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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

S.R. NEHAD, an individual, K.R.
NEHAD, an individual, ESTATE OF
FRIDOOON RAWSHAN NEHAD,

Plaintiffs,

v.

NEAL N. BROWDER, an individual,
CITY OF SAN DIEGO, a
municipality, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. 15cv1386 WQH - NLS
ORDER

HAYES, Judge:

The matter before the Court is the motion to change venue (ECF No. 40) filed by Plaintiffs Estate of Fridoon Rawshan Nehad, K.R. Nehad, and S.R. Nehad.

I. Background

On June 24, 2015, Plaintiffs filed a Complaint against Defendant Neal N. Browder, alleging deprivation of civil rights under 42 U.S.C. § 1983. On July 23, 2015, Plaintiffs filed a First Amended Complaint against Defendant Browder adding the City of San Diego. The First Amended Complaint alleges that Fridoon Rawshan Nehad was shot to death on April 30, 2015 by Defendant Browder, a San Diego police officer acting under color of authority.

On July 2015, the United States Magistrate Judge signed an Order Granting Joint Motion for Protective Order. (ECF No. 13). The Protective Order required Defendants' attorneys of record to immediately produce to Plaintiffs' attorneys copies of video

1 footage depicting the “surrounding area or scene of the April 30, 2015 shooting of
2 Fridoon Rawshan Nehad . . .” and copies of documents contained in the San Diego
3 Police Department’s homicide investigation binder. *Id.* at 1. The Protective Order
4 required the parties and their attorneys to not “[c]onvey, transfer, copy, publish, show,
5 or distribute the documents or other items produced . . . to anyone other than the parties
6 and their attorneys of record, . . . without court approval.” *Id.*

7 On August 19, 2015, Voice of San Diego, KPBS, KGTV 10 News, The San
8 Diego Union-Tribune and inewsourc, filed a motion seeking intervention pursuant to
9 Federal Rules of Civil Procedure 24(b) “to assert public and press access rights to
10 review and copy the security camera Video of the police shooting of FRIDOON
11 RAWSHANNEHAD and the official statement of Officer Neal N. Browder.” (ECF No.
12 16 at 2).

13 On November 9, 2015, San Diego County District Attorney Bonnie Dumanis
14 announced that no criminal charges will be filed against Officer Neal Browder for
15 fatally shooting Fridoon Rawshan Nehad. (ECF No. 41: Ex. G - M).

16 On November 30, 2015, Plaintiffs filed a motion to change venue on the grounds
17 that the jury pool in San Diego has been prejudiced by public statements made by
18 District Attorney Bonnie Dumanis about Fridoon Rawshan Nehad. (ECF No. 40). On
19 November 30, 2015, Plaintiffs filed the “Motion to Lodge Exhibits A &B Under Seal
20 in Support of Motion to Change Venue,” requesting to lodge the videos of the police
21 shootings under seal. (ECF No. 44). The motion to lodge the videos under seal stated
22 that the videos were “currently covered by the Stipulated Protective Order . . . and
23 therefore must be lodged under seal. *Id.* at 2.

24 On December 16, 2015, the Court issued an Order vacating the Protective Order,
25 granting the motion for permissive intervention, and otherwise denying the motion for
26 public access without prejudice. (ECF No. 51).

27 On December 22, 2015, District Attorney Dumanis released video footage of the
28 fatal shooting. (ECF No. 52-2: Ex. C - K).

1 On December 28, 2015, Plaintiffs filed a supplemental brief in support of their
2 motion to change venue. (ECF No. 52). Plaintiffs concurrently lodged declarations and
3 exhibits, including the videos of the police shooting.¹ On December 29, 2015,
4 Defendants filed an opposition to the motion to change venue. (ECF No. 53). On
5 January 5, 2016, Plaintiffs filed a reply.

6 On March 8, 2016, the Court heard oral argument.

7 **II. Contentions of the Parties**

8 Plaintiffs contend that “they can no longer get a fair trial in San Diego because
9 . . . San Diego County District Attorney Bonnie Dumanis has gone out in the media and
10 prejudiced the jury pool.” (ECF No. 40 at 5). Plaintiffs contend that

11 on November 9, 2015, DA Dumanis called a press conference and made
12 dishonest, inflammatory and gratuitous statements about the case. She
13 attacked the victim, Fridoon Nehad, as a violent criminal with a long rap
14 sheet; and she praised the shooter, Officer Neal Browder, as a model
15 police officer who did nothing wrong. Among other things, the DA:
16 Identified 18 prior violent incidents involving Fridoon (dating to 2004);
17 Called Fridoon a drug addict who was a threat to the community; Said
18 Fridoon “was not taking any appropriate medications to treat his bipolar
19 disorder or schizophrenia”; Said Fridoon “was not someone who could be
20 reasoned with”; Called Fridoon’s family “his most frequent victims”; and
21 Speculated that Fridoon knew Browder was a police officer and attacked
22 him anyway.

23 *Id.* Plaintiffs contend that “[e]very television station in San Diego covered the story.
24 And the DA is continuing to spread her ‘story’ through social media – Twitter, press
25 releases, and facebook. *Id.* at 6. Plaintiffs contend that “[v]oir dire will not cure the
26 problem. . . . We cannot just ask potential jurors if they have seen the media coverage.
27 We will have to dig deeper and ask them, specifically, if they saw the DA’s press
28 conference, letter or tweets, or the news stories” *Id.* at 7.

Plaintiffs contend that “[o]n December 22, 2015, DA Dumanis called another
press conference to release the video and other evidence subject to the Protective
Order.” (ECF No. 52 at 2). Plaintiffs contend that DA Dumanis made “argumentative

¹ Because the videos are no longer covered by the Protective Order and Plaintiff has lodged the videos not under seal (ECF No. 52, Ex. N,O), the motion to lodge the videos under seal (ECF No. 44) is denied as moot.

1 and inaccurate statements” about evidence related to the shooting. *Id.* at 3. Plaintiffs
2 contend that DA Dumanis “released witness statements and reports, but only those that
3 were favorable to Browder.” *Id.* at 4. Plaintiffs contend that “[t]he DA’s press
4 conference was the lead story on television and radio stations throughout San Diego.
5 The DA’s edited version of the shooting video was posted on YouTube and has been
6 viewed over 45,000 times already.” *Id.* at 4-5.

7 Defendants contend that DA Dumanis’ statements to the press were not
8 prejudicial and contained only information that would be admissible evidence at trial.
9 (ECF No. 53 at 7, 13). Defendants contend that DA Dumanis conducted press releases
10 discussing the decedent’s prior acts of violence in the context of “inform[ing] the public
11 about the District Attorney’s decision not to press charges” against Defendant Browder.
12 *Id.* at 7. Defendants contend that a survey conducted in December 2015 indicated that
13 “more than 66% of San Diegans have not heard of Mr. Nehad’s death.” *Id.* at 10.
14 Defendants further contend that “44% of the articles published between September 1,
15 2015, and December 23, 2015, are categorized as negative towards defendants, while
16 43% were neutral.” *Id.*

17 **III. Discussion**

18 “The standards governing a change of venue ultimately derive from the due
19 process clause of the fourteenth amendment which safeguards a defendant’s sixth
20 amendment right to be tried by a panel of impartial, indifferent jurors.” *Harris v.*
21 *Pulley*, 885 F.2d 1354, 1362 (9th Cir. 1988) (citations and internal quotations omitted).
22 “To support a change of venue motion, [the moving party] must demonstrate either
23 actual or presumed prejudice.” *Daniels v. Woodford*, 428 F.3d 1181, 1211 (9th Cir.
24 2005). Prior to trial, when there is no evidence of actual jury bias, the moving party
25 “must make a showing sufficient for a presumption of prejudice.” *See id.*

26 “Prejudice is presumed only in extreme instances ‘when the record demonstrates
27 that the community where the trial was held was saturated with prejudicial and
28 inflammatory media publicity about the crime.’” *Id.* (citing *Ainsworth v. Calderon*, 138

1 F.3d 787, 795 (9th Cir. 1998). “Three factors should be considered in determining
2 presumed prejudice: (1) whether there was a ‘barrage of inflammatory publicity
3 immediately prior to trial, amounting to a huge . . . wave of passion’; (2) whether the
4 news accounts were primarily factual because such accounts tend to be less
5 inflammatory than editorials or cartoons; and (3) whether the media accounts contained
6 inflammatory or prejudicial information not admissible at trial.” *Id.* (citations omitted).
7 “The trial court may be unable to seat an impartial jury because of prejudicial pretrial
8 publicity or an inflamed community atmosphere. In such a case, due process requires
9 that the trial court grant defendant’s motion for a change of venue.” *Pulley*, 885 F.2d
10 at 1361. “[W]hen the trial has been set in a large urban area, publicity has presented
11 less significant problems.” *Columbia Broadcasting Systems, Inc. v. U.S. Dist. Court*
12 *for Cent. Dist. Of California*, 729 F.2d 1174, 1181-82 (9th Cir. 1984) (finding that in
13 “[a]lmost all the cases in which the Supreme Court has found that press coverage
14 deprived the defendant of a fair trial have been tried in small rural communities.”).

15 “The effect of pretrial publicity can be better determined after the voir dire
16 examination of the jurors.” *Narten v. Eyman*, 460 F.2d 184, 187 (9th Cir. 1969). “It
17 is not required . . . that the jurors be totally ignorant of the facts and issues involved. .
18 . . It is sufficient if the juror can lay aside his impression or opinion and render a verdict
19 based on the evidence presented in court.” *Id.* at 188-89.

20 In this case, San Diego is a large urban area and therefore publicity presents a less
21 significant problem. *See Columbia Broadcasting Systems, Inc.*, 729 F.2d at 1181-82.
22 The record does not demonstrate that the community is so “saturated with prejudicial
23 and inflammatory media publicity about the crime” at this stage in the proceedings that
24 the Court would be unable to seat an impartial jury. *See Daniels*, 428 F.3d at 1211. A
25 trial in this case is more than a year away, with the Final Pretrial Conference currently
26 set for February 3, 2017. The motion to change venue is denied without prejudice.


27 **IV. Conclusion**

28 IT IS HEREBY ORDERED that the motion to change venue (ECF No. 40) is

1 denied without prejudice.

2 IT IS FURTHER ORDERED that the motion to lodge exhibits A & B under seal
3 in support of motion to change venue (ECF No. 44) is denied as moot.

4 DATED: March 9, 2016

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6 **WILLIAM Q. HAYES**
7 United States District Judge

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