

13-958 PH

No. 1546111

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
V.	§	178 <sup>th</sup> JUDICIAL DISTRICT
	§	
ANTONIO ARMSTRONG, JR.	§	HARRIS COUNTY, TEXAS

**PUBLICITY ORDER**

This Court has a duty to preserve the parties' right to a fair trial by an impartial jury and, if possible, to ensure that potential jurors will not be prejudiced by pretrial or in-trial publicity. The Court also notes that Rule 3.07 of the Texas Rules of Professional Conduct states that attorneys have a duty to refrain from making "extrajudicial statement(s) that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding." These extrajudicial statements include statements about "the character, credibility, reputation...or expected testimony of a party or a witness" as well as "information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial...." TEX. DISCIPLINARY R. PROF'L CONDUCT 3.07, reprinted in TEX. GOV'T CODE, tit. 2, subtit. G app. A (TEX. STATE BAR R., Art. 10 §9).

The Court is also mindful of the First Amendment rights of the parties, counsel, and the media, and is mindful of the Open Courts Provision of the Texas Constitution. In efforts to balance these competing interests, courts have found that prior restraint may be imposed if there is the threat of harm. Accordingly, before issuing such an order, a court must find that extensive media coverage will harm the judicial process.

This Court takes judicial notice of:

1. The high-profile subject matter of this case;
2. The case has already been tried twice before a jury and a hung jury was declared in both trials;
3. In both trials, large jury pools were summoned in order to impanel a jury;
4. The unusually emotional nature of the issues involved in this case;
5. The age of this case;

6. The impending trial setting of February 24, 2023;
7. The extensive and continual local media coverage that this case has already generated;
8. The willingness of many of the attorneys involved in this case to give media interviews, make social media postings and provide evidence to the media; and
9. The ABC Network show 20/20 which recently published purported testimony and evidence which this Court had previously ruled was inadmissible and would not be considered by the jury.

The Court FINDS that there is a substantial probability that continued media and social media coverage as this case proceeds will likely prejudice one or more parties' right to a fair trial.

The Court FINDS that the willingness of attorneys to give interviews and/or provide the media with information will only serve to increase the volume of pre-trial and in-trial publicity.

The Court FINDS that no less restrictive alternative means exists to treat the specific threat to the judicial process generated by this publicity.

The Court further FINDS that an order restricting extra-judicial commentary by counsel for the parties is necessary to preserve all parties' right to a fair trial by an impartial jury. The Court additionally FINDS that an order restricting counsel for the parties from supplying documents, evidence or anticipated testimony is also necessary to preserve all parties' right to a fair trial by an impartial jury.

**Nothing in this Order serves to restrict the media from attending the proceedings or reporting on the proceedings.**

Accordingly, in its sound discretion and in light of the relevant facts and circumstances of these particular cases, the Court ORDERS, that prior to and during the trial of these cases:

1. All attorneys involved in this case shall strictly adhere to the letter and spirit of the provisions of the Texas Code of Professional Responsibility governing comments to the media. Specifically, all attorneys shall refrain from making "extrajudicial statements that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or

reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding.” TEX. DISCIPLINARY R. PROF'L CONDUCT 3.07, *reprinted in* TEX. GOV'T CODE, tit. 2, subtit. G app. A (TEX. STATE BAR R. art 10 §9).

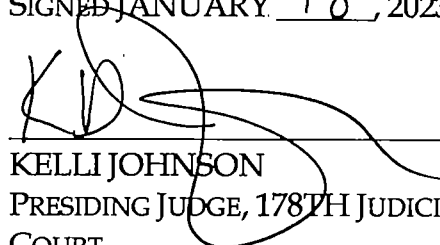
2. All attorneys, including associates, partners, and staff involved in this case shall not, prior to and during the trial of this case, discuss the following aspects of this case with the media or independently post on social media about:
  - a. the character, credibility, or reputation of any party;
  - b. the identity of a witness or the expected testimony of a party or a witness;
  - c. the contents of any pretrial admissions or statements given by a party or witness or that person's refusal or failure to make a statement;
  - d. the identity or nature of physical evidence expected to be presented or the absence of such physical evidence;
  - e. Any information that is substantially likely to materially prejudice the trial;
  - f. The strengths or weaknesses of the case or either party;
  - g. The rulings of the court; and
  - h. Any other information a lawyer knows or reasonably should know is likely to be inadmissible as evidence and would create a substantial risk of prejudice if disclosed.
  
3. All attorneys, including associates, partners, and staff involved in this case shall not, prior to and during the trial of this case, provide the media with documents, evidence or anticipated testimony containing or concerning:
  - a. the character, credibility, or reputation of any party;
  - b. the identity of a witness or the expected testimony of a party or a witness;
  - c. the contents of any pretrial admissions or statements given by a party or witness or that person's refusal or failure to make a statement;
  - d. the identity or nature of physical evidence expected to be presented or the absence of such physical evidence;
  - e. Any information that is substantially likely to materially prejudice the trial;
  - f. The strengths or weaknesses of the case or either party;
  - g. The rulings of the court; and
  - h. Any other information a lawyer knows or reasonably should know is likely to be inadmissible as evidence and would create a substantial risk of prejudice if disclosed.
  
4. This Order shall not be interpreted to prohibit attorneys from communicating with the parties in order to prepare for trial, nor shall it be interpreted to prohibit third parties from attending any live sessions before the Court or from publishing any information they have already obtained or may obtain in the

future. The term "third parties" includes any person or organization that is not a party, an attorney for a party, or a person employed by or is otherwise an agent for the parties or attorneys for the parties for the purpose of assisting in this litigation.

5. This Order does not prohibit any individual from stating without elaboration or characterization:
- a. the scheduling or result of any step in the proceedings; or
  - b. explaining, without characterization, the contents or substance of any motion or step in the proceedings, to the extent that such motion or step is a matter of public record.

This Court shall entertain reasonable requests to modify this Order as the need arises.

SIGNED JANUARY 18, 2023

  
KELLI JOHNSON  
PRESIDING JUDGE, 178TH JUDICIAL DISTRICT  
COURT

