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**FILED**  
SUPERIOR COURT-STOCKTON

OCT 20 2022

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8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF SAN JOAQUIN

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11 The People of the State of California,  
12 Plaintiff,  
13 v.  
14 WESLEY BROWNLEE,  
15 Defendant.

No. STK-CR-FE-2022-0010220

POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO FOR  
PROTECTIVE ORDER AGAINST  
PUBLICITY

Date: October 24, 2022  
Time: 1:30 p.m.  
Dept.: 9B

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17  
18 **MEMORANDUM OF POINTS AND AUTHORIES**

19 **I. INTRODUCTION**

20 On October 4, 2022, Stockton city officials, including Stockton Police Chief Stanley  
21 McFadden, Stockton City Manager Harry Black and Stockton Mayor Kevin Lincoln, participated  
22 in a press conference regarding a spate of homicides which have dominated local news.  
23 During the press conference, Chief McFadden attributed a recent series of murders to an  
24 alleged "serial killer" and introduced a video depiction of the alleged "serial killer"  
25 walking with his back to the camera. Additionally, Chief McFadden provided the public  
26 with information regarding the modus operandi of the alleged assailant. Specifically,  
27 Chief McFadden claimed the alleged suspect targeted men while walking along down  
28 dark empty sidewalks. Chief McFadden further stated "ballistics evidence" linked

1 several killings in Stockton and Oakland. (See Exhibit A: Best Copy of October 4, 2022  
2 Press Conference.)

3       Thereafter, on the morning of October 15, 2022, Wesley Brownlee was arrested in  
4 connection with the homicides discussed during the October 4, 2022 press conference. That  
5 same day, a second press conference was held announcing Mr. Brownlee's arrest. The press  
6 conference featured remarks by Stockton City Manager Harry Black, Stockton Police Chief  
7 McFadden, Stockton Mayor Kevin Lincoln and San Joaquin County District Attorney Tori  
8 Verber Salazar.

9       During this press conference, Chief McFadden provided the following "arrest details":

- 10       • "We watched his patterns and determined early this morning, he was on a mission to  
11 kill."  
12       • "He was out hunting."  
13       • "We are sure we stopped another killing." (See Exhibit E: Best copy of October 15, 2022  
14 Press Conference.)  
15       • Additionally, Chief McFadden thanked news and social media outlets for the coverage of  
16 the investigation. He acknowledged the important role played by media in leading to Mr.  
17 Brownlee's apprehension. (See Exhibit E: Best copy of October 15, 2022 Press  
18 Conference.)

19       District Attorney Salazar made the following remarks:

- 20       • "The defendant, cause I am no longer going to say his name again because he  
21 doesn't deserve to have a name, he doesn't deserve to be out there."  
22       • "This crime was solved because we're Stocktonians. Because you don't come to  
23 our house and bring this kind of reign of terror and not mobilize 350,000 people,  
24 780,000 in this whole entire county...mobilized...mobilized and captured this  
25 individual who's reign of terror is no longer." (See Exhibit E: Best copy of October  
26 15, 2022 Press Conference.)  
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28



1           October 18, 2022, the San Joaquin County District Attorney's Office, hereinafter  
2 referred to as the "People", filed an amended complaint against Wesley Brownlee alleging Mr.  
3 Brownlee committed three violations of Penal Code section 187(a)(First Degree Murder). As to  
4 the murder charges, the People further alleged a firearm enhancements as well as a special  
5 circumstance enhancement, alleging the commission of multiple murders. The special  
6 circumstance enhancement renders Mr. Brownlee eligible for the death penalty. Mr. Brownlee is  
7 also charged with being a felon in possession of a firearm and ammunition, violations of Penal  
8 Code sections 29800(a)(1) and 30305(a)(1), respectively. He was arraigned on the amended  
9 complaint that same day at which the San Joaquin County Public Defender's Office was  
10 appointed to represent him.

## 11   II.     LAW AND ARGUMENT

### 12 13           A. THE COURT IS EMPOWERED TO RESTRAIN PROSECUTORS FROM PUBLICLY 14 COMMENTING ON PENDING CASES IN ORDER TO INSURE A DEFENDANT'S 15 DUE PROCESS RIGHTS.

16           The United States Supreme Court, in *Sheppard v Maxwell* (1966) 384 U.S. 333, 361,  
17 endorsed the use of a protective order prohibiting extrajudicial statements in a case where  
18 adverse publicity threatens to compromise the defendant's right to a fair trial. A pretrial publicity  
19 order may prohibit discussions of the merits of the case, the evidence, or trial tactics, as well as  
20 divulging prejudicial matters such as the defendant's refusal to submit to a polygraph  
21 examination, any statements to the police or an individual's belief in the defendant's guilt or  
22 innocence. (Id. At 361-362.)

23           In *Nebraska Press Ass'n. v. Stuart* (1976) 427 U.S. 539, the United States Supreme Court  
24 reiterated that direct restraints on the speech of trial participants is appropriate where there is a  
25 "reasonable likelihood that prejudicial news prior to trial will prevent a fair trial." In upholding  
26 one of the most sacred tenets of America's Democracy, the court reaffirmed:

27  
28           "In essence, the right to jury trial guarantees to the criminally accused a fair trial by a  
panel of impartial, 'indifferent' jurors. . . . **'A fair trial in a fair tribunal is a basic**

1           **requirement of due process.** *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99  
2 L.Ed. 942. In the ultimate analysis, only the jury can strip a man of his liberty or his life.  
3 In the language of Lord Coke, a juror must be as 'indifferent as he stands unsworne.'  
4 Co.Litt. 155b. **His verdict must be based upon the evidence developed at the trial.**"  
5 *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S.Ct. 1639, 1642, 6 L.Ed.2d 751 (1961). (*Nebraska*  
6 *Press Ass'n. v. Stuart* (1976) 427 U.S. 539, 551 (emphasis added).)

7           California cases in many districts have held that *Sheppard* authorizes the issuance of a  
8 protective order to control pretrial publicity to assure the accused receives a fair trial. (*Hamilton*.  
9 *v. Municipal Court* (1969) 270 Cal.App.2d 797.) In *Hamilton*, a first district Court of Appeals  
10 decision, the court reaffirmed that the United State Supreme Court recognized the danger of  
11 "unwarranted and prejudicial" pretrial publicity and the importance in preserving the right to a  
12 fair trial. (*Id.* at 800.) The court construed this language to mean that in certain cases where the  
13 due process rights of a defendant are in jeopardy, the court is required to take steps to control the  
14 release and dissemination of facts and evidence likely to be released during the jury trial. (*Id.* at  
15 801.)

16           The protective order must necessarily be broad. In *Younger v. Smith* (1973) 30 Cal.App.  
17 3d 138, 166, the second district Court of Appeal held:

18           "Any such order must of necessity cover the infinite variety of ways and means in and by  
19 **which prejudicial utterances can be made and the many avenues through which a**  
20 **future jury can be prejudiced by speech which the court can prohibit.** It is  
21 respectable constitutional doctrine that vagueness does not vitiate where the command is  
22 as specific as circumstances permit." (*Younger v. Smith* (1973) 30 Cal.App.3d 138, 166  
23 (emphasis added).)

24           B. ATTORNEYS ARE ETHICALLY PROHIBITED FROM MAKING EXTRAJUDICIAL  
25 STATEMENTS WHICH ARE INFLAMMATORY OR IMPROPERLY PREJUDICE  
26 THE DEFENDANT'S RIGHT TO A FAIR TRIAL.

27           In *People v. McKinzie* (2013) 54 Cal. 4<sup>th</sup> 1302, the Court held a prosecutor's statements  
28 to an elevated standard of conduct because of the unique function he or she performs in  
representing the interests, and in exercising the sovereign power, of the state. The court  
explained:



1 "Prosecuting officers owe a public duty of fairness to the accused as well as to the  
2 People, and they should avoid the danger of prejudicing jurors and prospective jurors by  
3 giving material to news-disseminating agencies which may be inflammatory or  
4 improperly prejudicial to defendant's rights." (*People v. McKinzie* (2013) 54 Cal. 4th  
5 1302, 1326.)

6 Moreover, the comments made by the District Attorney, her representatives and other  
7 members of the prosecution team far exceed what is permissible under the *California Rules of*  
8 *Professional Responsibility*. Pursuant to section 5-120 *Trial Publicity* of the *California Rules of*  
9 *Professional Responsibility*:

10 (A) A member who is participating or has participated in the investigation or litigation of  
11 a matter shall not make an extrajudicial statement that a reasonable person would  
12 expect to be disseminated by means of public communication if the member knows  
13 or reasonably should know that it will have a substantial likelihood of materially  
14 prejudicing an adjudicative proceeding in the matter.

15 (B) Notwithstanding paragraph (A), a member may state:

16 (1) the claim, offense or defense involved and, except when prohibited by law, the  
17 identity of the persons involved;

18 (2) the information contained in a public record;

19 (3) that an investigation of the matter is in progress;

20 (4) the scheduling or result of any step in litigation;

21 (5) a request for assistance in obtaining evidence and information necessary  
22 thereto;

23 (6) a warning of danger concerning the behavior of a person involved, when there  
24 is reason to believe that there exists the likelihood of substantial harm to an  
25 individual or the public interest; and

26 (7) in a criminal case, in addition to subparagraphs (1) through (6):

27 (a) the identity, residence, occupation, and family status of the accused;

28 (b) if the accused has not been apprehended, the information necessary to  
aid in apprehension of that person;

(c) the fact, time, and place of arrest; and

(d) the identity of investigating and arresting officers or agencies and the  
length of the investigation.

(C) Notwithstanding paragraph (A), a member may make a statement that a reasonable  
member would believe is required to protect a client from the substantial undue  
prejudicial effect of recent publicity not initiated by the member or the member's client.  
A statement made pursuant to this paragraph shall be limited to such information as is  
necessary to mitigate the recent adverse publicity.

1 During the nationally broadcasted press conference of October 15, 2022, both Chief  
2 McFadden and District Attorney Salazar made several remarks which violate Mr. Brownlee's  
3 right to a fair trial and Due Process under the law. Chief McFadden claims that at the time of his  
4 arrest, Mr. Brownlee was "out hunting" and "on a mission to kill." Further, Chief McFadden  
5 stated that Mr. Brownlee's arrest thwarted another killing. These statements, by the highest-  
6 ranking law enforcement officer in the City of Stockton are both incredibly speculative and  
7 highly prejudicial to Mr. Brownlee. The allegations made by Chief McFadden far exceed the  
8 bounds of fairness to the accused and serve to inflame the entire prospective jury pool in San  
9 Joaquin County.

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11 District Attorney Salazar's comments about Mr. Brownlee are similarly inflammatory  
12 and prejudicial to Mr. Brownlee's defense. District Attorney Salazar's statement that Mr.  
13 Brownlee "does not deserve to have a name" is wholly dehumanizing and breaches her duty of  
14 fairness to the accused. Her comments that Stocktonians "mobilized" to stop Mr. Brownlee's  
15 "reign of terror" serves to unite the citizens of San Joaquin County against a common enemy:  
16 Mr. Brownlee.

### 17 18 III. CONCLUSION

19 For the above stated reasons, defendant respectfully submits that the court should  
20 issue the attached proposed protective order.

21  
22 Dated: October 20, 2022

23 Respectfully Submitted,

24 OFFICE OF THE PUBLIC DEFENDER  
25 Miriam Lyell, Public Defender

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27 Allison M. Nobert, Deputy Public Defender  
28 Attorneys for WESLEY BROWNLEE