IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY

Sarasota County Sheriff's Office,
et al ,
Petitioners,

v **Case No 2022 CA 2741**

Sarasota Herald-Tribune Company
& Melissa Perez-Carrillo,
Respondents
_____/

ORDER ON EMERGENCY MOTION TO DISSOLVE TEMPORARY INJUNCTION

This matter came before the Court on June 21, 2022, on Respondents' "emergency motion to dissolve unconstitutional prior restraint " The Court received testimony, heard argument of counsel, reviewed the court file and memoranda of law, the filed motions, and took the matter under advisement The Court finds as follows

Factual & Procedural Background

The factual background of this case has been laid out in the various motions for relief filed by the parties in this action and the Court finds the pertinent background of this case is essentially undisputed For the purpose only of addressing the legal issues raised by the Respondents' motion to dissolve temporary injunction and the Petitioners' response, the Court incorporates the common and undisputed facts of this case based on the filed pleadings, a joint factual stipulation provided by the parties, and the Courts own findings based on evidence presented at the hearing [1]

On April 1, 2022, deputies of the Sarasota County Sheriff's Office ("Sheriff"), including Deputy Doe #1 and Deputy Doe #2, arrived at an apartment to serve a court-ordered writ of possession for the removal of Jeremiah Evans from the apartment After the deputies' non-forcible entry, Mr Evans exhibited a knife and refused to leave Deputies commanded Mr Evans to drop the knife, but he refused to do so Deputies then "tased" Mr Evans, but he stood and advanced toward the deputies while holding the knife in front of his body in a threatening manner Mr Evans approached to within eight feet of the deputies and Deputy Doe #2 discharged a firearm, striking him Medical help was summoned, but Mr Evans died from the gunshot wound

[1] On Friday, June 24, 2022, at 6 09 PM, Respondents e-filed with the Clerk an "emergency notice prior restraint is moot" stating that another organization on June 23, 2022, reported on its website and via Twitter the name of one of the Petitioner deputies The notice was not considered by the Court in reaching this ruling

On May 13, 2022, Chief Assistant State Attorney for the Twelfth Judicial Circuit, Craig Schaeffer, sent a letter to the Sheriff regarding the above officer-involved shooting ("Letter") The Letter identified three deputies by last name only, related the factual circumstances of the shooting, and concluded that Deputy Doe #2's use of deadly force was lawful Implicit in this conclusion was that the weapon was filed in self-defense and in response to an imminent threat

On June 1, 2022, a reporter with the Sarasota Herald Tribune, Respondent Melissa Perez-Carrillo, by email made a public records request to the Office of the State Attorney ("State Attorney") for a copy of the Letter An unredacted copy of the Letter was received by Respondents from the State Attorney that same day [2] On June 7, 2022, Ms Perez-Carrillo contacted the Sheriff's interim public information officer, Doug Johnson, and requested the first name of Deputy Doe #2 since she had received the Letter from the State Attorney containing Deputy Doe #2's last name After consulting with the Sheriff's general counsel, Crystal Bailey, Mr Johnson informed Ms Perez-Carrillo that Deputy Doe #2's last name was released in error because the deputy is a crime victim under Marsy's Law entitled to confidentiality He requested that Respondents not publish the deputy's name On June 8, 2022, Ms Perez-Carrillo requested from Mr Johnson a roster of all deputies on the Sheriff's staff

On June 9, 2022, Ms Bailey spoke with Ms Perez-Carrillo by telephone and reiterated the Sheriff's position that deputies who become crime victims in the course of performing their official duties, such as Deputies Doe #1 and Doe #2, are entitled to confidentiality under the Marsy's Law provision of the Florida Constitution Ms Bailey sought an assurance that the deputies' names would not be published Ms Perez-Carrillo stated she would speak with her editor and call Ms Bailey back Ms Perez-Carrillo did not call back but later that day sent Ms Bailey an email stating, "As far as the records I requested with the [Sheriff's Office], those are public records Also, I'm not sure of the angle of the story yet " Ms Bailey heard nothing further from Ms Perez-Carrillo and testified she interpreted this as an indication that Respondents intended to publish the deputies' names and that publication was imminent However, Ms Bailey did not attempt to contact an editor with the newspaper or the newspaper's attorney

On June 10, 2022, Petitioners filed their verified motion for emergency injunction and petition for declaratory relief ("Petition") The Petition sought a declaratory judgment that Deputies Doe #1 and Doe #2 are victims under Marsy's Law entitled to keep confidential their names or information or records that could be used to locate or harass them or their families The Petition further sought an emergency temporary order enjoining Respondents from publishing the deputies' names or other personal information until the Court determined the merits of their Petition

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[2] A partially redacted copy of the Letter is attached to Petitioners' Verified Motion for Emergency Injunction and Petition for Declaratory Relief as Exhibit C

Based on information and allegations contained in the Petition, the Petitioners obtained from the Court, without notice to Respondents, an injunctive order The order temporarily enjoined Respondents "from publishing and/or otherwise further disseminating the personal information of Deputy Doe #1 or Deputy Doe #2 including but not limited to their names" and reserving until further order of the court, signed by Judge Charles E Roberts at 6 30PM on June 10th, 2022 The Respondents received notice of the injunctive order at or about 9 00PM on June 10, 2022 The timeline for the filing of the motion for temporary injunction, coupled with the timing of the request for consideration of the motion by Judge Roberts, prevented a hearing from being held prior to entry of the order The Respondents did not have an opportunity to be heard on the request for an emergency temporary injunction

On June 13, 2022, the Respondents filed their motion to dissolve temporary injunction They allege the injunctive order is an unconstitutional prior restraint upon their First Amendment rights and that the motion for temporary injunction and the injunctive order itself are legally insufficient

The Petitioners allege that divulging the deputies' names would violate Marsy's Law in that the two deputies involved were "victims" under the language of the law *See* Article I, Sec 16(b)(5) of the Florida Constitution During the hearing, Petitioners presented evidence that prior to the adoption of Marsy's Law, the names of deputies were routinely released in response to public records requests made after an officer-involved shooting In some instances, deputies involved in shootings required extra security to protect their homes A witness recounted an incident where emergency response was needed to intervene when such a deputy was recognized and surrounded by a group of men at a gas station

The Respondents do not challenge the constitutionality of Marsy's Law Nor do they particularly take issue with the Petitioners' position that law enforcement officers, while acting in their official capacity, can become victims of crime under Marsy's Law depending upon the particular circumstances of the case The parties acknowledge that the First District Court of Appeal has held as much in *Florida Police Benevolent Association, Inc v City of Tallahassee*, 314 So 3d 796 (Fla 1st DCA 2021) That decision is currently under review by the Florida Supreme Court

For purposes of determining Respondents' motion to dissolve the temporary injunction, the Court need not determine the constitutionality of Marsy's Law nor whether Marsy's Law is applicable to Deputy Doe #1 and Deputy Doe #2 It is enough that Petitioners claim the deputies are crime victims and base their Petition on that claim Instead, the central issue at this point of the case is the legal effect of the State Attorney's release of the unredacted Letter pursuant to a public records request by the Respondents Through other public records information, and legal journalistic methods and deduction, the full names of both deputies were gleaned by the Respondents

The Law

Marsy's Law

Some discussion of Marsy's Law is necessary for an understanding of the interest Petitioners seek to protect Following passage of Amendment 6 in November 2018, Marsy's Law became part of the Florida Constitution, creating a Bill of Rights for crime victims and their families *See* Art I, Sec 16(b), Fla Const Marsy's Law is recognized and enforced "throughout the criminal and juvenile justice systems for crime victims, and [ensures] that crime victims' rights are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents[ ]" *Id* Its stated purpose is "[t]o preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims " *Id*

Marsy's Law, in part, requires that the following rights be given to every victim beginning at the time of his or her victimization

(2) The right to be free from intimidation, harassment, and abuse

(5) The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim

Art I, Sec 16(b)(1) & (5), Fla Const

In turn, Sec 16(c), Fla Const , provides "[t]he victim, the retained attorney of the victim, a lawful representative of the victim, or the office of the state attorney upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record"

Prior restraint

The First Amendment is a limitation on the government's ability to regulate or prohibit speech It does not bar all attempts to regulate speech and it does not absolutely prohibit prior restraints against publication A "prior restraint" denotes "administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur " *Alexander v United States,* 509 U S 544, 550 (1993) Prior restraint of publication is an extraordinary remedy attended by a heavy presumption against its constitutional validity *N Y Times Co v United States*, 403 U S 713,714 (1971) The Second District Court of Appeal has observed that

A temporary injunction aimed at speech, as it is here, "is a classic example of prior restraint on speech triggering First Amendment concerns," *Vrasic v Leibel,* 106 So 3d 485, 486 (Fla 4th DCA 2013), and as such, it is prohibited in all but the most exceptional cases, *Near v Minn ex rel Olson,* 283 U S 697, 716, 51 S Ct 625, 75 L Ed 1357 (1931) Since "prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights," the moving party bears the "heavy burden" of establishing that there are no less extreme measures available to "mitigate the effects of the unrestrained public[ation]" and that the restraint will indeed effectively accomplish its purpose *Neb Press Ass'n v Stuart,* 427 U S 539, 558–59, 562, 96 S Ct 2791, 49 L Ed 2d 683 (1976)

Gawker Media, LLC v Bollea, 129 So 3d 1196, 1199 (Fla 2d DCA 2014)

To justify a prior restraint, the state must have an interest of the "highest order" it seeks to protect *Florida Star v B J F* , 491 U S 524, 533 (1989) *Florida Star* involved the Duval County Sheriff's Office mistaken inclusion of the full name of a rape victim in an incident report left in the Sheriff's pressroom A reporter copied the information and the victim's full name was later printed in the newspaper's report of the incident Sec 794 03, Fla Stat , made it unlawful to "print, publish, or broadcast in any instrument of mass communication" the name of the victim of a sexual offense B J F sued the Sheriff and the newspaper for damages The newspaper unsuccessfully moved to dismiss, claiming imposing civil sanctions pursuant to the statute violated the First Amendment

The case ultimately reached the U S Supreme Court, which reversed in favor of the newspaper based on the principle that "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order " The court found the newspaper lawfully obtained the truthful information from the government, that the newspaper article involved a matter of public significance (commission and investigation of a violent crime reported to authorities), and imposing liability on the newspaper did not serve "a need to further a state interest of the highest order " The court acknowledged that the interest in protecting the privacy and safety of sexual assault victims and in encouraging them to report offenses without fear of exposure are highly significant, but imposing liability was not a narrowly tailored means of safeguarding anonymity The court reasoned that "where the government has made certain information publicly available, it is highly anomalous to sanction persons other than the source of its release " *Id* at 534

Those same principles were cited by the court in *Gawker Media* when it reversed a temporary injunction against publication as a prior restraint There Bollea (better known as Hulk Hogan) sought to enjoin Gawker Media from publishing a report about his extramarital affair that included video excerpts from a sexual encounter with a woman that Bollea claimed was illegally recorded in violation of Florida law The trial court granted a temporary injunction against

publication The trial court did not make any findings during the hearing or in the injunctive order to support its decision The appellate court interpreted the trial court's comments during the hearing as its belief that Bollea's right to privacy was insurmountable and that publishing the video excerpts was impermissible because it was illegally recorded Those grounds were found insufficient to justify the prior restraint on publication The court cited *Bartnicki v Vopper*, 532 U S 514, 535 (2001) (if a publisher lawfully obtains the information in question, the speech is protected by the First Amendment provided it is a matter of public concern, even if the source recorded it unlawfully) and *N Y Times Co v United States,* 403 U S 713 (1971) (holding that notwithstanding the fact that a third party had stolen the information, the press had a constitutional right to publish the Pentagon Papers because they were of public concern) and found the temporary injunction an unconstitutional prior restraint There was no dispute that Gawker Media was not responsible for creation of the video and Bollea did not allege it had otherwise obtained the video unlawfully

Temporary injunction

The court in *Gawker Media* further observed that

> 'The primary purpose of a temporary injunction is to preserve the status quo while the merits of the underlying dispute are litigated ' *Manatee Cnty v 1187 Upper James of Fla , LLC,* 104 So 3d 1118, 1121 (Fla 2d DCA 2012) In the context of the media, 'the status quo is to publish news promptly that editors decide to publish A restraining order disturbs the status quo and impinges on the exercise of editorial discretion ' *In re Providence Journal Co ,* 820 F 2d 1342, 1351 (1st Cir 1986), *modified on other grounds on reh'g by* 820 F 2d 1354 (1st Cir), *cert dismissed, United States v Providence Journal Co ,* 485 U S 693, 108 S Ct 1502, 99 L Ed 2d 785 (1988)

Gawker Media, LLC v Bollea, 129 So 3d at 1199 Thus, the proponent of a temporary injunction against publication must shoulder an extremely heavy burden

Rule 1 610(a)(1), Fla R civ P , provides that a temporary injunction may be entered without written or oral notice to the adverse party only if

> (A) It appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition, and
>
> (B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required "

Rule 1 610(a)(2) provides, "Every temporary injunction granted without notice shall define the injury, state findings by the court why the injury may be irreparable and give the reasons why

the order was granted without notice if notice was not given *See also Lewis v Sunbelt Rentals, Inc* , 949 So 2d 1114 (Fla 2d DCA 2007)

Rule 1 610(b) provides "No temporary injunction shall be entered unless a bond is given by the movant in an amount the court deems proper, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined " However, the rule further provides, "When any injunction is issued on the pleading of a municipality or the state or any officer, agency, or political subdivision thereof, the court may require or dispense with a bond, with or without surety, and conditioned in the same manner, having due regard for the public interest "

Discussion

The Respondents argue that based on the circumstances of the present case, Marsy's Law does not prohibit the Respondents from publishing the deputies' identities Respondents cite *Florida Star* and *Gawker Media* for the proposition that once information is publicly revealed or in the public domain, its publication cannot be constitutionally restrained They also claim that the motion for temporary injunction and the temporary injunctive order are insufficient in that the circumstances do not support a hearing without notice, the order does not make the necessary finding to justify a temporary injunction without notice, and the order failed to require a bond to cover Respondents' costs and damages if the injunction is wrongfully entered or explain why dispensing with the bond requirement was appropriate

The Petitioners contend that the publication of Deputy Doe #1 and Deputy Doe #2's personal information, including but not limited to their names, would constitute irreparable harm for which no adequate legal remedy would afford redress They argue that their right to confidentiality under Marsy's Law is a constitutional right and that the circumstances justified entry of the temporary injunction without notice to the Respondents They cite *People v Bryant*, 94 P 3d 624 (2004), a Colorado Supreme Court decision that upheld a prior restraint against publication of a transcript of an *in camera* hearing mistakenly released to the media by a court employee in violation of Colorado's rape shield statute

Under the unique facts in this case, particularly the fact that the State Attorney, albeit mistakenly,divulged identifying information of Deputy Doe #1 and Deputy Doe #2 to Respondents who, by lawful journalistic means then ascertained the identities of the deputies, the Court finds that the temporary injunction entered in this case is an unconstitutional prior restraint that must be dissolved

The Court's determination is controlled by *Florida Star* and *Gawker Media* Under facts strikingly similar to the present case, the U S Supreme Court in *Florida Star* reversed a civil judgment against a newspaper for publishing the full name of a rape victim in violation of a statute The court reasoned that the interest in protecting the privacy and safety of sexual assault victims and in encouraging them to report offenses without fear of exposure, although

highly significant, did not outweigh the newspaper's First amendment right to publish truthful information about a matter of public concern that was not obtained through the newspaper's unlawful conduct It is noteworthy that the court in *Florida Star* invalidated the less-intrusive, post-publication imposition of civil liability rather than a prior restraint on publication, which presents an even greater burden for the proponent of a temporary injunction That is, if the state's interests are not compelling enough to justify an after-the-fact restraint, they are certainly not sufficient to justify a prior restraint

In the present case, the fatal shooting of Mr Evans in the course of the deputies' service of a writ of possession is unquestionably a matter of public concern The last names of the deputies were mistakenly released in an unredacted version of the State Attorney's letter to the Sheriff As in *Florida Star* and *Gawker Media*, there is no evidence that the Respondents obtained the information through any unlawful conduct of their own Further, the record before the Court is insufficient to show that the confidentiality provision of Marsy's Law furthers a state interest "of the highest order" as required by *Florida Star* and cases cited therein

The Colorado Supreme Court's decision in *Bryant* does not alter the court's conclusion that the present temporary injunctive order is an unconstitutional prior restraint *Bryant* involved the policy supporting Colorado's rape shield statute as compared to the First Amendment interest in publishing details of a rape victim's sexual history that mistakenly came into possession of the media The court construed *Florida Star* as identifying the state's interest in protecting the identity of a victim of a sexual offense as "being of the highest order" and then analyzed how a court order redacting portions of the released transcripts could be narrowly tailored to render the prior restraint constitutional *Bryant* at 629,635 But *Florida Star* did not identify the state's interest in protecting the identity of a victim of a sexual offense as an interest "of the highest order " *Bryant* depends upon aspects of Colorado law and a misinterpretation of *Florida Star* It does not control the outcome of the present case

The Court further finds the issuance of the temporary injunction was deficient from a procedural standpoint Although the motion is verified, it does not go far enough in alleging why irreparable injury would result before the Respondents could be heard in opposition The motion for temporary injunction does not include a certification of the movant's counsel of the efforts made to give notice to the newspaper and the reasons why notice should not be required Based on the evidence presented, the Court finds that Petitioners could have given notice to Respondents before seeking the temporary injunction It does not appear to the Court that publication of the deputies' names was imminent when Petitioners filed their Petition

Similarly, the order granting the temporary injunction does not make the specific findings required by Rule 1 610(a)(2) regarding definition of the injury, the irreparable nature of the injury, and reasons why the order was granted without notice Although the Petitioners are public officers who may be granted a temporary inunction without bond, the order did not explain why no bond was required

Ruling

For all of the above, and the arguments presented, in part, by the Respondents, the emergency motion to dissolve the order regarding verified motion for emergency injunction and petition for declaratory judgment (signed June 10th, 2022, by the Hon Charles E Roberts) is **Granted** At the end of the motion hearing Petitioners requested time to pursue an appeal of the order if the Court ruled in favor of the Respondents The Court shall stay the effect of this order until 4 00 PM on June 28, 2022, to allow the Respondents that opportunity

Done and ordered this 27th **day of June 2022, in Sarasota, Sarasota County, Florida**

Charles E Williams
Circuit Court Judge

cc

Counsel of record