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County of Kern
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FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

AUG 28 2020

BY S. J. J. J. DEPUTY

AUG 28 2020

6 SUPERIOR COURT OF CALIFORNIA
7 COUNTY OF KERN - METROPOLITAN DIVISION

8 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: BF 181682A
9 Plaintiff,))
10 vs.) PEOPLE'S RESPONSE TO MOTION
11 ARMANDO CRUZ,) CLOSE PRELIMINARY HEARING, ALL
12) PRE-TRIAL HEARINGS, FOR
Petitioner/Defendant) PROTECTIVE ORDER AND REQUEST
13) FOR ORDER SHORTENING TIME.
14) Date: September 2, 2020
Time: 8:30 a.m.
Dept.: CC

15 THE PEOPLE OF THE STATE OF CALIFORNIA, through its attorney, CYNTHIA
16 ZIMMER, District Attorney for the County of Kern, hereby respectfully submits the People's
17 Response the Defendant's Motion to Close Preliminary Hearing and Impose Protective Order.

18 I.
19 STATEMENT OF FACTS

20 Defendant Armando Cruz is accused in this case of the rape and murder of a 13 year old child
21 that the defendant met on social media. The complaint charges the defendant with 1st degree murder
22 with special circumstances of kidnapping, rape, lewd act on a child, and oral copulation. The
23 defendant is also charged with 11 other felony offenses involving sexual conduct.

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II.
ARGUMENT

A.
THE MAGISTRATE SHALL CLOSE THE COURTROOM TO THE PUBLIC IF THERE IS
A SUBSTANTIAL PROBABILITY OF PREJUDICE AND NO OTHER REASONABLE
ALTERNATIVE AVAILABLE.

Penal Code Section 868 provides that a preliminary hearing shall be open and public.

However, at the request of the defendant and a finding by the magistrate that exclusion of the public is necessary in order to protect the defendant's right to a fair and impartial trial, the magistrate shall exclude from examination every person except the clerk, court reporter, and bailiff, the prosecutor and his/her counsel, the Attorney General, the district attorney of the county, the investigating officer, the officer having custody of a prisoner witness, the defendant and his/her counsel, the officer having the defendant in custody, and a person chosen by the prosecuting witness who is not himself/herself a witness but who is present to provide the prosecuting witness moral support.

Penal Code Section 868 further provides that upon motion of the prosecution, members of the victim's family shall be entitled to be present and seated during the examination.

The court shall grant the motion unless the magistrate finds that the exclusion is necessary to protect the defendant's right to a fair and impartial trial, or unless information provided by the defendant or notices by the court establishes that there is a reasonable likelihood that the attendance of members of the alleged victim's family poses a risk of affecting the content of the testimony of the victim or any other witness. The court shall admonish members of the alleged victim's family who are present and seated during the examination not to discuss any testimony with family members, witnesses, or the public. The victim's family shall include the victim's spouse, parents, legal guardian, children, or siblings. Penal Code Section 868.

1 In Press-Enterprise Company v. Superior Court, 478 U.S. 1 (1986), the United States Supreme
2 Court reviewed this rarely used California code section and stated that a qualified First Amendment
3 right of access to criminal proceedings applies to preliminary hearings as conducted in California. Id.
4 at 2.

5 The Press court further stated that since a qualified First Amendment right of access attaches to
6 preliminary hearings in California under Cal. Penal Code Section 868, the proceedings cannot be
7 closed unless specific, on the record findings are made demonstrating that closure is essential to
8 preserve higher values and is narrowly tailed to serve that interest. Id. at 13-14.

9 If the interest asserted is the right of the accused to a fair trial, the preliminary hearing shall be
10 closed only if specific findings are made demonstrating that, first, there is a substantial probability that
11 the defendant's right to a fair trial will be prejudiced by publicity that closure would prevent, and,
12 second, reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights. Id.

13 The Press court further explained that the California Supreme Court, when reviewing the case,
14 applied the incorrect test, concluded that the magistrate shall close the preliminary hearing upon
15 finding a "reasonable likelihood" of substantial prejudice. The "reasonable likelihood" test places a
16 lesser burden on the defendant than the "substantial probability" test which is called for by the First
17 Amendment. The United States Supreme Court also found that the California Supreme Court failed to
18 consider whether alternatives short of complete closure would have protected the interests of the
19 accused. Id. at 15.

20 In this case before the Court, the People agree that Penal Code Section 868 is
21 constitutional; however, the People assert the following based on the law provided in Penal Code
22 Section 868 and the Press case:
23
24

1 1. The magistrate before whom the preliminary hearing is to be heard should be the judicial
2 officer to hear this motion and make findings.

3 2. The defense has not met their burden of proof, at this point, of showing that there is a
4 substantial probability that the defendant's right to a fair trial will be prejudiced by publicity that
5 closure would prevent, and that reasonable alternatives to closure cannot adequately protect the
6 defendant's fair trial rights.

7 3. The magistrate should hold a hearing to determine if the defendant can meet his burdens,
8 make findings, and place those findings on the record.

9 4. If the magistrate does choose to close the courtroom for the purpose of the preliminary
10 hearing, the People will move to allow the attendance of the victim's family.
11

12 5. While the requirements of Penal Code Section 868 and the Press case should be followed in
13 determining whether to close the courtroom, the People's right to a fair trial will not be diminished by
14 the closure of the preliminary hearing courtroom to the public.

15 **B.**

16 **THE COURT MAY ISSUE A PROTECTIVE ORDER PROHIBITING EXTRAJUDICIAL**
17 **STATEMENTS BY THE PARTIES**

18 In Sheppard v. Maxwell, 384 U.S. 333 (1966) the United States Supreme Court stated that trial
19 courts may issue protective or "gag" orders in order to insure both parties a fair trial. These orders
20 may be imposed on counsel for defense, prosecutors, the accused, witnesses, court staff and law
21 enforcement officers. People v. Watson, 15 Cal. App. 3d 28, 41 (1971) citing Sheppard at 384 U.S.
22 333, 363.

1 The People of the State of California do not object to the court's imposition of a protective
2 order in this case, prohibiting extrajudicial comments by the parties. However, the People request an
3 exception to this order to allow the prosecution to discuss with the public, possible questions that may
4 be posed to the District Attorney's Office regarding dates of upcoming hearings associated with this
5 case.

6
7 C.

8 **NEITHER THE PROSECUTION NOR THE BAKERSFIELD POLICE DEPARTMENT HAS**
9 **RELEASED DETAILS TO THE MEDIA ABOUT THE FACTUAL DETAILS OF THIS**
10 **MURDER**

11 In this motion, the defense asserts that law enforcement officials released facts to local media
12 outlets that dealt with the horrific details of the instant case. This is a false statement and is not
13 supported by the evidence. While this statement is irrelevant to the motion, the People feel compelled
14 to inform the court that no law enforcement official released details regarding this murder to the media
15 or to the public. See Declaration of Bakersfield Police Sergeant Robert Pair.

16 D.

17 **CONCLUSION**

18 The People argue that the preliminary hearing judge should hear this motion and hold a hearing
19 to determine whether the preliminary hearing should be ordered closed to the public. However, the
20 People do not object to this court granting a protective order prohibiting the involved parties in making
21 extrajudicial statements regarding this case.

22 Dated: August 28, 2020

23 Respectfully submitted,

24 
Cynthia J. Zimmer
District Attorney

1 **DECLARATION OF BAKERSFIELD POLICE SERGEANT ROBERT PAIR**

2 My name is Robert Pair and I declare the following:

3 I am a Sergeant with the Bakersfield Police Department. I am currently assigned as the Public
4 Information Officer. My primary duty is the dissemination of information to the media.

5 In my role as the Public Information Officer, I dealt with a case involving a missing juvenile
6 which was case number 20-122721. I authored and disseminated a written press release with regard to
7 this case on July 4, 2020, July 5, 2020 and July 6, 2020. Those press releases are attached.

8 On July 6, 2020 and thereafter, I conducted on-camera and audio interviews with various
9 media. I did not provide factual details regarding the case. I did not release offense reports to the
10 media. At no time have I, and to the best of my knowledge, has any Bakersfield Police employee,
11 categorized that the referenced investigation was one of the worst cases Bakersfield Police have ever
12 seen.

13 I declare the following is true and correct to the best of my ability. Executed this 28th day of
14 August, 2020 in Bakersfield, Kern County, California.

15
16  #913
17 Sergeant Robert Pair
18 Bakersfield Police Department

BPD Attachment

2 pages



BAKERSFIELD POLICE DEPARTMENT PRESS RELEASE

Greg Terry, Chief of Police

Robert Pair, Sergeant
Public Information Officer
661-326-3803
rpair@bakersfieldpd.us

Updated Release

July 6, 2020

As Bakersfield Police Department detectives continued this investigation, a person of interest was identified as 24-year-old Armando Cruz, of Inglewood, California. Cruz was subsequently located and interviewed, and later arrested for his involvement in this incident on July 6, 2020. He was booked into the Kern County Jail for charges including murder and sexual assault of a juvenile.

The Bakersfield Police Department is requesting information from anyone with knowledge of Cruz's recent visits to the Bakersfield area. Detective Ursery is the lead investigator and can be reached at (661) 326-3871.

Previous Release

July 5, 2020

On July 5, 2020, Bakersfield Police Department detectives located and seized the vehicle in the previously released photograph.

The investigation is continuing, and anyone with additional information is urged to contact Detective Ursery at (661) 326-3871, the Bakersfield Police Department at (661) 327-7111, or the Kern County Secret Witness hotline at (661) 322-4040.

Previous Release

July 4, 2020

The Bakersfield Police Department is asking for the community's assistance in locating a missing juvenile. [REDACTED] was last seen on July 1, 2020, at approximately 11:30 PM, in the area of Hosking Avenue and Wible Road. [REDACTED] is described as a:

Hispanic female, 13 years old, 5'0" tall, 90 pounds, with
brown hair and brown eyes,
unknown clothing description

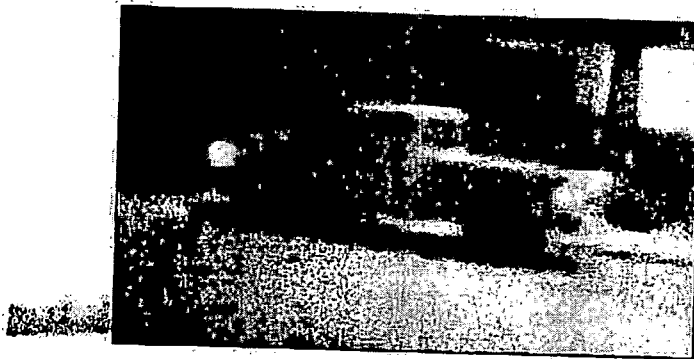
The Bakersfield Police Department partners with our community to protect
the lives and property of the people we serve.

Compassion • Accountability • Professionalism



A vehicle seen in the area at the approximate time of [REDACTED] disappearance is described as a:

white older model pick-up



Anyone with information regarding [REDACTED] whereabouts is encouraged to contact the Bakersfield Police Department at 661-327-7111.

You can now send an anonymous tip to the Bakersfield Police Department. Access the "Submit an Anonymous Tip" link on the Bakersfield Police Department homepage (www.bakersfieldpd.us) from your computer or internet enabled mobile device. The tip, which can include photographs and video, is sent to the police department and the sender remains completely anonymous. The same anonymous information can be sent by accessing www.p3tips.com.

2020-122721

1 **DECLARATION OF CYNTHIA J. ZIMMER IN SUPPORT OF**
2 **ORDER SHORTENING TIME**

3 I, the undersigned, declare under penalty of perjury as follows:

4 1. I am an attorney licensed to practice in the state of California, State Bar Number #116401.

5 2. I am the attorney assigned to prosecute the case of People v. Armando Cruz, BF181682A.

6 3. I received the defense motion and began researching the law regarding the closure of
7 preliminary hearings and protective orders. My response on this case required a careful review
8 of the law. This response also required research from the Bakersfield Police Department
9 regarding the information provided to the media and a declaration was requested and completed
10 by the Public Information Officer. In order for this motion to be timely heard, and Order
11 Shortening Time is necessary.

12 I declare under penalty of perjury the foregoing is true and correct. Respectfully Submitted.

13 Executed on August 27, 2020 at Bakersfield, California.

14
15 *Cynthia Zimmer*
16 Cynthia Zimmer
17 District Attorney

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6 **SUPERIOR COURT OF CALIFORNIA**
7 **COUNTY OF KERN - METROPOLITAN DIVISION**

8 THE PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: BF181682A
9)
10 Plaintiff,)
11 vs.)
12 ARMANDO CRUZ,) **ORDER SHORTENING TIME**
13 Defendant.)

14
15 An ex parte request for an Order Shortening Time in this case came before me this day. Good
16 cause appearing therefore, it is hereby ordered, adjudged and decreed that the People's request for an
17 Order Shortening Time in which to notice motion is granted.

18 Good Cause Appearing, it is hereby ordered that notice of the attached motion must be served
19 upon opposing counsel and filed with the court no later than 3:00 a.m. (p.m.) on
20 8/28, 2020, opposing counsel may serve and file a response/opposition no later than
21 4:00 a.m. (p.m.) on 9/1, 2020, without further order of the court.

22
23 DATED: 8/28/2020

[Signature]
JUDGE OF THE KERN COUNTY
SUPERIOR COURT

24 **DAVID ZULFA**

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PROOF OF SERVICE

I declare that I am employed in the County of Kern, State of California; that I am over the age of eighteen years; that I am not a party to this action; and that my business address is 1215 Truxtun Avenue, Bakersfield, California 93301.

I served a copy of the attached **PEOPLE'S RESPONSE TO DEFENSE MOTION TO CLOSE PRELIMINARY HEARING, ALL PRE-TRIAL HEARINGS, FOR PROTECTIVE ORDER AND REQUEST FOR OST** in the case of **People vs. Armando Cruz, BF181682A**, on defendant's attorney as follows, and in the manner described below:

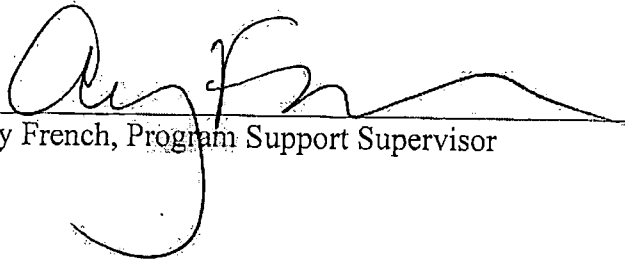
Tomas Requejo
Email: tomas@requejolaw.com

Joel Garcia
Email: Joel@garcialawgrouppe.com

ELECTRONIC DELIVERY – I served the above-described document on defendants in the above-numbered action by sending a true and correct electronic copy to the e-mail address indicated above, and that said transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Bakersfield, California on August 28, 2020.



Amy French, Program Support Supervisor

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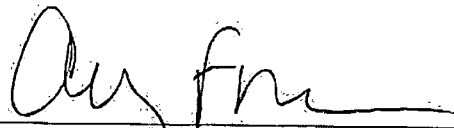
Tomas Requejo
Email: tomas@requejolaw.com

Joel Garcia
Email: Joel@garcialawgrouppe.com

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