

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

ASHLEY DIAMOND,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.
v.	:	5:20-cv-00453-MTT
	:	
TIMOTHY WARD, <i>et al.</i> ,	:	
	:	
Defendants.	:	

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**RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION  
FOR LEAVE TO REDACT MOTION IN LIMINE**

Defendants Sharon Lewis, Ahmed Holt, Robert Toole, Brooks Benton, Grace Atchison, and Lachesha Smith, through counsel, respectfully submit this response in opposition to Plaintiff’s motion for leave to redact her motion *in limine* (Doc. 185). For several reasons as set forth herein, Defendants ask that Plaintiff’s motion be denied.

*First*, the motion runs counter to the fundamental feature of the openness of, and the public right of access to, judicial proceedings, a feature and right which serve both to protect litigants and secure the integrity of the judicial process. *See Romero v. Drummond Co.*, 480 F.3d 1234, 1245-1248 (11th Cir. 2007); *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304 (11th Cir. 2001). In order to overcome the presumption of openness and the public right of access, Plaintiff must show, at a minimum, good cause for sealing material from public view. *See id.* And the problem here is that Plaintiff’s motion does not state what information she seeks to shield from public view beyond the generic descriptor “allegations of criminal conduct against Ms. Diamond and others, and discussion thereof . . . .” This description does not permit a

determination of whether good cause exists for secrecy, as this excerpt from *Romero* makes plain:

The common law right of access may be overcome by a showing of good cause, which requires “balanc[ing] the asserted right of access against the other party’s interest in keeping the information confidential.” *Chi. Tribune*, 263 F.3d at 1309. “[W]hether good cause exists . . . is . . . decided by the nature and character of the information in question.” *Id.* at 1315.

480 F.3d at 1246. Plaintiff offers no information, beyond the generic description above, of the “nature and character” of the information at issue that will permit the Court to exercise the important function of determining whether the presumptive openness of this proceeding and public right of access to the proceeding has been overcome.

*Second*, Plaintiff has not shown a “privacy or proprietary interest” in the information in question. *Romero*, 480 F.3d at 1246. Importantly, the Court on joint submission of the parties entered a protective order earlier in this case that allowed the parties to designate material as confidential, in which event non-public filing could occur. Doc. 113. While not clear, Plaintiff’s motion appears to relate to data and information pertaining to and extracted from a contraband cell phone that she possessed and used during her period of incarceration at Coastal State Prison. That data and information was produced more than eight months ago, and Plaintiff did not at any time designate or seek to designate any of the data or material as confidential or otherwise seek protection of the material under the protective order. Moreover, details of the data and information were made public in an open hearing that was held on March 23, 2022, Doc. 142, and Plaintiff also did not seek to redact the hearing transcript which is now on the public docket. Doc. 145.

*Third*, Plaintiff's motion offers an incomplete statement of the factors the Court would consider in determining whether to seal portions of the record in this case and thereby secret that part of the case from public view. *Romero* lists the factors in this way:

In balancing the public interest in accessing court documents against a party's interest in keeping the information confidential, courts consider, among other factors, 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.

480 F.3d at 126. Plaintiff's motion mentions only the last of these factors, but several of the earlier factors favor openness, not secrecy. Plaintiff has not identified a personal, privacy, or proprietary interest; she offers only speculation that harm will occur if the unspecified information is made public; she has not shown that the information is unreliable; she will have an opportunity to respond to the information at trial; and the information – again if what is at issue is her contraband cell phone data and related information – certainly is a matter of public concern because it will show contempt for and obstruction of this legal proceeding, including payment of witnesses to testify in court with sex, drugs, and money, destruction of relevant evidence, and motive and intent to fabricate allegations of sexual assault.

*Fourth*, and most critically, the linchpin of Plaintiff's motion is the unusual contention that secrecy is required here because this case has “garnered regional and national media attention.” Initially, what is unusual about this contention is that it gets the court access question backwards. Public interest in a case is further reason for openness, not secrecy, as *Romero* and *Chicago Tribune* make clear. Moreover, *Romero* squarely

rejected the notion that public access to a judicial proceeding will necessarily prejudice a litigant's right to a fair trial. 480 F.3d at 1247 (holding that the attempted justification of prejudice to the fair trial right amounted to “stereotyped and conclusory statements’ that do not establish good cause.”).

Finally, and also regarding this attempted justification of undue or prejudicial publicity, Plaintiff and her counsel have at every turn in this case sought to publicize the case when they feel that it is beneficial to do so. *See* <https://www.splcenter.org/search?keyword=Ashley+diamond>; *and see also* <https://ccrjustice.org/search/site/Ashley%20Diamond>. Plaintiff complains of public or media interest in the case, but that interest largely is of her and her lawyers' own creation. That they would continually publicize, over the life of this action, those parts of the case which they deem beneficial to Plaintiff, but then seek closure of those parts of the case which provide reason to question Plaintiff's claims, is cynical, manipulative of the judicial process, and improper under the precedents discussed above.

*Fifth*, Plaintiff's motion suggests that another reason for secrecy is the need for an impartial jury to decide the facts of the case. Again, Plaintiff and her counsel have publicized this case repeatedly, and her contention that now the public's access must be curtailed rings hollow given that conduct. Taken together – the continual publication of information they deem beneficial and the attempt to secret away from public access the information they deem harmful – in fact may well result in prejudice to Defendants who have in the main limited their comment on the case to the public record. And, in any event, there is no showing, only speculation, that an impartial jury cannot be struck to decide this case if the case papers remain public as the law requires.

Defendants respectfully ask that Plaintiff's motion be denied.

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on this date I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Emma Lee Douglas  
Andrea Chinyere Ezie  
Bruce Warfield Hamilton  
Elizabeth Littrell  
Scott D. McCoy  
Caitlin Joy Sandley

This 15th day of December, 2022.

s/ Roger A. Chalmers  
Roger A. Chalmers