

FILED

MAR 25 2004

FRESNO SUPERIOR COURT

By Jr DEPT. 96 DEPUTY

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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF FRESNO  
12 CENTRAL DIVISION

13 THE PEOPLE OF THE STATE OF  
14 CALIFORNIA,  
15 Plaintiff,  
16 vs.  
17 MARCUS WESSON,  
18 Defendant

Case No.: F049017856

**Motion for an Order Granting**

**Wesson the Same**

**Visiting Privileges as All Pre-Trial**

**Detainees.**

19  
20 **I. Statement of the Facts and Case**

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22 Wesson is charged by felony complaint with nine counts of murder in violation of  
23 Penal Code section 187. A special circumstance of multiple murder is alleged under  
24 Penal Code section 190.2.

25 There has been no evidence submitted yet in the case. It is widely reported in the  
26 news media that on March 12, 2004, police arrived at Wesson's abode. Wesson

1 remained inside the abode for about two hours. When he emerged he was arrested. The  
2 news media report that he had blood on his shirt. Inside the house were found nine  
3 bodies: one adult and eight children. The new media report that all nine died from  
4 gunshot wounds. The media report that officials are withholding information about the  
5 exact time of death. The news media report that at least one of the deceased had gunshot  
6 residue on her hands.

7 Wesson is being held at the Fresno County Jail. At his first court appearance,  
8 March 17, 2004, the court remanded him without bail. (The Fresno Superior Court's web  
9 site reports that before that Wesson's bail was over \$9 million.)  
10  
11

12 Relevant to visitation, at the first court appearance, a person in the audience, later  
13 identified as an adult son of Wesson, stood up and stated "I love you, Dad."

14 Also relevant to visitation, it has also been reported in the media that Wesson's  
15 wife tried to visit him in the jail.

16 Also, "The Fresno Bee" carried a long article about Wesson's mother.

17 Thus we have three adult relatives, at least two of whom, and probably the third  
18 also, would obviously like to visit Wesson.  
19  
20

21 At time set for the continued arraignment, March 18, 2004, private attorneys  
22 David Mugridge and Gary Harvey appeared with Wesson and asked that the arraignment  
23 be continued a week, for them to decide if they would be Wesson's defense counsel.

24 Also on March 18, prospective defense counsel asked that Wesson be allowed  
25 visitation with his family. No evidence was taken, but the statement was undisputed that  
26 the Fresno County Sheriff is not allowing Wesson any jail visits at all, *except by counsel.*

1 On information and belief, normally the jail permits visits by at least two people,  
2 of at least up to one hour per inmate per week.

3 The court, according to the March 18 minute order, denied the request of  
4 prospective counsel, that Wesson be allowed family visits, "due to security issues," but  
5 permitted defense counsel to "submit written motion with proper notice to all parties."  
6 The court continued the matter until today, March 25, 2004.

7 Mugridge stated in open court on March 18 that he anticipated filing papers earlier  
8 this week.

9 Instead, however, Mugridge sent a letter to the court, dated March 20, 2004, and  
10 received by the court on Tuesday, March 23, 2004, stating "... [W]e [Mugridge and  
11 Harvey] will not be representing Mr. Wesson...." As to the Visitation Motion, the letter  
12 says "... [W]e will not be filing any formal motions ..., but will instead leave that up to  
13 subsequent counsel."

14 Today, March 25, the court appointed the Public Defender to represent Wesson.

15 Public Defender is informed and believes that, Chief Deputy Counsel J. Wesley  
16 Merritt, representing the Fresno County Sheriff, had planned on a hearing on this  
17 visitation question today, March 25, at 1:30.

18 Accordingly, Wesson, by and through his attorney, the Fresno County Public  
19 Defender, submits these points and authorities, and is ready for a hearing.

20  
21  
22 **II. The Court Should Require the Sheriff to Demonstrate Compliance With**  
23 **California Code of Regulations title 15, section 1062.**  
24

25 Penal Code section 6030, subdivision (a), requires the Board of Corrections to  
26 "establish minimum standards for local detention facilities ...."

1 Penal Code section 6030, subdivision (b) requires “[t]he standards [to] include ...  
2 treatment of persons confined in local detention facilities.”

3 Accordingly, the Board of Corrections has promulgated regulations found at  
4 C.C.R. tit. 15, Div. 1, Ch. 1, Subchapter 4, “Minimum Standards for Local Detention  
5 Facilities,” Sections 1000 to 1282.

6 C.C.R. tit. 15, section 1062 is titled “Visiting.” Subdivision (a) provides as  
7 follows.

8 “The facility administrator shall develop written policies and procedures for  
9 inmate visiting which shall provide for as many visits and visitors as  
10 facility schedules, space, and number of personnel will allow.... [A]ll  
11 inmates in all inmates in Type II<sup>(1)</sup> facilities there shall be allowed no fewer  
12 than two visits totaling at least one hour per inmate each week.

13  
14 Accordingly, the Fresno County Sheriff must show that this denial is in accord  
15 with the required previously “develop[ed] written policies and procedures.” Unless and  
16 until the Sheriff does so, Wesson must be allowed visits the same as any other inmate.

17 If the denial of visits to Wesson are not in accord with the Sheriff’s previously  
18 “develop[ed] written policies and procedures” it obviously will not suffice for the Sheriff  
19 to write some so-called policy to cover this case alone. Instead, the Sheriff must  
20 properly develop a written policy and procedure. To repeat, unless and until the Sheriff  
21 does so, Wesson must be allowed visits the same as any other inmate.

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24  
25 <sup>1</sup> Fresno’s jail is a Type II facility. C.C.R. tit. 15, § 1006, Definitions, defines this as  
26 follows. “ ‘Type II facility’ means a local detention facility used for the detention of  
persons pending arraignment, during trial, and upon a sentence of commitment.”

1 **III. Pretrial Detainees Are Entitled to Due Process in Visitation.**

2  
3 The leading United States Supreme Court case on pretrial detainees is *Bell v.*  
4 *Wolfish* (1979) 441 U.S. 520.

5 *Wolfish* held that pretrial detention conditions not amounting to punishment, are  
6 evaluated under Constitutional due process standards.

7 *Bell* speaks extensively about the government's interest in managing the jail, in  
8 maintaining security..

9 Note, however, that those statements are about the government's concrete interest  
10 in the jail itself. They are not about the government's less specific interest in maintaining  
11 public safety, or in preventing future crimes or other harm.

12  
13 At this time there is no evidence of why the Sheriff is restricting Wesson's visits.

14  
15 In the absence of evidence, this restriction could only be punitive. If it is punitive,  
16 then, even under *Bell*, it must be analyzed under the Constitutional prohibition on cruel  
17 and unusual punishment. Solitary confinement has been referred to as cruel and unusual  
18 punishment. *Chambers v. Florida* (1940) 309 U.S. 227, 237 – 238.

19  
20 If the Sheriff does present evidence showing an interest in maintaining jail  
21 security, then *Bell*, and its progeny, give us some guidance.

22 For example, *In re Smith* (1980) 112 Cal.App.3d 956, applied *Bell* to hold that a  
23 ban on pretrial detainees receiving visits from their minor children is "an excessive  
24 response to the limited risk presented by child visitation in these particular facilities, and  
25 therefore is not reasonably related to a legitimate governmental objective." *Smith* relied

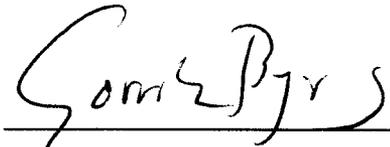
1 on the fundamental right of the relationship between parent and child.<sup>2</sup> While *Smith*  
2 obviously had minor children in mind, the relationship between a father and his adult son,  
3 between a man and a wife, and between an adult son and his mother, are all also, surely,  
4 fundamental rights. *Smith* also relied on the “constitutional rights of association and  
5 privacy.”<sup>3</sup> Surely those, too, apply with equal force here.  
6

7 If the Sheriff cites some concern about people who are not in the jail, or that does  
8 not concern jail security, then the cases offer less guidance. But even if measured by the  
9 more conventional *Bell* standards, this denial of visitation should still not be allowed to  
10 stand. It is surely unnecessarily cruel to adopt the extreme measure of denial of all  
11 visitation. *Chambers v. Florida*, *supra*.  
12  
13

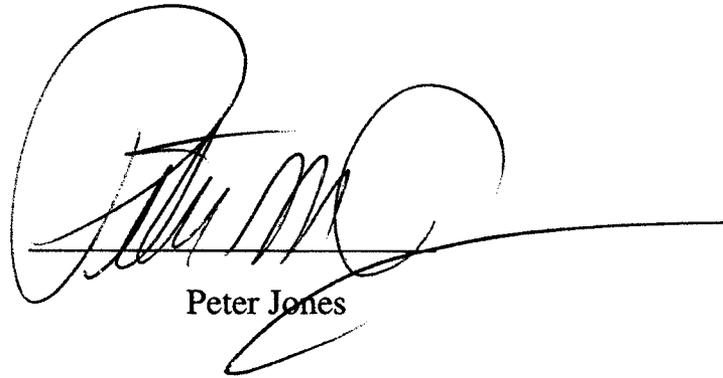
14 Respectfully Submitted,  
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16 MAR 25, 2004

17 Date

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22 Garrick Byers

23 

24 Peter Jones

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26 <sup>2</sup> *In re Smith, supra*, 112 Cal.App.3d at 966.

<sup>3</sup> *In re Smith, supra*, 112 Cal.App.3d at 964.