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Court Order Regarding Media Restrictions

Judge Ronald Suster

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STATE OF OHIO)
) SS.
CUYAHOGA COUNTY)

IN THE COURT COMMON PLEAS

CASE NO. 312322

ALAN DAVIS, et al.,)
)
Plaintiff,)
)
v.)
)
STATE OF OHIO,)
)
Defendant.)

ORDER

On January 27, 2000, this Court issued an Order and incorporated Media Advisory concerning public and media access to the proceedings in this case. On January 31, 2000, the Court issued an additional Order in this regard. Those orders remain in full force and effect.

On February 7, 2000, this Court held a Hearing to address reasonable alternatives on prior restraints that this Court will impose on the media regarding prospective and actual jurors. At the Hearing this Court took judicial notice of the following:

1. The media has the constitutional right under the First Amendment to freedom of speech and the press. As a result, the media is entitled to protected information that is mentioned in open court or offered in publicly available court records.
2. The Ohio Supreme Court case, State, ex rel. NBC, Inc. et al., v. Court of Common Pleas (1990), 52 Ohio St. 3d 104 (citing to State, ex rel. Beacon Journal Pub. Co., v. Kainrad (1976), 46 Ohio St. 2d 349), governs prior restraint that this Court imposes on the media.
3. This case has generated significant media coverage dating back to 1954.
4. This jury trial may take up to six weeks or more prior to the jury reaching its verdict.

This Court heard argument from the media, including counsel for a local newspaper and a reporter from a local television station, regarding the juror biographical information and the jury questionnaire. The media representatives argued for the release of juror information with a prior

restraint that would limit the media from contacting the jurors or prospective jurors until after the trial has ended. The media requested the right to record or tape, without broadcast, the voir dire proceedings with the intent to use information that does not identify jurors specifically. Finally, counsel for the local newspaper argued that the juror questionnaire has adequate disclosure language that permits a juror to address a question privately with this Court. Thus, counsel argued that this Court should approach the juror questionnaire in a question-by-question basis.

Counsel for the respective parties voiced concerns for protecting the identity of the jurors and prospective jurors, including but not limited to certain questions on the voir dire questionnaire. Counsel argued that this Court should hold closed voir dire for sensitive issues raised in the juror questionnaire.

The Ohio Supreme Court offers guidance to this Court when insulating a jury in a case such as this. See State, ex rel. NBC, Inc. et al., v. Court of Common Pleas et al. (1990), 52 Ohio St. 3d 104 (citing State, ex rel. Beacon Journal Pub. Co., v. Kainrad (1976), 46 Ohio St. 2d 349. The Ohio Supreme Court specified a trial court's burden for imposing prior restraint on the media.

An order not to publish cannot be considered unless the circumstances are imperative, and it appears clearly in the record that a defendant's right to a fair trial will be jeopardized and that there is no other recourse within the power of the court to protect that right or minimize the danger of it.

Before issuing any such order not to publish, it is obligatory upon the court to hold a hearing and make a finding that all other measures within the power of the court to ensure a fair trial have been found unavailing and deficient.

Kainrad, 46 Ohio St. 2d at 352.

Ironically, the right, and in some cases the obligation of a trial judge to insulate a jury arises from Sheppard v. Maxwell. (1966), 384 U.S. 333. Our Supreme Court criticized a trial judge for permitting a media that thrust the jurors of Dr. Sheppard's 1954 case into celebrity roles. In fact, the Court held that the trial judge should have insulated the jurors from the media.

However, this Court recognizes that such judicial conduct constitutes a prior restraint on publication. Generally, this Court opposes any type of prior restraint on publication.

Furthermore, this Court finds that such prior restraint on publication is "one of the most

extraordinary remedies known to our jurisprudence.” State ex rel. NBC, Inc., 52 Ohio St. 3d at 112 (citing Nebraska Press Assn. v. Stuart (1976,) 427 U.S. 539, 562).

In light of our laws and the facts of this case, this Court will impose a prior restraint on the media covering this trial. The restraint is limited to this Court’s intent to insulate the jurors and prospective jurors from identification, humiliation, or harassment. This Court has considered all available measures and determines that this limited restraint is the least restrictive alternative to ensure a fair trial. All other measures are unavailing and deficient under the circumstances.

Specifically, this Court finds that the circumstances of this case make it imperative on this Court to insulate the jurors and prospective jurors from the media. This case and its participants have attracted excessive media since 1954. Many of this case’s participants have been elevated to celebrity status within the media. In fact, several of the current participants have recently received considerable coverage. Arguably, several of the current participants have been or may be elevated to celebrity status within the media. Furthermore, this case is a jury trial which requires a fair and impartial jury to remain free from intrusion during the course of this trial. The media involved in covering this case will likely continue its coverage until and even after the case’s conclusion.

In a civil trial, each party is entitled to the right of a fair trial, free from elements that may jeopardize that right. Both parties have had considerable news coverage, especially recently. This Court takes judicial notice that the media has covered this case on a daily basis on local television and radio news programs and within the newspapers. Absent a change in venue, the local sentiment may waver for any given party at any time during this trial. This case portrays a significant slice of our local history. Many of our residents recall the earlier events or participants with clarity. Thus, public access to the jurors’ or prospective jurors’ identification could lead to harassment or embarrassment, and disrupt their own and their families’ lives. Such a disruption could cause conflict or disruption within the jury and could jeopardize the parties’ right to a fair trial.

This Court recognizes its recourse to protect the parties’ right to a fair trial or to minimize the danger to the fair trial. Several of the counsel or representatives offered alternatives at this

Court's Hearing. In addition to the offered alternatives, this Court has considered sequestering the jury, closing the voir dire process, and protecting the juror's names and identities.

Pursuant to its obligations on restraining the media, this Court will choose the least restrictive alternative in light of the circumstances and the competing interests. Thus, this Court orders the following for this case only: This Court prohibits

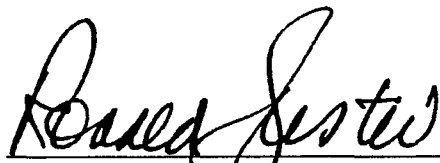
1. all access to the Court's biographical jury information;
2. all access to the completed juror questionnaires; and
3. the recording or broadcast of any jury member. This Court will permit a closed circuit television feed during voir dire. Members of the media may attend the proceedings in the courtroom granted available seating or via the television feed, and may report on what they see and hear in open court.

Furthermore, due to limited seating, this Court will restrict the number of media allotted courtroom seating during voir dire. Finally, this Court notes that the impact of this order is merely to place the media in the same position while covering the voir dire of this case as it would be in other federal and state courts that prohibit cameras or recorders all together in the courtroom.

So ordered.

2-7-00

Date

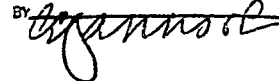

RONALD SUSTER, JUDGE

THE STATE OF OHIO Cuyahoga County	I, GERALD E. FUERST, CLERK OF SS. THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY THE ACT AND DEED FROM THE COURT.	
NOT FOR FILE IN MY OFFICE.	
WITNESS MY HAND AND SEAL OF SAID COURT THIS <u>07</u> DAY OF <u>Feb</u> A.D. <u>00</u>	
GERALD E. FUERST, Clerk	
By <u>A. Grace</u>	Deputy

RECEIVED FOR FILING

FEB 07 2000

GERALD E. FUERST, CLERK

By  DEP.