IN THE COUNTY COURT OF THE
11TH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR MIAMI-DADE COUNTY

CASE NO. B14-2900
JUDGE WILLIAM ALTFIELD

STATE OF FLORIDA,
Plaintiff,

v.

JUSTIN DREW BIEBER,
Defendant.

Defendant's Corrected Reply in Support of Emergency Motion to Quash Public Records Request Pursuant to Section 119.01 of the Florida Statutes

"Inmates in jails, prisons, or mental institutions retain certain fundamental rights of privacy; they are not like animals in a zoo to be filmed and photographed at will by the public or by media reporters." *Houchins v. KQED, Inc.*, 438 U.S. 1, 5 n.2 (1978). The Public Records Act, which was designed for the noble purpose of "allow[ing] Florida's citizens to discover the actions of their government," *Doe v. State*, 901 So. 2d 881, 883 (Fla. 4th DCA 2005), does not support the Media Companies' efforts to obtain jailhouse security footage of Defendant submitting to a urine test. *See* Fla. Stat. § 316.1932(1)(b) ("The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved").

It is well settled that the right of privacy enshrined in Florida's Constitution "is much broader in scope than under the Federal Constitution." *Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Petersen*, 920 So. 2d 75, 80 (Fla. 1st DCA 2006). And, as it pertains to this case, that expansive right of privacy only bends in the face of an appropriate demand for "public" records. Jailhouse security footage of Defendant urinating is not a public record as a matter of Florida law. Contrary to the Media Companies' assertion that *Bent v. State*, 46 So. 3d 1047 (Fla. 4th DCA 2010), is "irrelevant" and "inapplicable," that decision is dispositive of the threshold question presented in this case. The definition of the term "public records" is limited to "'materials that have been prepared *with the intent* of perpetuating or formalizing knowledge' in connection with the transaction of official agency business." *Bent*, 46 So. 3d at 1049. Even if it is necessary or appropriate to monitor inmates while administering urine tests for security purposes, "perpetuating or maintaining" video recordings of urine tests "has no connection to any official business," and releasing them would neither advance the interest of "allow[ing] public oversight of government business," nor "further the purpose of the Public Records Act." *Id.* Simply put, a recording of Defendant urinating does "not in any way reflect the actions of government," and there is no basis for this Court to make such a recording available "for anyone and everyone" to see. *Id.*

Even assuming that the definition of "public records" were sufficiently expansive to include gratuitous video recordings of inmates urinating, the Media

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Companies rely on outdated and inapplicable precedent. The Media Companies urge this Court to apply the *Lewis* test, which was established in a case involving the closure of pretrial hearings. *See Miami Herald Pub. Co. v. Lewis,* 426 So.2d 1 (Fla. 1982). However, in a more recent case involving "the closure of pretrial discovery documents," as opposed to pretrial hearings, the Florida Supreme Court expressly declined to apply *Lewis*, and instead held that the test set forth in *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988), was the "more appropriate standard" to apply. *Post-Newsweek Stations, Fla. Inc. v. Doe*, 612 So. 2d 549, 551-52 (Fla. 1992).

Pursuant to the *Barron* test, public access to pretrial discovery may be restricted when necessary (a) "to comply with established public policy set forth in the constitution, statutes, rules, or case law"; or (b) "to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed." *Id.* at 552 (quoting *Barron*, 531 So. 2d at 118) (emphasis omitted). In determining whether disclosure is appropriate, "'it is generally the content of the subject matter' that determines whether a privacy interest exists that might override the public's right to inspect the records." *Id.* (quoting *Barron*, 531 So. 2d at 118).

Florida's "public policy," including its "constitution, statutes, rules[,] case law" and "common law," *id.*, do not countenance a public right to view video footage of inmates urinating. For example, in contrast to breath and blood tests, Florida statutory

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law expressly requires urine tests to be administered in a manner that "maintain[s] the privacy of the individual involved." Fla. Stat. § 316.1932(1)(b). The statutory text merely confirms the baseline, common-sense policy that urination is an inherently private act and that there is no legitimate public right to access video recordings of such an act. *See City of Palm Bay v. Bauman*, 475 So. 2d 1322, 1324 (Fla. 5th DCA 1985) ("A citizen has a reasonable expectation of privacy in the discharge and disposition of his urine").

In addition to the statutory requirements, the particular circumstances surrounding Defendant's urine test gave rise to a reasonable expectation of privacy in accordance with the laws and public policy of this State. *Post-Newsweek*, 612 So. 2d at 552 (quoting *Barron*, 531 So. 2d at 118). There is no legitimate law enforcement justification for creating and maintaining a video recording of Defendant's urine test and subjecting it to public disclosure. *See Lattany v. Four Unknown U.S. Marshals*, 845 F. Supp. 262 (E.D. Pa. 1994) (citing *Best v. District of Columbia*, 743 F. Supp. 44 (D.D.C. 1990)) (recognizing a "constitutional right to privacy" that protects against being photographed in custody "[a]bsent any law enforcement rationale"); *Burns v. Goodman*, No. 99-CV-0313, 2001 WL 498231, at *5 (N.D. Tex. May 8, 2001) (providing privacy to prisoners, out of view of cameras and video monitors, when being strip searched and changing their clothing); *City of Coppell v. Waltman*, 997 S.W. 2d 633 (Tex. App. Dallas 1998) ("[T]he cell contains a privacy screen so the prisoner may use the toilet facilities in private").

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Consequently, Defendant was "giv[en] every indication" that his urine test would be conducted in a "secure and private" manner, rather than recorded on video and ultimately distributed to the public at large. *State v. Calhoun*, 479 So. 2d 241, 243 (Fla. 4th DCA 1985). Disseminating video recordings of Defendant's urine test to the public would disrupt those reasonable expectations and infringe Defendant's constitutional rights.

Moreover, the "federal analogue of Florida's public records statute, the Freedom of Information Act," *Henderson v. State*, 745 So. 2d 319, 322 (Fla. 1999), reflects the privacy interests articulated in *Barron* and underscores the fact that a person accused of a crime does not forfeit all of his privacy interests in his most intimate bodily acts. Under the federal Freedom of Information Act – which "represents 'a general philosophy of full agency disclosure," *id.* – records compiled for law enforcement purposes are not subject to disclosure if they could "reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552b(c)(7). The disclosure of video recordings of inmates involved in an altercation, which is a significantly less private act than urination, have been found to constitute an unwarranted invasion of personal privacy when the inmates do not consent to the disclosure. *Mingo v. U.S. Dept. of Justice*, 793 F. Supp. 2d 447 (D.D.C. 2011).

The Media Companies' "disproportionate attention to this case" has generated additional litigation that diverts the time, resources, and attention of the parties and

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Court, impeding "the fair and administration of justice" in this criminal matter. *Stern v. Cosby*, 529 F. Supp. 2d 417, 422 (S.D.N.Y. 2007). The discovery derived from these criminal proceedings is "not intended to provide 'a vehicle for generating content for broadcast and other media'" by subjecting Defendant to public ridicule and embarrassment that infringes his constitutional rights. *Id.* at 422-23. Video recordings of Defendant's urine test are not public records, and disclosing them would violate public policy of as reflected in statutes, *see, e.g.*, Fla. Stat. § 316.1932(1)(b); the Constitution, *see* Fla. Const., art. 1 § 23; case law, *see, e.g.*, *State v. Calhoun*, 479 So. 2d 241, 243 (Fla. 4th DCA 1985); and common law as reflected in the disposition of analogous issues in cases from other jurisdictions, *see, e.g.*, *Mingo v. U.S. Dept. of Justice*, 793 F. Supp. 2d 447 (D.D.C. 2011).

WHEREFORE Defendant respectfully requests that the Court issue a temporary stay on all pending public records requests for videotaped footage of the defendant while in police custody and custody of the Department of Corrections.

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I certify that on February 21, 2014, my office mailed a true copy of the foregoing to:

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Respectfully submitted,

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