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FILED
OCT 07 2016

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
Michelle Williams
DEPUTY

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF STANISLAUS

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,
13 Plaintiff,
14 vs.
15 FRANK CLIFFORD CARSON,
16 BALJIT ATWAL,
17 DALJIT ATWAL,
18 WALTER WESTLEY WELLS,
19 GEORGIA DEFILIPPO,
CHRISTINA DEFILIPPO,
EDUARDO QUINTANAR, and
20 SCOTT MCFARLANE,
Defendants.

Case No.: 1490969
OPPOSITION TO DEFENDANT CARSON'S
MOTION TO DISMISS FOR MISCONDUCT
IN VIOLATING A COURT ORDER AND
SEEKING TO DENY DEFENDANT'S DUE
PROCESS; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
OPPOSITION; AND EXHIBITS
Date: October 17, 2016
Time: 9:30 a.m.
Dept.: 26
The Honorable Barbara Zúñiga

21
22 Comes now the People of the State of California, by and through their attorney, BIRGIT
23 FLADAGER, Stanislaus County District Attorney, MARLISA A. FERREIRA, Chief Deputy District
24 Attorney, and respectfully submits this Opposition to Defendant Carson's Motion to Dismiss for
25 Misconduct in Violating a Court Order and Seeking to Deny Defendant's Due Process with supporting
26 memorandum of points and authorities and exhibits.

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I.

INTRODUCTION

The Honorable Mitchell Rigby issued the *Ramey* Warrant for the arrest of defendant Carson and his co-defendants on August 13, 2015. Judge Rigby did not sign a sealing order of the *Ramey* Warrant nor did Stanislaus County Sheriff's Detective Brown seek a sealing order in his Affidavit in Support of *Ramey* Warrant. On August 14, 2015, following the arrests of defendants Frank Carson, Georgia DeFilippo, Christina DeFilippo, Baljit Atwal, Daljit Atwal, Walter Wells, Scott McFarlane and Eduardo Quintanar, Jr.,¹ the Office of the District Attorney of Stanislaus County discussed with the Stanislaus County Sheriff's Department the potential of providing the *Ramey* Warrant online given the foreseeable influx of media requests surrounding arrests of three California Highway Patrol Officers. The Stanislaus County Sheriff's Department made the ultimate decision to post the *Ramey* Warrant online following the arrest of the defendants. (Exhibit A, Stanislaus County Sheriff's Department Website.) The Office of the District Attorney did not post the *Ramey* Warrant online nor did the Superior Court of Stanislaus County. These facts negate any substance to defendant Carson's filed motion. There is no violation of a court order nor is there any misconduct on behalf of the Stanislaus County District Attorney's Office and for these reasons, the People request an immediate denial of defendant Carson's motion.

II.

STATEMENT OF FACTS

On August 13, 2015, Detective Brown of the Stanislaus County Sheriff's Office presented to the Honorable Mitchell Rigby an Affidavit in Support of *Ramey* Warrant, pertinent portions provided here as Exhibit B. Detective Brown neither sought a sealing order nor did Judge Rigby issue a sealing order for the Affidavit in Support of *Ramey* Warrant. Defendants were arrested on August 14, 2015. On August 17, 2015, Investigator Jacobson of the Stanislaus County District Attorney's Office sought

¹ Based on the tone and nature of defendant's motion, the People provided a copy of Defendant Carson's Motion on Stanislaus County Counsel on October 5, 2016.

1 and obtained a Disclosure Order from Judge Rigby seeking a release from Judge Rigby for all prior
2 search warrants, wiretaps and items previously sealed by the Court. (Exhibit C, Disclosure Order.)
3 Within the Disclosure Order, the list of items named for release include "*Ramey* Warrants." Previously
4 in the months of February through April of 2014, detectives sought and obtained *Ramey* Warrants for
5 defendants Robert Woody, Baljit Atwal, Daljit Atwal and Frank Carson with Sealing Orders issued
6 by Judge Rigby. (Exhibit D, Sealing Order and *Ramey* Warrants for Robert Woody, Baljit Atwal,
7 Daljit Atwal and Frank Carson, February 27, 2014 through April 28, 2014.) On September 4, 2015
8 and October 7, 2015, the People discovered the related warrants, affidavits in support of warrants and
9 wiretap orders to defense counsel for the charged defendants in the instant matter, which included
10 those ordered released per the Disclosure Order of Judge Rigby. Following disclosure, these items
11 were maintained by the Office of the Stanislaus County District Attorney's Office until their release
12 to the Honorable Barbara Zúñiga on July 7, 2016.

13 A news conference was held shortly after the defendants' arrests with the Stanislaus County
14 Sheriff Adam Christianson, California Highway Patrol Commissioner Joseph A. Farrow, and District
15 Attorney Birgit Fladager present in addition to multiple members of news agencies. (Exhibit E, CD-
16 Rom of News Conference.) Prior to the news conference, discussion regarding release of the *Ramey*
17 Warrant online occurred between the Sheriff's Department and the District Attorney's Office. The
18 concerns addressed during the discussion included foreseeing extensive media requests for the *Ramey*
19 Warrant. The parties recognized the high profile nature of this case not only due to the fact a local
20 defense attorney was charged with Murder, but also because one former officer of the California
21 Highway Patrol was charged with Murder and Conspiracy to Obstruct Justice and two other officers
22 on administrative leave from the California Highway Patrol were charged with Conspiracy to Obstruct
23 Justice and Accessory. The Sheriff's Department made the decision to release the *Ramey* Warrant
24 online through its website.

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III.

LAW AND ARGUMENT

A.

The Form of Defendant's Motion Is Improper

Cal. Rules of Court, Rule 2.2 provides, "The Trial Court Rules apply to all cases in the superior courts unless otherwise specified by a rule or statute." Cal. Rules of Court, Rule 3.1112(a) provides a motion **must include at least** the following, "(a) A notice of hearing on the motion, (b) The motion itself; and (3) A memorandum in support of the motion or demurrer". (Emphasis added.) Cal. Rules of Court, Rule 3.1113(b) states that a memorandum **must include** "a statement of facts, a concise statement of the law, evidence and argument relied on, and a **discussion of the statutes**, cases, and textbooks cited in support of the position advanced." (Emphasis added.) Civil rules regarding motion practice applicability to criminal cases is supported by the California Criminal Law Procedure and Practice Manual (2016) Section 18.5 and the case of the *People v. Williams* (1999) 20 Cal.4th 119, 129.

Here, defendant Carson submits another motion which lacks notice. Therefore, defendant's motion lacks the requisite form. The People request the Court strike defendant Carson's motion or, in the alternative, require defendant Carson submit an amended motion in compliance with the Rules of Court.

B.

The Facts

Cal. Rules of Court, Rule 2.2 provides, "The Trial Court Rules apply to all cases in the superior courts unless otherwise specified by a rule or statute." Cal. Rules of Court, Rule 3.113(b) provides a statement of facts shall support a memorandum in support of a motion. The application of these rules to criminal cases is also supported by the California Criminal Law Procedure and Practice Manual (2016) Section 18.5 and the case of the *People v. Williams* (1999) 20 Cal.4th 119, 129. In situations where parties submit briefs to the appellate courts, the court has cautioned parties and courts to observe

1 the California Rules of Court and the necessity to summarize the significant facts, not only those
2 favorable to the client. (*In re S.C.* (2006) 138 Cal.App.4th 396, 402-404.)

3 Defendant's motion does not provide a statement of facts, but throughout his pleading,
4 defendant's "alleged facts" are far from providing the "significant facts." Specific examples include:
5 "The officers of the court above kept secret search warrants and other documents until July 7, 2016,
6 but invited world-wide attention via a dedicated website of prejudicial allegations in a 325 page
7 novella of innuendo, falsehoods and "beliefs" by biased investigators with an agenda to destroy the
8 defendants. The District Attorney and Sheriff did this to poison the public and prospective jurors
9 against the defendants." (p. 1, lines 26-28 and p. 2, lines 1-2.) "It [Judge Rigby's August 13, 2015
10 endorsed *Ramey* warrant] was to be kept sealed until further Court order." (p. 3, lines 9-10.) "In this
11 case, the Stanislaus County District Attorney and Sheriff raced to Web-post the *Ramey* Warrant
12 bypassing judicial intervention, redactions, or restraint to unilaterally influence as many people and
13 parties as possible. These agents of government sought to publicize to the world in an uncontradicted
14 or edited way a lurid set of allegations of supposed skullduggery by the defendants." (p. 3, lines 19-
15 23.)

16 The People therefore request the defendant Carson's aforementioned "alleged facts" be
17 stricken from the defendant's motion and the Court record.

18
19 **C.**

20 **Defendant Carson Has Failed to Meet His Burden**

21 Cal. Evid. Code section 500 requires, "Except as otherwise provided by law, a party has the
22 burden of proof as to each fact the existence or nonexistence of which is essential to the claim for
23 relief or defense he is asserting." In *People v. Lopez* (1997) 52 Cal.App.4th 233, 251, the Third District
24 Court of Appeal cited two Court of Appeal decisions *Scott v. Renz* (1945) 67 Cal.App.2d 428, 431 and
25 *People v. Carson* (1970) 4 Cal.App.3d 782, 785, which found, "[O]n all motions the burden is on the
26 moving party."

27 Defendant Carson submits to the court egregious offenses allegedly conducted by the Office
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1 of the District Attorney of Stanislaus County. However, defendant does not have the facts required to
2 support his claims. As a point in fact, defendant argues about the publication of the *Ramey* warrant by
3 the Stanislaus County District Attorney's Office, except prior to this instance, as indicated below,
4 defendants argued the Stanislaus County Superior Court published the *Ramey* Warrant, when the truth
5 was the decision to publish and the act of publication was conducted by the Stanislaus County Sheriff's
6 Department.

7 MR. FORKNER: Judge, has the government made any effort to seal the Ramey warrant
8 from public view that disparages all these lawyers and defendants since October --
9 excuse me, August 14th of last year? Has any attempt been made whatsoever to do that,
10 to seal that by them? No. They like it out there for the public to see. They don't like it
11 when the truth comes out on Ms. Ferreira's misconduct on the record in that motion.

12 THE COURT: I think I've asked this before. Where is it posted? I've never read it.
13 Where is it?

14 MR. GARCIA: On the Internet.

15 THE COURT: Just one at a time.

16 MR. FORKNER: Can I finish?

17 THE COURT: Who posted it?

18 MS. FERREIRA: The Sheriff's --

19 THE COURT: The Sheriff?

20 MR. FORKNER: Yes, and a press release. It's still posted there. It's on, I believe, the
21 Court Web site.

22 THE COURT: I'm not sure of that.

23 MR. FORKNER: It is.

24 THE COURT: Is it?

25 MR. HJERTONSSON: Yes.

(March 2, 2016: PX RT 5867:6-27.)

26 THE COURT: Well, when I was first assigned to the case, I have to say, I was --
27 "surprised" would be an understatement, that the Ramey warrant had been posted by
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1 the Court. And I tried to find out, then, who in the world authorized that and found out
2 that it was no one at the court. It was the Sheriff's Department that did it.

3 (July 7, 2016: PX RT 13174:23-28)

4 Next, as indicated in the applicable pages of the *Ramey* Warrant, Detective Brown did not seek
5 a sealing order, nor was an order to seal made by the Honorable Mitchell Rigby (Exhibit B.) The
6 Disclosure Order issued by the Honorable Mitchell Rigby covered "*Ramey* Warrants", as provided in
7 discovery several previous Ramey Warrants were issued and sealed. (Exhibit C, Disclosure Order and
8 Exhibit D, Ramey Warrants for Robert Woody (2/27/14), Daljit Atwal (3/13/14), Baljit Atwal
9 (3/13/14) and Frank Carson (4/18/14).) These warrants and supporting affidavits were discovered to
10 defendants on September 4, 2015. Most notably, defendant Carson fails to provide a case law or
11 statute which would support a dismissal in this instance. Defendant Carson's motion fails to reach its
12 required burden according to the facts, the Evidence Code and *Lopez*, therefore, the People request the
13 motion be denied forthwith.

14 **D.**

15 **Defendant's Cited Case Does Not Support a Finding of Misconduct on behalf of**
16 **the Office of the District Attorney of Stanislaus County**

17 In defendant's cited case of *People v. Michael Jackson* (2005) 128 Cal.App.4th 1009, 1014, the
18 Second District Court of Appeal reviewed an appeal by NBC Universal to unseal "the grand jury
19 transcript, the indictment, search warrant affidavits and other court records..." The Appellate Court
20 found the trial court had made a thorough record of the reasons for sealing the contested items and
21 reversed the trial court only as to the indictment, given argument had occurred in a public forum during
22 the prosecutor's response to defendant's motion to dismiss the indictment. (*Id.* at 1026-1028.) Within
23 its analysis, the court recognized that only one case to that date had been published and which analyzed
24 the Rule of Court regarding the sealing of court records. (*Id.* at p. 1020.) Furthermore, the Court noted
25 that there is significant difference in an order to seal records and an order to unseal records, noting the
26 distinct rules for each situation. *Id.* NBC Universal likened the case of *Martha Stewart (ABC, Inc. v.*
27 *Stewart* (2d Cir. 2004) 360 F.3d 90) to the situation before the Court, but the Court pointed out the
28 significant difference between accusations in a white collar case versus the heightened prejudice that

1 exists with charges of child molestation. (*Id.* at p. 1024.) The Court also noted the reference of the
2 small judicial district made by County Counsel, as Santa Barbara County at that time claimed only
3 approximately 200,000 people. (*Id.* at p. 1026.)

4 The situation here is quite different from the *Jackson* case. First and most importantly, the
5 Honorable Mitchell Rigby did not order the sealing of the *Ramey* Warrant for the arrest of the
6 defendants on August 13, 2015, as he had done for prior search warrants and wiretaps. Second,
7 defendant Carson does not recognize the same celebrated status as Michael Jackson. Third, there is no
8 accusation of child molestation before this court. Fourth, the United States 2010 Census identified
9 Stanislaus County as having a population of 514,453, significantly greater than the size of Santa
10 Barbara County.² Therefore, defendant's attempt to analogize the *Jackson* case to the matter before
11 the court fails.

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13 **E.**

14 **The Office of the Stanislaus County District Attorney Has Acted within the**
15 **Confines of the California Rules of Professional Responsibility**

16 *California Professional Conduct Rule 5-120*

17 In addition to defendant Carson's cite to *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030
18 for the proposition that defendant has been denied a fair trial, defendant Carson further implicates the
19 Office of the District Attorney as in violation of the Rule 5-120 of the Cal. Rules of Professional
20 Conduct. In its entirety, Rule 5-120 provides as follows,

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

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

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28 ² United States Census Bureau, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=blmknk>.

- 1 (1) the claim, offense or defense involved and, except when prohibited by law, the
identity of the persons involved;
- 2 (2) the information contained in a public record;
- 3 (3) that an investigation of the matter is in progress;
- 4 (4) the scheduling or result of any step in litigation;
- 5 (5) a request for assistance in obtaining evidence and information necessary thereto;
- 6 (6) a warning of danger concerning the behavior of a person involved, when there is
reason to believe that there exists the likelihood of substantial harm to an individual
or the public interest; and
- 7 (7) in a criminal case, in addition to subparagraphs (1) through (6):
- 8 (a) the identity, residence, occupation, and family status of the accused;
- 9 (b) if the accused has not been apprehended, the information necessary to aid in
apprehension of that person;
- 10 (c) the fact, time, and place of arrest; and
- 11 (d) the identity of investigating and arresting officers or agencies and the length of the
investigation.

12 (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
13 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.

14 DISCUSSION

15 Rule 5-120 is intended to apply equally to prosecutors and criminal defense counsel.

16 Whether an extrajudicial statement violates rule 5-120 depends on many factors,
17 including: (1) whether the extrajudicial statement presents information clearly
18 inadmissible as evidence in the matter for the purpose of proving or disproving a
19 material fact in issue; (2) whether the extrajudicial statement presents information the
20 member knows is false, deceptive, or the use of which would violate Business and
21 Professions Code section 6068(d); (3) whether the extrajudicial statement violates a
22 lawful "gag" order, or protective order, statute, rule of court, or special rule of
confidentiality (for example, in juvenile, domestic, mental disability, and certain
criminal proceedings); and (4) the timing of the statement.

23 Paragraph (A) is intended to apply to statements made by or on behalf of the member.
24 Subparagraph (B)(6) is not intended to create, augment, diminish, or eliminate any
25 application of the lawyer-client privilege or of Business and Professions Code section
6068(e) regarding the member's duty to maintain client confidence and secrets.

26 The *Ramey* Warrant was published by the Sheriff's Department, who is not a member of the
27 California State Bar. Furthermore, the publication of the *Ramey* Warrant does not violate the Rules
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1 of Professional Conduct. As noted within defendant's motion, within the discussion notes of Rule 5-
2 120, there is a discussion of factors whether a statement is in violation. The People take this
3 opportunity to address each of these factors:

4 **(1) Whether the Extrajudicial Statement Presents Information Clearly**
5 **Inadmissible as Evidence in the Matter for the Purpose of Proving or**
6 **Disproving a Material Fact in Issue**

7 Beginning on October 13, 2015 to the present day, the People submit that much of the evidence
8 within the *Ramey* Warrant was submitted to the Court for review during this ongoing Preliminary
9 Hearing and is admissible evidence to support defendant Carson's guilt in the Murder of Korey
10 Kauffman.

11
12 **(2) Whether the Extrajudicial Statement Presents Information the Member**
13 **Knows Is False, Deceptive, or the Use of Which Would Violate Business and**
14 **Professions Code section 6068(d)**

15 The evidence relayed in the *Ramey* Warrant is supported by Detective Brown for the statements
16 that he knew directly that were true to his knowledge and on remaining matters relayed by other
17 officers were believed by him to be true. Several officers, detectives and investigators from multiple
18 agencies engaged in a three-year investigation into the Murder of Korey Kauffman, where they
19 conducted, at times, multiple interviews of one source by sometimes more than one
20 officer/detective/investigator, to ensure the honesty and integrity of the statements. Furthermore,
21 action was not taken in this case until these statements were corroborated with other witnesses'
22 statements and/or cell phone evidence. This evidence has also undergone extensive examination by
23 defense counsel at the ongoing Preliminary Hearing.

24
25 **(3) Whether the Extrajudicial Statement Violates a Lawful "Gag" Order, or**
26 **Protective Order, Statute, Rule of Court or Special Rule of Confidentiality**

27 On August 13, 2015, the Honorable Mitchell Rigby issued *the* Ramey Warrant. There was no
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1 sealing order requested or granted by Judge Rigby on that day. The *Ramey* Warrant was not ordered
2 sealed. Therefore, there was no violation of court rules.

3
4 **(4) The Timing of the Event**

5 On August 14, 2015, defendants were arrested and the *Ramey* Warrant was published that date
6 by the Sheriff's Department. At the inception of the case, the prosecutor did not foresee defendant
7 Carson proceeding to a no time waiver Preliminary Hearing. Furthermore, while the prosecutor did
8 not release the *Ramey* Warrant, a release of the *Ramey* Warrant to the public could not prejudice a
9 jury pool where the jury could not reasonably have been chosen within a few months of defendant
10 Carson's arrest. In defendant's cited case of *Gentile, supra*, where the Court limited its holding to the
11 Nevada Statute, the court found it unlikely that attorney *Gentile* prejudiced a jury pool six months
12 prior to trial with his statements. (*Gentile, supra*, 501 U.S. at p. 1047-1048.) The Court reasoned, in
13 Clark County, where the population exceeded 600,000, "only the most damaging of information could
14 give rise to any likelihood of prejudice." (*Id.* at p. 1044.) Here, the information provided was
15 admissible evidence which unlike *Gentile* is pre-information and/or pre-indictment and well before
16 trial.

17
18 **F. No One Can Take Advantage of His Own Wrong**
19 **(Cal. Civil Code section 3517)**

20 The actions of defendant in this matter cannot be ignored. In various instances, during the
21 investigation of the Murder of Korey Kauffman, the defendant and his co-defendants sought out
22 publicity, held protests, and engaged law enforcement in publicly viewed confrontations. After the
23 charges were filed, defendants and their counsel have further broadcasted or assisted in the broadcast
24 of sensitive testimony regarding the victim and his family and relayed detailed testimony from
25 witnesses to *quasi*-media entities. In addition, several court documents which are not considered part
26 of the public record, i.e. reporter's transcripts, have made it into the hands of members of the public
27 and were published online. (Exhibit F.) These instances cannot support defendant's claim that the
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1 prosecution is tainting the jury pool, when it is seen on a daily basis, that it is in fact defendant and
2 defense counsel contributing to public discourse.


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4 **IV.**
5 **CONCLUSION**

6 For the foregoing reasons the People respectfully request the Court strike defendant's alleged
7 facts and deny defendant Carson's motion to dismiss for misconduct in violating a court order and
8 seeking to deny defendant's due process.

9 Dated this ¹⁵6 day of October 2016, at Modesto, California.

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11 Respectfully submitted,

12 BIRGIT FLADAGER
13 District Attorney

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15 Marlisa A. Ferreira
16 Chief Deputy District Attorney

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF STANISLAUS)

4 I, the undersigned, declare as follows:

5 That I was at the time of service of the attached **People's Opposition to Defendant Carson's**
6 **Motion to Dismiss for Misconduct in Violating a Court Order and Seeking to Deny Defendant's**
7 **Due Process, Memorandum of Points and Authorities, and Exhibits**, over the age of eighteen years
and not a party to the above-entitled action and served a copy on the following parties via email and by
8 mail:

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26 I declare under penalty of perjury that the foregoing is true and correct.

27 Executed this 7th day of October 2016, at Modesto, California.

28 
Declarant