionary Review of
a Decision of the District Court
of Appeal of Florida, Fourth District

Initial Brief of Palm Beach Newspapers, Inc., Scripps-Howard Broadcasting Company, and the News & Sun Sentinel Company

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INTRODUCTION

Of the four cases now before the Court which raise issues regarding access to pretrial depositions in criminal cases,[1] this case is unique in that the trial court, after weighing the interests of the parties and the public, found the state was not entitled to exclude the press from the depositions. In accordance with that order, reporters did attend and chronicle the depositions for their readers and viewers.

Notwithstanding this journalistic intrusion into the judicial process, the defendants' fair trial rights were not impaired by the reporting of the depositions -- indeed the defendants in this case welcomed media coverage of the depositions. In addition, the State's ability to prosecute the case was not impaired -- both defendants ultimately were convicted. Furthermore, the public, through observation of the entire process, was able to more fully understand the facts which had led to a heinous crime, was satisfied to observe that its public officials could respond rapidly to the crime, and was able to have confidence that the institutions of justice were working openly and as intended. Thus, this case demonstrates that the constitutional, common law, and procedural arguments advanced by the petitioners in the other pending cases are

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1. Three cases raising similar issues, Palm Beach Newspapers, Inc., et al. v. Burk, Case No. 67,352, Miami Herald Publishing Co. v. Hagler, Case No. 67,479, and Post-Newsweek Stations, Florida, Inc. v. State, Case No. 67,671, are pending before this Court.

correct, and that when correctly applied, enhance important societal values without injuring individual rights.

The lack of discord in the trial court did not, however, permit the litigants in this case to rest because the State appealed the trial court's order and, after all of the depositions had been completed, the Fourth District Court of Appeal granted a common law writ of certiorari to reverse the trial court order because it interpreted its decision in Palm Beach Newspapers, Inc. v. Burk, 471 So.2d 571 (Fla. 4th DCA 1983)(en banc), pet. for rev. pending, Case No. 67,352, as requiring the trial court to enforce the State's request to exclude the media from the depositions.

The Fourth District's opinion in this case is substantively flawed because it follows the rationale of the Burk decision and carries it to a new extreme. The opinion is procedurally wrong because certiorari should not have been granted in a case such as this where its issuance served to protect no rights.

STATEMENT OF THE FACTS AND THE CASE

The essential facts regarding this case are as follows. References to the appendix are made by the notation "(A.).".

Ralph Lee Walker is Murdered

On July 28, 1984, police found the body of Ralph Lee Walker stuffed in a steamer truck in the back of a van parked near the House of Draperies, a store in downtown West Palm Beach. Walker had been the manager of the Bennett Hotel, a West

Palm Beach hotel. An autopsy showed Walker had been injected with a solution of valium and vodka and stabbed repeatedly (A. 3).

John Trent, owner of the Bennett Hotel and the House of Draperies, who also worked as an informant for the Palm Beach County Sheriff's office, and Dr. John S. Freund, a former Palm Beach cancer specialist, were charged with first-degree murder in connection with Walker's death (A. 3-5). Police told reporters they believed the murder had been committed at Trent's apartment on July 24, 1984.

Freund surrendered himself to police and was taken into custody July 31, 1984. Trent was not apprehended until August 11, 1984, after a nationwide FBI manhunt. Twelve days later, a grand jury indicted both suspects. Freund and Trent entered pleas of not guilty to the murder indictment.

Defendants Seek to Depose Witnesses

Defense counsel for Freund and Trent noticed four of the State's witnesses for deposition on January 30, 1985. The witnesses were Donald Jacobs, the Palm Beach Police detective who investigated the murder, and three alleged eyewitnesses, William Daniell, Eleanor Mills and Mills' daughter, Lisa Angelilli.

The depositions were scheduled to take place in a deposition room at the Palm Beach County Courthouse. Because members of the media wished to attend, the court reporter arranged to move the proceedings to a large, available courtroom

on the third floor. Three newspaper reporters, a television reporter and photographer employed by petitioners appeared for the depositions. The photographer set up the television camera at the opposite end of the table from the witness chair. Also present for the depositions were Detective Jacobs, Assistant State Attorney Jorge LaBarga, Trent's attorney, David Roth, Freund's attorney, Douglas Duncan and James Hegerty, a private investigator.

The State Terminates the Deposition

Before testimony could begin, Assistant State Attorney LaBarga objected to the presence of the media, based on his assertion that, "the deposition is not a public proceeding and the case law, as such, has so ruled (A. 140)." LaBarga then stated that the media's right to be present was "up to the prosecutor," and that, if the media representatives insisted on staying, he would instruct the witness not to testify (A. 140-41). Defense attorney Roth objected to "clos[ing] the doors and proceed[ing] without the press" (A. 141). The reporters present also objected to being excluded and requested a recess to call legal counsel (A. 141). Within a short while, an attorney for the media arrived.

When the deposition resumed, Detective Jacobs got as far as stating his name and employer when LaBarga stopped him (A. 143). The assistant state attorney objected to any further testimony until the issue of a protective order could be resolved. Both defense attorneys stated that their clients had

no objection to the presence of the media (A. 144) and insisted upon going forward with the deposition in the presence of the media. But LaBarga directed the deponent not to testify further and announced his intention to seek a protective order. That action suspended the deposition.

Judge Mounts Hears Extensive Argument

That afternoon, the parties appeared before Judge Marvin Mounts, Jr. The defendants moved to compel the State to proceed with discovery (A. 21). The State moved for a protective order excluding the media from the depositions, arguing that (1) depositions are not judicial proceedings, (2) the depositions would eventually be transcribed, filed and thus open to the public, and (3) the witnesses were "frightened to death" and would be affected by the presence of the media (A. 26-27). During the hearing, however, the State abandoned its argument that the witnesses would be frightened by the media, conceding that it had no factual basis for the assertion and that it had not consulted with the witnesses to determine whether the witnesses would be affected by the media. At the State's request, Judge Mounts recessed the hearing to allow the parties two weeks to brief their arguments.

At a second hearing, convened before Judge Mounts February 15, 1985, the State argued that the reason it was entitled to exclude the press from the depositions was that depositions are not judicial proceedings. The state asserted abstractly that the public's knowledge of the governmental

process is not enhanced by attendance at depositions, the public's presence may hinder lawyers in performing their duties, and the public's presence at a deposition is not consistent with the philosophy of the criminal justice system (A. 92). The state made no attempt to demonstrate that there was any need to exclude the media from the particular depositions in this case.

The media intervenors argued that recognizing the State's arbitrary power to exclude the public from discovery depositions over objections of the media and the defendant would violate their respective First and Sixth Amendment rights. Notwithstanding these arguments, the media suggested the court need not reach these issues because the State had not presented any good cause to keep the press out of the depositions. Florida Rule of Civil Procedure 1.280(c), states that a person seeking an order limiting attendance at depositions must show good cause in order to justify such an order (A. 115). In this case, where the defendants and the media opposed exclusion of the press, counsel for the media said, the State could only demonstrate good cause by showing a compelling governmental interest in media exclusion and that media exclusion was the least restrictive means of serving the compelling interest. Media intervenors further asserted that the State Attorney's philosophical view that media should never be permitted to attend depositions because of general fears regarding possible media impact on the process satisfied neither the good cause nor compelling interest standards (A. 118).

Counsel for defendant Trent argued before Judge Mounts that "we not only don't object [to the media's presence] but we would object to the press being precluded from attending these depositions. We think the laundry ought to be aired" (A. 71). Counsel for defendant Freund voiced no objection to the presence of the media, reserving his right to move for change of venue.

The Trial Court's Order

On February 22, 1985, Judge Mounts entered an order denying the State's motion for a protective order and State's Motion to Require News Media Representatives to Demonstrate the Existence of a Right for Them and the Public to be Present During a Discovery Deposition.

In his ruling, the judge pointed out that neither defendant objected to presence of the media. He also declined to rule on whether a deposition is a judicial proceeding. He found that a recent decision of the Second District Court of Appeal, Short v. Gaylord Broadcasting Co., 462 So.2d 591 (Fla. 2d DCA 1985) mandated this result, [observing]:

> [I]t seems clear to me that I am bound by the Gaylord decision. As that decision points out, the situation occurring here is governed by Florida Rule of Civil Procedure 1.280(c) which provides for protective orders. As the Court indicates at page 258: "This rule gives the trial court control over who may or may not attend depositions; the court's discretion is limited only by the standard 'for good cause shown.' The Rule places the burden of obtaining a protective order on the person or party seeking to limit attendance at a deposition."

Because the State failed to offer any reasons for excluding the media from the depositions, Judge Mounts ordered the attorneys to "arrange for access of the media to these depositions in the same fashion as is provided in an actual judicial proceeding."

Lisa Angelilli Describes the Murder

Six days after Judge Mounts entered his order, Lisa Angelilli was deposed. Present were five reporters employed by petitioners. Angelilli, by this time seventeen years old and pregnant, first told of her family background.

Her mother, Eleanor Mills, ran an escort service in West Palm Beach. She had run massage parlors in Orlando and had once been arrested for prostitution. Her father was serving time in Leavenworth, Kansas for cocaine trafficking (A. 161). Angelilli had been using marijuana, cocaine, alcohol and amphetamines since she was fifteen (A. 164-65).

Angelilli testified that on the day Ralph Walker was murdered, she and her mother had gone to John Trent's condominium in Palm Beach. When they arrived, Trent offered them cocaine and they accepted (A. 188). Trent then called Ralph Walker, the manager of Trent's Bennett Hotel, and asked him to bring over some marijuana (A. 194). Walker, a hulking body builder, arrived and had five or six drinks of Tequila,

then he and Trent started to talk about violence and killing people (A. 199). Walker took some cocaine and smoked marijuana and then became violent and out of control (A. 203).

Walker began making sexual advances toward Angelilli, asking her to come into the bedroom, Angelilli stated. When she refused, he started banging a metal baseball bat on a table (A. 205). Angelilli sought protection from Trent and he tried to get Walker under control. Walker picked up two guns and threatened the group, but Trent disarmed him (A. 208). Angelilli's mother helped Trent wrestle Walker to the floor and handcuff him. As he lay handcuffed on the floor, Walker suggested that Trent have sex with Angelilli while he (Walker) watched.

Trent asked Mills, Angelilli's mother, to call a doctor friend of his, Dr. Freund (A. 216). Freund had formerly been a brillant cancer specialist who graduated at the top of his medical school class. He had been barred from practicing about a year before, after suffering brain damage from a morphine overdose (A. 3). After the call, Freund arrived, carrying a medical bag. He filled a syringe with "medicine," pulled Walker's shorts down and injected him (A. 221-22). Twenty minutes later, Freund injected him again. Freund then crushed up some Valium pills with vodka and injected Walker with that mixture (A. 226-28). Angelilli and her mother went into a bedroom with Trent. Angelilli left to go to the bathroom and when she looked down the hall, saw a smiling Freund repeatedly

stabbing Walker in the chest with a knife (A. 232-33). When Angelilli returned to the bedroom, Freund came in and said, "It was a pleasure doing business with you, John," looked at the two women and said, "I was never here," changed his bloodied shirt and left the apartment (A. 235).

Two days later, Angelilli and her mother returned to Trent's apartment and Walker's body was still there (A. 243). Angelilli left her mother at the apartment and later that afternoon learned that her mother, Trent and another man had put Walker's body into a steamer trunk (A. 244). Trent got a friend to move the trunk into a van, saying it was filled with law books. That night, Mills called the police.

The Mills Deposition is Cut Short

Eleanor Louise Mills, Lisa Angelilli's mother, was deposed on March 21, 1985 also in the presence of reporters and photographers. She stated that she first heard of Trent while in jail on cocaine trafficking charges (A. 317). When she later met Trent, he told her he had connections with the Palm Beach Sheriff's Office, had everyone in his pocket and would get everything taken care of (A. 321). Mills knew at the time that she was facing a minimum 15-year prison sentence on the cocaine trafficking charge. The criminal world was a familiar one to Mills; she was arrested on racketeering charges in Orlando and was put on probation for that charge, involving a massage parlor business (A. 170).

Trent told Mills she would have the charges against her dropped or reduced if she "set up" the arrest of a man named Needles, but Mills never pursued it (A. 340). She next saw Trent when she and her daughter went to his apartment on July 24, 1984, to talk to Trent about a job for Angelilli at the House of Draperies (A. 354). Mills' testimony was consistent with her daughter's. About an hour into the deposition, State Attorney LaBarga tried to ask questions during defense attorney David Roth's direct examination (A. 388). LaBarga refused to stop questioning Mills and Roth terminated the deposition. Judge Mounts later ruled that Roth was correct in asking LaBarga to hold his questions until cross-examination.

The State Petitions for Writ of Certiorari

On March 21, 1985, the State sought a writ of common law certiorari, attempting to overturn Judge Mounts' order which denied the State's motions to bar public and press access to the depositions. In its petition, the State sought the following relief: "[T]hat an order be entered allowing the public and media to be present only if counsel for both the State and the defendants agree." Neither Trent nor Freund filed a brief with the appeals court to raise the Sixth Amendment claims they had argued below. Furthermore, the State's petition argued that the trial court order was in error because it placed the burden on both the State and defense counsel "to conduct their respective investigations by accommodating the news media."

The Fourth District Grants the Writ

While the petition was pending, the Fourth District Court of Appeal decided Palm Beach Newspapers, Inc. v. Burk, 471 So.2d 571 (Fla. 4th DCA 1985), holding that there is no public right of access to pretrial depositions in a criminal case. Following its recent decision, the Fourth District granted the writ and quashed Judge Mounts' order in a per curiam opinion on July 31, 1985.

Judge Letts' Concurring Opinion

In his special concurrence, Judge Letts agreed that Burk governed the instant case. However, Judge Letts then questioned the basis for his own concurring opinion in Burk:

> I realize that the statement by the Florida Supreme Court in Miami Herald Publishing Co. v. Lewis, 426 So.2d 1 (Fla. 1982), that "[t]here is no first amendment protection of the press' rights to attend pretrial hearings" is suspect, if it relies, as it appears to, on Gannett Co. v. DePasquale, 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979). If the Florida court continues to be of the same mind when it addresses the issue of pretrial depositions, it should not, as I did in Burk when I quoted Lewis, rely on Gannett. The Gannett decision, while admittedly equivocal, is clarified in a later United States Supreme Court case where it is confirmed that the media has in fact a "qualified" first amendment right to attend pretrial suppression hearings. Waller v. Georgia, ___U.S. ___, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984).

Trent Is Tried Separately

John Trent was tried separately from Freund in September 1985. Despite extensive publicity, the voir dire proceeded without problem and no juror was excused because of prejudice from pretrial publicity. The trial resulted in a hung jury. Facing re-trial, Trent pled guilty to second-degree murder and was sentenced to 12 years in prison. After the plea bargain, Trent took out an advertisement in three Palm Beach newspapers, asserting that he did not "kill or help kill Ralph Lee Walker" and stating that he had accepted the plea bargain because "[h]ad I decided to be tried again there would have been more agony for my wife and daughter, plus a reptition of the monumental expenses and time of a new trial" (A. 15).

Freund is Convicted of Murder

Freund pled not guilty by reason of insanity, but was declared competent to stand trial and was convicted notwithstanding the testimony of three psychiatrists who agreed he was insane (A. 13). Freund was sentenced to life in prison. As in the case of Trent, pretrial publicity did not hamper the voir dire process.

Supreme Court Jurisdiction

Petitioners sought review of the Fourth District's decision pursuant to article V, section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(iv) on the grounds that the Fourth District's

decision was in express and direct conflict with Short v. Gaylord Broadcasting Company, 462 So.2d 591 (Fla. 2d DCA 1985), and in prima facie express and direct conflict with Palm Beach Newspapers, Inc. v. Burk, supra. The Court accepted jurisdiction in an order rendered on February 7, 1986.

SUMMARY OF ARGUMENT

The Fourth District Court of Appeal erred in granting a writ of certiorari to reverse the decision of the trial court allowing the press to attend the pretrial depositions in this criminal case for two reasons:

Point I. As a matter of substantive constitutional law and common law, the State may deny public access to important information only where there are compelling interests which justify the denial of access and the means chosen to deny access are narrowly tailored to serve those compelling interests. In this case, the depositions contained information regarding the judicial process and no interests were present which could justify a restriction on access. Accordingly, the trial court's order refusing to exclude the press from the depositions was correct.

Point II. As a matter of appellate procedure, the State may obtain a writ of certiorari reversing an interlocutory order in a criminal case only where it demonstrates that the order will so substantially impair its ability to prosecute the case that a miscarriage of justice will result unless interlocutory review is granted. The State failed to make this showing. The State's petition for a writ of certiorari therefore should have been denied.

ARGUMENT

I.

Public Observation of the Depositions in this Case Served Important Societal Values Without Impairing the Parties' Rights

The petitioners have argued extensively in the other pending deposition access cases that the State cannot in the absence of compelling interests constitutionally deny the public or press access to depositions in criminal cases because such access serves important societal values. The instant case provides a concrete example of the values which are served by access to the deposition process. It also shows that in some cases there are no interests, let alone compelling interests, which warrant entry of an order denying access. Each of these points is discussed briefly below.

A. Access to the Depositions in this Case Served Important Societal Values

Shortly after the body of Ralph Walker was discovered in a trunk near the House of Draperies in West Palm Beach, all that the public knew was that a violent murder had been committed and that a killer was on the loose. Those who knew Walker, quite justifiably might have felt a sense of outrage, those who did not, undoubtedly felt a sense of great fear. Soon after the crime was discovered, the public knew that two men had been charged with committing it -- both well-known members of the Palm Beach community, one a hotel owner and the other a physician formerlly specializing in cancer treatment. Both men pled not guilty to the charges of murder.

At this point in the case, the State would have the flow of information to the public regarding the prosecution halted. Instead, the trial court, concluding that there was no basis for an order denying access, refused the State's request. Consequently, the public had the opportunity to hear eyewitness testimony both at deposition and at trial, with the ability to compare the testimony and gain insight into the facts leading up to the murder.

More importantly, reporting of the depositions, as can be determined from the news reports regarding the depositions contained in the appendix to this brief, allowed the public to monitor the prosecution of the case closely, assuring that a thorough investigation of the crime would be done, that those accused were given an opportunity to defend themselves, and that ultimately justice would be done.

The United States Supreme Court has observed in cases such as Richmond Newsapapers, Inc. v. Virginia, 448 U.S. 555 (1980) and Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982), that public observation of the criminal justice system has an important cathartic influence on communities which have suffered serious crimes. The Court also has observed that public access to the system is of constitutional significance as a check on public officials to ensure that they carry out their public duties faithfully. It further inspires the public's confidence in its institutions. All these important values were served by journalists attending and reporting about the depositions in this case.

In addition, the information exposed in this case helped to expose the reality of the impact that illegal narcotics have on the lives of individuals and the need for societal solutions to the drug problem. In a community where major drug interdiction efforts are often overshadowed by the "Miami Vice" glamour of the drug scene, reporting of prosecutions such as the Walker murder prosecution can be the only glimpse the public obtains of reality.

The deposition testimony, which is often longer and goes into more detail than the more polished trial testimony, gave people in the Palm Beach area an understanding of the lives of John Trent, Eleanor Mills and her daughter. Defendant Trent actively sought to keep the depositions open, apparently hoping to demonstrate to the world that he was innocent. The trial court's order keeping the depositions open served the important purpose of ensuring that Trent's Sixth Amendment right to a public trial was fully satisfied.[2]

B. Access to the Depositions in this Case Did Not Impair the Parties' Rights

Unlike the other deposition access cases before this Court, in this case the defendant affirmatively objected to exclusion of the press from depositions and asserted

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2. In Waller v. Georgia, 81 L.Ed.2d 31 (1984), the United States Supreme Court established that the right to a public trial extends to pretrial proceedings as well as trial proceedings. Obviously the petitioners lack standing to assert the Sixth Amendment rights of the accused in this case, but make this point to show the important interests which openness serves.

a Sixth Amendment right to have public attendance.[3] Thus, there is no argument that exclusion was essential to protect the defendants' rights. Indeed, it is obvious that their rights were served by access, or at least they perceived their rights to be so served.

Of course, defendants will not in every case agree that their rights will be benefitted by publicity regarding depositions. In all three of the other deposition access cases before the Court, the defendants have in fact sought exclusion,

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3. See Waller v. Georgia, 81 L.Ed.2d 31 (1984), cited by Judge Letts in his concurring opinion. The United States Supreme Court noted that the analysis in trial and pretrial access cases had focused previously on the First Amendment. "Nevertheless," the Court said, "there can be little doubt that the explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and the public." Id. at 38. Waller involved a suppression hearing and the Court held that under the Sixth Amendment any closure of a suppression hearing over the objections of the accused must meet the following test:

1) The party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced;

2) The closure must be no broader than necessary to protect that interest;

3) The trial court must consider reasonable alternatives to closing the proceeding; and

4) The trial court must make findings adequate to support the closure. Id. at 39.

The instant case did not involve a suppression hearing, but the Court's logic applies to depositions, which in many situations are as important as the trial itself because they may help to foreclose any need for an actual trial. This is especially true in Florida, where only a paucity of cases reach the trial stage.

or at least tacitly agreed to the prosecutor's request for exclusion. In those cases, the trial judge must determine whether the rights of the accused will be so jeopardized by access that an order restrciting access can be justified. Where a criminal defendant can demonstrate that access to the depositions presents a serious and imminent threat to his fair trial rights, that no less restrictive alternatives to denying access are available, and that denying access will be effective, see Miami Herald Publishing Co. v. Lewis, 426 So.2d 1 (Fla. 1982), then a trial court should conclude that there are compelling interests for denying access, but absent such a demonstration, restrictions on access to protect the rights of the accused simply are not constitutionally tolerable.

The trial judge's decision to allow the media to attend the depositions had no apparent impact on the defendants' ability to receive fair trials. All of the depositions taken by the defendants were widely reported on by the petitioners. (A. 7-11). Notwithstanding the intensive pretrial publicity, lawyers for the State and the defendants were able to pick juries in both cases without the need to challenge or dismiss a single potential juror due to bias or prejudice. Neither defendant has ever complained that he did not receive a fair trial because the media was allowed to attent the depositions.

In the trial and appellate court proceedings, the State has yet to propose a logical basis for closing the depositions in this case, and has asked the Court to recognize the State's absolute power to close depositions over the public's and the

defendant's objection. Its focus throughout has been the inconvenience caused by accommodating the news media. Any such inconvenience was absent from the depositions which actually took place and certainly would never rise to such a compelling level as to override the right of the public to be present and witness a crucial part of the judicial process. It should be noted that no party in this case has claimed that the open depositions in any way adversely affected the judicial process at any stage, from voir dire to sentencing.

The appeals court decision in this case stands for the proposition that the State may arbitrarily close pretrial depositions without any cause and over the objections of the media and the defendant. The decision abridges the First and Fourteenth Amendments of the United States Constitution, the common law, and the rules of civil and criminal procedure.[4]

II.

The Fourth District Erred in Holding that the Trial Court Departed from the Essential Requirements of Law by Allowing the Press to Attend the Depositions

This Court unanimously held in Combs v. State, 436 So.2d 93, 95-96 (Fla. 1983), that the district courts should exercise their discretion to grant a writ of certiorari "only

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4. As argued fully in the aforementioned briefs before this Court, the decision also is an unconstitutional delegation of the judicial power to oversee discovery in criminal cases. See Petitioners' Initial Brief, Post-Newsweek Stations, Florida, Inc. v. State, Fla. S.Ct. Case No. 67,671 at 38 n.20. The judiciary may not delegate its authority to control access to depositions to the State at its whim, particularly, as in this case, where there are objections from the defendant.

where there has been a violation of a clearly established principle of law resulting in a miscarriage of justice."

When the state seeks interlocutory review of a pretrial order in a criminal case by petition for writ of certiorari, it generally must demonstrate that the order is both a departure from the essential requirements of law and that the order sought to be reviewed "has the effect of substantially impairing the ability of the state to prosecute its case." See State v. Steinbrecher, 409 So.2d 510 (Fla. 3d DCA 1982).

Neither in the trial court nor in the district court of appeal did the State advance even an argument that conducting the depositions at issue in the presence of the press would impair its ability to prosecute the defendants or infringe upon some other legitimate state interest. Consequently, the trial court's decision -- even if regarded as wrong -- did not result in any "miscarriage of justice" and should not have been reversed by the Fourth District. The writ of certiorari should have been denied.

CONCLUSION

The decision of the Fourth District Court of Appeal should be quashed and the Fourth District should be directed to enter an order denying the state's petition for writ of certiorari.

Respectfully submitted,

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