

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, STATE OF FLORIDA  
CRIMINAL DIVISION

STATE OF FLORIDA,  
Plaintiff,

Case No: CRC1400216CFAES

Division: 1

vs.

CURTIS J. REEVES,  
Defendant.

**DEFENDANT'S RESPONSE IN OPPOSITION TO TIMES PUBLISHING COMPANY'S  
MOTION TO INTERVENE, FOR OPPORTUNITY TO BE HEARD, AND OBJECTION  
TO EXCLUDING NEWS MEDIA AND PUBLIC FROM SCENE VIEW BY  
JUDGE AND COUNSEL**

The Defendant, CURTIS REEVES, by and through undersigned counsels, hereby files this Response in Opposition to Times Publishing Company's Motion to Intervene, for Opportunity to be Heard, and Objection to Excluding News Media and Public from Scene View by Judge and Counsel, and as grounds states as follows:

**PROCEDURAL AND FACTUAL HISTORY**

A scene view with Judge Susan Barthle is scheduled for the morning of Friday, February 24, 2017 at the Cobb Grove 16, 6333 Wesley Grove Blvd., Wesley Chapel, FL 33544. The "scene," in particular, is within the Cobb Grove 16's "theater 10."

The Cobb Grove Theater is owned by Cobb Theatres, LLC, located at 2000-B South Bridge Parkway, Suite 100, Birmingham, AL 35209. Cobb Theatres, LLC owns and operates a chain of movie theaters in dozens of locations spanning several states. Theater 10 is on the property of Cobb Theaters LLC.

Neither a closure order nor any other judicial ruling prevents members of the public or the media from entering the Cobb Theatres, LLC property in Wesley Chapel on the morning of February 24, 2017. Rather, the Cobb Theatres, LLC voluntarily gave the presiding Judge (and staff

members of the Court), the Defense team, members of the prosecution, and this Defendant permission to conduct the scene view on the morning of February 24, 2017. Undersigned counsels can surmise that the Cobb Theatres, LLC did not extend any similar such invitation to members of the Times Publishing Company.

The Times Publishing Company now seeks to intervene, as it contends that “the news media is entitled to a hearing, and findings meeting the test for closure[ ] are necessary before the media and public can be excluded from the scene view.” As detailed below, the Times Publishing Company’s Motion should be denied without a hearing, as no closure order or other ruling constituting “state action” has caused or resulted in the exclusion of the news media from the February 24, 2017 scene view. In other words, the Court has no jurisdiction to entertain the Motion, as there is nothing that can be legitimately challenged by the Times Publishing Company.

#### **MEMORANDUM OF LAW**

As a matter of law, in order for there to be a violation of the First Amendment, there must be some form of state action. *Cf. King v. McKenna*, \_\_\_ A.3d \_\_\_ n. 11 \*8 (Del. Superior Ct. June 29, 2015), *citing Doe v. Cape Henlopen School Dist.*, 759 F.Supp.2d 522, 530 (D. Del. 2011). Although the First Amendment affords the public and news media standing to challenge “any closure order,” *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. 1988) – some sort of judicial ruling constituting state action is required before *anyone* has standing to intervene.

Here, the Court has not rendered any order that is susceptible to legal challenge. Rather, the Court granted Defendant the right to have a scene view as allowed by law, §918.05, Fla. Stat. (2015), and the Cobb Theatre, LLC opted to exercise their right to extend an invitation to only the Court (and staff members), counsel, and the Defendant. Accordingly, the movant lacks standing, as there is no real controversy between the Court, the Defendant, and/or the State of Florida and the Times Publishing Company. *Department of Revenue v. Kuhnlein*, 646 So. 2d 717, 720-21 (Fla.

1994), *cert. denied by Adams v. Dickinson*, 515 U.S. 1158, 115 S. Ct. 268, 132 L.Ed. 2d. 853 (1995).

The cases to which the movant cites do not support its request for an opportunity to be heard and be given relief. For example, the case from Ohio – *State ex. rel. Cincinnati Enquirer v. Bronson*, 191 Ohio App. 3d 160 (2010) – is factually distinguishable as it involves state action. In *Bronson*, a news organization sought to attend the jury view of the crime scene. A staff member to the presiding Judge, Judge Bronson, told the news organization that it could “observe the jury view at a distance only.” *Id.* at 164. The media organization objected, but its request for a hearing and an opportunity to be heard in opposition to Judge Bronson’s imposed restrictions was denied. *Id.* The appeals court ultimately held that “Judge Bronson is prohibited from *imposing restrictions* on a jury view without affording all interested parties the opportunity to be heard before the order is entered.” *Id.* at 168 (emphasis added). At no point did the *Bronson* court hold that the First Amendment compels a trial court presiding over a criminal case to forcibly compel by judicial decree, in turn, the owner of a private property to make his or her property available for entry by members of the public and the media.

Here, the Court has imposed no restriction on either the public or the media. The movant’s contention is with a private entity which, notably, was not listed as a respondent or interested party in this case. As a matter of law, there are no grounds for relief.

### **CONCLUSION**

Given all of the above, the Times Publishing Company’s Motion should be denied without a hearing.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and accurate copy of this Response in Opposition to Times Publishing Company's Motion to Intervene, for Opportunity to be Heard, and Objection to Excluding News Media and Public from Scene View by Judge and Counsel, to the Office of the State Attorney for the Sixth Judicial Circuit at [SA6eService@pinellascounty.org](mailto:SA6eService@pinellascounty.org), and Allison M. Steele, Esq. at [amnestee@aol.com](mailto:amnestee@aol.com), this 23<sup>rd</sup> day of February 2017.

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