

Russell M Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

V.

*

Indictment:

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CR 2000433

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GREG MCMICHAEL

*

TRAVIS MCMICHAEL

*

WILLIAM R. BRYAN

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4.69.1 STATE'S SUPPLEMENTAL MOTION AND RESPONSE
FOR AN ORDER RESTRICTING EXTRAJUDICIAL STATEMENTS

The State filed its original motion on September 3, 2021, motioning this Court for an Order Restricting Extrajudicial Statements by all lawyers representing the defendants in the above matter and the Assistant District Attorneys Pro Tempore for the State. The time frame requested is from now until the rendering of a verdict in this case.¹

1.

The State based this request on previous statements of defense counsel that blatantly asked the public to call into question the integrity of the justice system, the rules of evidence and this Court's rulings on the admission of evidence, since the State Bar of Georgia's Aspirational Statements directs that a lawyer should not use criticism or commentary to undermine the public confidence in the administration of justice.

The second concern of the State, was that Counsel for the defendants had provided numerous interviews, both for scripted podcasts

¹ The requested restriction is to include (1) the making of any statements, commentary or arguments about the facts or evidence involved in the case, (2) making statements or commentary about the judicial proceedings that previously took place inside the Courtroom, or will take place in the future and (3) making statements or commentary about the rulings and orders of this Court. This restriction is also to include the release of information concerning the case to any individual or entity, including by not limited to radio, television or newspaper reporters, in any form or medium, including interviews or written statements.

(<https://www.ajc.com/news/breakdown/>), as well as live interviews after each court hearing, and have provided numerous statements for newspaper articles,² including statements which detailed evidence that has now been ruled inadmissible or which is under consideration by this Court.³

2.

None of the above-mentioned statements to the media by defense counsel have in any way been designed to “stop a wave of publicity [they] perceived as prejudicing potential jurors against [their] client[s] and injuring [their] client’s reputation in the community.” **Defense counsel barely talks about their clients.** The main focus has been on the character of the victim, his prior acts, of which the defendants knew nothing, and his mental health, again, of which the defendants knew nothing, and criticism designed to undermine confidence in the justice system.

The State does not have a “narrative.” The State has not been interviewed on a series of eight podcasts by the AJC. The State has not been interviewed by reporters for the AJC for commentary on this Court’s rulings. Thus, it is disingenuous to say that the State has spread any narrative about the case that requires such extrajudicial statements from the defense attorneys.

Regardless, the statements by the defense attorneys, as seen by their content, have absolutely nothing to do with protecting their clients character, reputation or rebutting an improper perception by media personnel. And it is disingenuous to throw the blame for making such extrajudicial statements on the victim’s family,

² While the defense filed an exhibit purporting to list numerous articles about this case, most of the titles had nothing to do with this case. Random selections: “One year after James Scurlock was killed, Omaha still coming to grips with aftermath” “Georgia teacher tax credit, possible year-round daylight saving time signed into law” “FBI investigating noose left in NASCAR stall of Black driver.”

³ The four statements made by former Assistant District Attorney Pro Tempore Jessie Evans (Page 2) were made during a CBS 48 Hours special in 2020 in which all three sets of defense attorneys were much more heavily featured, made numerous statements about the case and the evidence, and stated their defenses for potential juror consideration. This far outweighed anything ADA Evans said during that one episode, the only time an ADA has made such extrajudicial statements in this case, except those allowed by the GA Bar Rules. The defense could point to no other statements by the State, that required the defense to then protect their clients “reputation in the community.”

since any family would want to seek justice and have their day in court, after such a graphic homicide video was released to the public.

The defense attorneys have illustrated a pattern of criticizing and undermining the judicial process by alleging that this very Court is doing something to keep the truth from the jurors. Their targeted messaging has been statements, not about their clients seeking their day in court, nor information to set the record straight about their clients' reputation, but instead, it has been a steady character assassination of the victim, which is exactly what the defense did in the AJC story, unnecessarily going through the victim's other acts, which they knew had been ruled inadmissible. Those statements had absolutely nothing to do with defending any reputation or misperception of the defendants' actions, and were intentionally made to reiterate to the public excluded character evidence of the victim.

3.

If the defense attorney's true desire is to protect their client's reputation in the community, and see that they get a fair trial, then there is no need for any lawyer involved in this case to provide nightly commentary about the evidence and the rulings during the trial, as such comments, provided to the media on a daily basis, may inadvertently be seen by a juror, or be unintentionally relayed to a juror by another. And such comments that criticize this Court's evidentiary rulings, or reiterate inadmissible evidence as a reminder of what is not being presented in the courtroom due to the rules of evidence, will also serve to undermine the public confidence in the administration of justice, as this trial proceeds.

4.

The State is also not seeking to preclude any attorney or court officer from quoting or referring without comment⁴ to public records of the court in this case,

⁴ "Without comment" includes, but is not limited to, criticism of the State or this Court, advocacy for particular evidentiary rulings (outside of written motions and courtroom arguments), arguments and positioning of the facts and evidence in order to sway jurors, or potential jurors, outside of the courtroom.

from announcing the scheduling or result (i.e. “denied” or “granted”) of any stage in the judicial process, or from announcing without further comment that the accused denies the charges made against him. See Bar Rule 3.6 Comment 5B.

5.

The State asks this Court to find that extrajudicial statements to the media, especially, but not limited to, evidence that has been ruled inadmissible, previously or during the trial, or criticism of this Court’s previous rulings or rulings during the trial, will have a substantial likelihood of materially prejudicing the trial.

This the 1st day of October, 2021.

/S/ Linda J. Dunikoski

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served opposing counsel with a true and correct copy of the above 4.69.1 STATE'S MOTION FOR AN ORDER RESTRICTING EXTRAJUDICIAL STATEMENTS via the Odyssey E-File System to:

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This the 1st day of October 2021.

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