

**IN THE CIRCUIT COURT,  
SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY, FLORIDA**

**CASE NO: 2019-00723-CFFA**

**STATE OF FLORIDA**

**VS.**

**BENJAMIN SEAN ALLEN,  
DEFENDANT.**

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**STATE'S MOTION TO TRANSCRIBE GRAND JURY  
TESTIMONY OF DARYIN NEWSOM AND KEEP UNDER SEAL  
PURSUANT TO 905.27 FLORIDA STATUTES**

COMES NOW, R.J. LARIZZA, State Attorney for the Seventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, pursuant to Florida Statute 905.27, respectfully moves this Honorable Court to transcribe the testimony of Daryin Newsom taken before the Grand Jury for Putnam County Spring Term 2019 and as grounds therefore shows:

1. The undersigned Assistant State Attorney presented testimony to the Flagler County Grand Jury Spring Term 2019 of various witnesses including Daryin Newsom whose testimony upon consideration by the Grand Jury resulted in the presentment of an Indictment against Benjamin Sean Allen for, among other things, the crime of First Degree Murder. This Grand Jury convened on August 1, 2019.
2. Daryin Newsom is a good friend of the Defendant. Daryin Newsom told law enforcement he considers the Defendant like a little brother. Daryin Newsom withheld information throughout the investigation and he provided inconsistent statements prior to disclosing what happened (which was largely consistent with other witnesses in the

- case). While not disclosing the testimony of Daryin Newsom taken before the Grand Jury aforesaid, the State believes and asserts that it is possible the trial testimony of this witness may differ than previous sworn testimony before the Grand Jury.
3. The State does not have a good faith basis at this time to request the unsealing of said testimony, but instead wishes to have it transcribed by the court reporter and delivered to the Court under seal where it will remain until further Order of this court.
  4. If Daryin Newsom testifies during trial inconsistent with his sworn Grand Jury testimony and the State believes that the testimony should be unsealed, it will make an ore tenus motion to have the testimony inspected by the Court and disclosed to the parties for use.
  5. This motion is made pursuant to F.S. 905.27(1)(a) and/or (c) with the caveats noted as outlined in F. S. 905.27(2). Florida Statute 905.27 (2020) states in part,  
  
“(1) A grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person appearing before the grand jury shall not disclose the testimony of a witness examined before the grand jury or other evidence received by it except when required by a court to disclose the testimony for the purpose of:  
  
    (a) Ascertaining whether it is consistent with the testimony given by the witness before the court;  
    (b) Determining whether the witness is guilty of perjury; or  
    (c) Furthering justice.”
  6. When the State believes and asserts that grand jury testimony of a witness is different than the testimony of that witness at trial or the witness is feigning “memory loss” in order to avoid testifying in the matter, then grand jury testimony may be transcribed, disclosed and used as substantive evidence at trial. Hills v. State, 428 So.2d 318 (Fla. 1st DCA 1983).
  7. Due to the close relationship between the witness and the Defendant, the State believes that having the testimony of Daryin Newsom transcribed prior to trial and kept under

seal by this Court will avoid any unnecessary delays during trial if its admission becomes necessary.

WHEREFORE, the undersigned Assistant State Attorney respectfully requests the Court issue an Order to Coastal Court Reporting Services asking for the testimony of Daryin Newsom to be transcribed and delivered to the Court under seal in preparation for trial.

R.J. LARIZZA  
STATE ATTORNEY

By: s/JENNIFER L DUNTON  
ASSISTANT STATE ATTORNEY  
Florida Bar No.: 0014274  
ESERVICEFLAGLER@SAO7.ORG

**CERTIFICATION OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by e-service to Gerald Bettman, 5515 Phillips Highway, Jacksonville, Florida 32207, this 17th day of May, 2021.

R.J. LARIZZA  
STATE ATTORNEY

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