

09-22784

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION
CASE NO.: 2008-CF9434 AXK and 2008-CF9381 AXK
STATE OF FLORIDA,
Plaintiff,
vs.
JEFFREY RYSTEIN,
Defendant.

PROCEEDINGS HELD BEFORE
THE HONORABLE JEFFREY J. COLBATH
JUNE 10, 2009
11:08 A.M. - 11:25 A.M.
PALM BEACH COUNTY COURTHOUSE
WEST PALM BEACH, FLORIDA

Reported by Louanne Rawls
Notary Public, State of Florida
West Palm Beach Office #190578

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Proceedings

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APPEARANCES:

1 On behalf of the Defendant
2 JACK ALAN GOLDBERGER, ESQUIRE
3 Atterbury, Goldberger, et al.
4 250 Australian Ave. South, Suite 1400
5 West Palm Beach, FL 33401

6 On behalf of the Defendant
7 ROBERT CRITTON, JR., ESQUIRE
8 Burman, Critton, et al.
9 515 N. Flagler Drive, Ste. 400
10 West Palm Beach, FL 33401-4349

11 On behalf of Third Party E.W.
12 WILLIAM J. BERGER, ESQUIRE
13 BRADLEY J. EDWARDS, ESQUIRE
14 Rothstein Rosenfeldt Adler
15 401 E. Las Olas Blvd., Suite 1650
16 Fort Lauderdale, FL 33394

17 On behalf of Third Party, The Post
18 DEANNA SHULLMAN, ESQUIRE
19 Thomas, LoCiero & Bralow, PL
20 101 N.E. 3rd Avenue
21 Suite 1500
22 Fort Lauderdale, FL 33301-1181
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P R O C E E D I N G S

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BE IT REMEMBERED that the following proceedings were had and testimony adduced before the Honorable Jeffrey Colbath, at the Palm Beach County Courthouse, West Palm Beach, Florida beginning at the hour of 11:08 a.m. on June 10, 2009, with appearances as herein noted to-wit:

THE COURT: State vs. Epstein. Let me have for the record, announce everybody's appearance.

MR. BERGER: Your Honor, William J. Berger and Bradley Edwards for non-party E.W.

MS. SHULLMAN: Your Honor, Deanna Shullman of Thomas, Luciere & Bralow for non-party The Palm Beach Post.

THE COURT: Let me slow down a little bit. On behalf of The Post is?

MS. SHULLMAN: Deanna Shullman.

THE COURT: E-W-U-L --

MS. SHULLMAN: E-W-U-L-E-N-A-N.

THE COURT: Ms. Shullman, good morning. Mr. Berger, good morning. And Mr. Berger, your client is E --

MR. BERGER: E.W., yes.

THE COURT: Anybody else here?

MR. EDWARDS: Brad Edwards on behalf of E.W. as well, Judge. Thanks.

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THE COURT: Last name is spelled?

MR. EDWARDS: Edwards. E-D-W-A-R-D-S.

THE COURT: Okay.

MR. GOLDBERGER: For the other side, Your Honor, Jack Goldberger along with Robert Critton on behalf of Jeffrey Epstein.

THE COURT: It is the Post's and E.W.'s Motion to Intervene for the purpose of unsealing records?

MR. BERGER: Yes, sir.

THE COURT: Here's what I think I know, and I tell you this so that you can fill in the gaps of what you know that I don't know and suggest what you think I ought to do. It appears to me that there was some agreement -- an agreement that was sealed and then an addendum or amendment to the agreement that was sealed as to documents in the Court's files under seal and it appears as though the punitive interveners want to unseal those and take a peek at them. I don't see where any of the proper procedures to seal the documents was ever followed to begin with. I don't know but it's not jumping out at me when I reviewed the file. So, I'm thinking that it might be appropriate and the burden might be on the moving party, being the State and Mr. Epstein, to give them the opportunity to jump through the hur -- hoops to seal the documents if they are entitled to have them sealed, then

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I'll grant that request. If they're not entitled to seal then I'll order it as documents unsealed. But that's kind of procedurally where I think the case is. I will allow Mr. Berger and Mr. Shullman to argue if they wish to, otherwise I will go over to Mr. Goldberger and Mr. Critton to perhaps talk about what they think about my suggestion. Mr. Berger?

MR. BERGER: I -- I'd like to hear what they say.

THE COURT: Mr. Shullman?

MR. SHULLMAN: Agreed.

THE COURT: Mr. Goldberger?

MR. GOLDBERGER: Your Honor --

THE COURT: I mean, it looks like they just handed up an Agreed Order to sign.

MR. GOLDBERGER: Well, if the Court -- I know the Court is trying to short circuit here and the idea in theory is not horrible, it's not terrible, it's actually not so bad. But let me alert the Court to a couple of issues. First of all, this is not something that came up ahead of time where we were moving to close a hearing or file documents under seal and the Rules of Judicial Administration makes an important distinction between things that are done in advance and things that come up during a hearing and the fact that maybe it goes to the Rule -- talk about situations that arise during the course

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of a hearing, that the Rules would not apply to that. Secondly, E.W.'s Motion to Intervene is brought under a Rule that does not apply because she brought it under a Rule that applies to non-criminal cases. Having said that I know the Court's desire to get to the issues here and I just need to alert the Court to one other matter because I think it's really important. The Plaintiff's, E.W., has this agreement already. They have this agreement. Counsel will tell you they have this agreement. There have been two hearings in front of Judge Barra who has the Federal cases here. They moved to unseal the non-prosecution agreement in front of Judge Barra. He entered an initial order, a very, very well reasoned Order which I have a copy for the Court.

THE COURT: Oh, thanks.

MR. GOLDBERGER: We entered a very, very well reasoned Order weighing the interest of the Plaintiffs to have access to the non-prosecution agreement with the confidentiality that the parties intended to be part of this agreement. And what he did, he said they can have this agreement. They can review it all they want. If they want to review it with somebody else, they need to give them a copy of this Order that it is not to be disclosed to anyone else. Subsequent to that -- so that's the Rule that's in place right now. Subsequent to that the

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Plaintiffs went back and said we want to disseminate this Order. We want to disseminate this agreement to other parties and Judge Narra entered a second Order denying that request and said, no. My Order is in place but if you have some compelling reason why you want this agreement to be disseminated to others, file a motion and come back to me.

THE COURT: This is as a result of some civil litigation pending in the Federal Courthouse?

MR. GOLDBERGER: Yes.

THE COURT: As opposed to any criminal prosecution going on?

MR. GOLDBERGER: It is civil proceedings that are going on in Federal Court. But in the interest of comity, Your Honor, the Court has ruled on the confidentiality agreement and has put a well reasoned procedure into place. If the parties want that agreement unsealed where they need to go is go back to Federal Court and Judge Narra invited them to do so.

THE COURT: That may be as it pertains to E.W., but what about The Post?

MR. GOLDBERGER: I think -- and I think I know where the Court is going on this. If The Post's position is the public has right to see -- access to this then there is a procedure in place and ultimately the Court has to conduct

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a hearing and do the balancing test where you look at whether there is some compelling government interest and that's going to require an evidentiary hearing. So I have no great objection to filing the Request for Closure and then have a hearing in front of the Court.

THE COURT: Well, let's do -- I'm thinking out loud. I'm not ruling. I will give you all a chance to argue further, but this is what I'm thinking I will do, grant the Motion to Intervene. It gives standing to E.W. It gives standing to The Post to contest the fact that these were sealed. And then I will shift the burden back on the State and Defendant, Mr. Epstein, to petition the Court to seal these documents. Until such time that I rule on that I will leave them under seal because they might have been correctly sealed but the procedure wasn't followed. There's got to be notice. You've got to comply with the Administrative Order 2.303. You've got to comply with the Rule of Judicial Administration 2.420(d). I think even though that's a civil -- it addresses a civil matter this is, you know, in the nature of a civil procedure. So, I'll do that. And thank you for these Orders. So, where do we go from here? I'm thinking out loud, not ruling. Mr. Berger?

MR. BERGER: Judge, with all due respect I completely disagree with counsel's characterization of

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1 these two Orders. I don't know if he handed up both to
2 you?
3 THE COURT: I do.
4 MR. BERGER: They simply do not say what he tells
5 you they say.
6 THE COURT: I'll read them --
7 MR. BERGER: All right.
8 THE COURT: -- and I'll allow you to make that
9 argument --
10 MR. BERGER: And -- and --
11 THE COURT: -- at the time of the Renewed Motion to
12 seal.
13 MR. BERGER: All right. And, also, I don't think the
14 Court -- I think the Court needs to deal with this
15 immediately, expeditiously. This is a matter that the
16 Supreme Court has placed incredible scrutiny over. And the
17 Rule that we are traveling under -- we're not only
18 traveling under a Rule of Judicial Administration that
19 applies to criminal and civil cases, we're applying to an
20 Administrative Order of this Court that was in place when
21 the sealing was done and that superseded the sealing.
22 THE COURT: I --
23 MR. BERGER: I'm just saying, I respectfully request
24 that the Court not delay this one minute.
25 THE COURT: You've got the agreements.

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1 MR. BERGER: Pardon me?
2 THE COURT: You've got the agreements anyway. You've
3 got what's under seal.
4 MR. BERGER: Judge, we cannot do anything with them.
5 THE COURT: Take that up with Judge Marra.
6 MR. BERGER: No, sir. That is not what the Order
7 says. May I quote Judge Marra. "If a specific tangible
8 need arises in a civil case the relief should be sought in
9 that case." In other words, the civil cases which are in
10 front of Judge Hefele is one forum that Judge Marra said
11 go to it. Judge Marra did not say that this Court does not
12 have jurisdiction to unseal its own sealed records or to
13 vacate its own Order sealing. And any characterization is
14 -- is false.
15 THE COURT: I'll take a look at it and I'll draw
16 from it what it says -- what I think it says. I appreciate
17 your zealous representation of your client. Please, it
18 appears as though you're yelling at me.
19 MR. SHULLMAN: Your Honor?
20 THE COURT: Ms. Shullman?
21 MR. BERGER: Judge, this happens to be a very
22 serious matter and every day of delay delays our
23 discovery.
24 THE COURT: Ms. Shullman?
25 MS. SHULLMAN: Your Honor, if I may be heard on the

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issue as well. As a representative of the public's right of access --

THE COURT: Right.

MS. SHULLMAN: -- here essentially. I would agree with Mr. Berger that we need an immediate hearing on this issue. That's what we're here to do today. I think I heard Your Honor say that he's not clear that the procedures were applied. My review of the record does not reveal that the procedures were complied with. My review is similar to Your Honor's. It looks like sort of everybody approached the bench and Judge Pucillo said let's take it under seal. If Mr. Epstein's counsel is not prepared to go forward today and meet his burden, then I would ask that this Court set a hearing as soon as practical because the right solution here should be to unseal the records and then, you know --

THE COURT: I've gotcha.

MS. SHULLMAN: -- and they have to make a motion.

THE COURT: Well, what house is on fire? I mean, what is the -- I think what they have to do is they've got to give ten days notice pursuant to the Rule -- the Administrative Order, Rules of Judicial Administration, to go through that process. What -- what prejudice is there? What house is burning down if I say okay. State and defense, go ahead and expeditiously move through the

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process and let's get this back on my docket as quickly as possible and give them until Friday to file their notice and ten days after that we have an evidentiary hearing. I go through the process then. What bad thing is going to happen by waiting these extra twelve to fifteen days?

MS. SHULLMAN: The bad thing that's going to happen, Your Honor, is that the status quo in Florida is that the constitutional right of access is openness.

THE COURT: Right.

MS. SHULLMAN: You know, certainly if Your Honor is inclined to postpone this hearing I would ask that it be done expeditiously as you suggest.

THE COURT: Yeah.

MS. SHULLMAN: You know, Friday and then ten days thereafter, it just delays access for another two weeks and it infringes on our rights.

THE COURT: I agree. Mr. Berger, I will let you answer that same question.

MR. BERGER: I don't think --

THE COURT: Anything specific rather than --

MR. BERGER: Yes.

THE COURT: You know, anything closed that the people are allowed to look at is a transgression and any transgression is bad, but anything unique beyond that?

MR. BERGER: Your Honor -- Your Honor, I do not

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1 Believe that this Court has the jurisdiction to revisit
2 the propriety of the sealing of these records and give the
3 Defendant or the State, for that matter, a second bite at
4 the apple. If the records are sealed improperly, which the
5 Court has said on its face that appears to have occurred,
6 I do not believe that this Court has jurisdiction to allow
7 them a second bite at the apple to go through with the
8 notice requirements. They should have done that in front
9 of Judge Pucillo a year ago and they did not do it. The
10 Rule of Judicial Administration 2.420 simply does not give
11 this Court the right to reactivate the procedure that you
12 outlined.
13 THE COURT: Okay.
14 MR. BERGER: Thank you.
15 THE COURT: Anything further, Mr. Goldberger or Mr.
16 Crittent?
17 MR. GOLDBERGER: Just note, Your Honor, as far as
18 the timing of this and we want to do this expeditiously,
19 of course, this sealing occurred not last week, not two
20 weeks ago, not four months ago but eleven and one half
21 months ago. The Post reported this last July. So, I
22 understand the right for the public to have access and we
23 want to do this as quickly as possible but there is no
24 fire here. There is no house burning.
25 THE COURT: Then I'll go ahead and enter an Order as

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1 I've indicated, that is that I'll grant the Intervener's
2 Motion to Intervene. You have standing. I will order that
3 the State and/or the defense by noon Friday file a Notice
4 of -- comply with the Administrative Order 2.381 and the
5 Judicial Rule -- the Rule of Judicial Administration
6 2.420, paragraph d, that outlines the procedures to seal
7 files in these types of cases and then we'll get a hearing
8 scheduled for argument on whether or not they will be
9 sealed. Until that time they will remain sealed because
10 Judge Pucillo signed off on the Order and I'm not inclined
11 to disturb that until I find more about the merits of the
12 movant's position.
13 MR. GOLDBERGER: Thank you.
14 THE COURT: Anybody want to reduce any of that mess
15 to a written Order?
16 MR. EDWARDS: I'd like to Your Honor. I'd like to
17 know if you're going to give us a hearing date today.
18 THE COURT: I'll deal with that. Yeah. Let me give
19 you some time. How much time do you think it's going to
20 take? I don't think I'm going to have any surprises. How
21 much time do you think we need? A half hour?
22 MR. EDWARDS: Not more. I'd say an hour at the
23 longest.
24 THE COURT: I'm not taking evidence or anything like
25 that. In the meantime, do you agree it would be prudent

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for me to take a look and see what the content of these things are so I can be articulate on what -- their know about? I didn't do that for today's hearing?

MR. GOLDBERGER: The defense --

MR. EDWARDS: The non-prosecution agreement?

THE COURT: Right. Whatever is under seal. Whatever it is that's under seal I'll take a look at it so that I can at least have a feel for apparently what you all know and I don't.

MR. GOLDBERGER: The defense has no objection.

THE COURT: Okay. I'll go ahead and read these two sealed documents and I'll see you back here, assuming that Mr. Goldberger and Mr. Caltton get that done between now and Friday. Ten days from this Friday is the 22nd. How about we do this on the 25th at 1:30?

MR. GOLDBERGER: One moment. Your Honor. That's fine with me.

MR. BERGER: Thank you.

THE COURT: All right. Great. Thank you so much.

MR. GOLDBERGER: Thank you, Judge.

(PROCEEDINGS CONCLUDED)

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C E R T I F I C A T E

I, LOUANNIE RAWLS, certify that I was authorized to and did digitally report the foregoing proceedings and that the transcript is a true and complete record of my notes.

Dated this 10th day of June, 2009.

LOUANNIE RAWLS, #100578

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