

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

ASHLEY DIAMOND,
Plaintiff,

v.

TIMOTHY WARD, *et al.*,
Defendants.

Case No. 5:20-cv-00453-MTT

**PLAINTIFF’S UNOPPOSED MOTION TO REDACT PORTIONS OF APRIL 28, 2021
STATUS CONFERENCE TRANSCRIPT**

Plaintiff Ashley Diamond hereby moves this Court for an Order directing that the transcript from the Status Conference before this Court on April 28, 2021, be redacted to remove the name of Plaintiff’s confidential witness, “John Doe.”

In support of her Unopposed Motion, Plaintiff submits the following incorporated Memorandum of Law.

STATEMENT OF FACTS

On April 9, 2021, Plaintiff filed a Motion for Preliminary Injunction, ECF No. 50, and Motion for Protective Order, ECF No. 51. As supporting documentation for her motions, Plaintiff filed a declaration in support from a confidential witness, referred to as “John Doe,” who is currently in the custody of the Georgia Department of Corrections (“GDC”). *See* Decl. of John Doe, ECF Nos. 53, 59-2 (“Doe Decl.”).

Prior to these filings, the Court had ordered the Parties to abide by privacy protections with respect to medical records and identifying information for Plaintiff’s confidential witness, including his name. *See* Text Order dated April 8, 2021 (“April 8 Order”), ECF No. 48. Pursuant to the April 8 Order, a redacted version of the “John Doe” Declaration was publicly filed, ECF No. 53, and an unredacted version revealing identifying information about John Doe was filed

under seal, ECF No. 59-2. Doe’s declaration describes events underlying this action as well as his credible fear for his safety, ongoing retaliation, and intimidation from Defendants and their agents as a result of his involvement in this matter. *Id.* Based on threats of violence and retaliation, Plaintiff also filed a Motion for Miscellaneous Relief, requesting that this Court order Defendants, their agents, and their employees not to contact Mr. Doe about his declaration in this matter and not to retaliate in any way against Doe, or, in the alternative, direct that Doe’s declaration be designated as “Attorneys’ Eyes Only.” ECF No. 61.

Counsel for the Parties have used John Doe’s real name during private discussions pursuant to agreements regarding confidentiality. During the April 28, 2021, Status Conference, the subject of John Doe’s testimony, the need for a transfer order, and Plaintiff’s request that all Parties and the Court use the pseudonym “John Doe” when referencing Plaintiff’s confidential witness at a pending May 12, 2021, hearing, in order to strike a balance between public access to the courts and the need for confidentiality, were discussed. However, likely inadvertently, the Parties and the Court repeatedly used John Doe’s real name during these discussions. Accordingly, Plaintiff respectfully moves for redaction of all portions of the transcript referring to Mr. Doe’s real name.

ARGUMENT

The common-law right of access is not absolute “[a]nd the presumption in favor of public access does not always prevail.” *[Redacted] v. [Redacted]*, No. 4:18-CV-68 (CDL), 2018 WL 3831340, at *2 (M.D. Ga. Aug. 10, 2018). For substantive pretrial motions, the presumption can be overcome by a showing of good cause. *Romero v. Drummond Co.*, 480 F.3d 1234, 1245–47 (11th Cir. 2007). Courts must “balanc[e] the asserted right of access against the other party’s interest in keeping the information confidential.” *Id.* at 1245 (quoting *Chi. Tribune Co. v. Bridgestone*, 263 F.3d 1304, 1309 (11th Cir. 2001)). The balancing test includes “whether allowing access would impair court functions or harm legitimate privacy interests, the degree of and

likelihood of injury if made public, the reliability of the information, whether there will be an opportunity to respond to the information, whether the information concerns public officials or public concerns, and the availability of a less onerous alternative to sealing the documents.” *Id.* at 1246.

Here, disclosure of John Doe’s identity would harm legitimate privacy interests and has a likelihood of injury if made public, as the risk of retaliation from both GDC staff and other incarcerated people remains. *See Doe Decl.* ¶ 40. Mr. Doe is a third party who alleges he already suffered retaliation, intimidation, and coercion prior to Plaintiff filing her Motions for a Preliminary Injunction and Protective Order. Ms. Diamond and Mr. Doe were given disciplinary reports for having sex, which they adamantly deny. *See id.* 18-20. GDC sustained the disputed report without allowing a requested medical exam which would have proven his innocence, and in a hearing without allowing testimony on Mr. Doe’s behalf. *See id.* ¶ 21-22. Mr. Doe was repeatedly pressured to “be a team player” and file a PREA complaint against Ms. Diamond, which he refused to do, and was placed into solitary confinement for nearly a three-month period. *See id.* ¶ 23-29. GDC staff perpetuated rumors, along with false claims regarding Mr. Doe’s sexual orientation, that Mr. Doe had been “screwed by a transsexual,” putting him at serious risk of harassment and violence. *See id.* ¶ 30-32. For example, Mr. Doe was approached at knifepoint by gang members who called him anti-gay slurs and threatened to kill him unless he paid them protection money. *See id.* ¶ 32-33. These allegations show that Mr. Doe credibly fears additional retaliation, harassment, and physical injury, while in GDC custody, if his name is publicly released in connection with these proceedings. *See id.* at 36-41.

Plaintiff is seeking a narrow remedy to alleviate further risk to Mr. Doe, which is to redact all references to Mr. Doe’s real name and allow the rest of the transcript to be publicly available.

See Braggs v. Dunn, No. 2:14CV601-MHT, 2019 WL 6833843, at *2 (M.D. Ala. Dec. 13, 2019) (finding “relatively limited redactions” of names and dates were “narrowly tailored to minimize the harm” regarding the “security of those inside the prison”).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court order that all references to John Doe by his real name during the April 28 Status Conference be redacted from the publicly available transcript.

Dated: April 30, 2021

Respectfully submitted,

/s/ Elizabeth Littrell

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Counsel for Plaintiff Ashley Diamond

* Admitted *Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of filing to counsel of record.

/s/ Maya Rajaratnam

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