ORIGINAL

FILED
4 O'Clock P.M.
JAN 06 2011
JEANNINE HICKS, Clerk
By: [illegible]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

THE STATE OF ARIZONA, Plaintiff,	)	
vs.	)	No. CR 2008-1339
STEVEN CARROLL DEMOCKER, Defendant.	)	

BEFORE: THE HONORABLE THOMAS B. LINDBERG
JUDGE OF THE SUPERIOR COURT
DIVISION SIX
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
JANUARY 9, 2009
1:04 P.M.

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
HEARING RE: MEDIA COVERAGE

COURT'S RULING ON RULE 122 HEARING

ROXANNE E. TARN, CR
Certified Court Reporter
Certificate No. 50808

FRIDAY, JANUARY 9, 2009
1:04 P.M.

COURT'S RULING ON RULE 122 HEARING

APPEARANCES:
FOR THE STATE, MR. MARK AINLEY, DEPUTY COUNTY ATTORNEY.
FOR THE DEFENDANT, MR. LARRY HAMMOND, ATTORNEY AT LAW.
FOR AMERICAN BROADCASTING CORPORATION, MR. DAVID BODNEY, ATTORNEY AT LAW.

(THE FOLLOWING IS A PARTIAL TRANSCRIPT OF THE PROCEEDINGS HELD ON JANUARY 9, 2009:)

THE COURT: I had been toying with not issuing a ruling from the bench, but I think that I will issue a ruling from the bench at this time.

Rule 122 has been amended effective this year and governs the Court's obligations under the law. Obviously, I am as cognizant as anyone is of the sacredness of the right to a fair trial for any defendant, and of the other Constitutional rights that we have as citizens of our State and country to have a free press.

There are no limitations on the press's access to the courts. We need to have that involvement of the people who are governed in their government by having an informed public, the ability to come in the courthouse.

I did note the observation that this was a case of keen interest in Yavapai County, and perhaps it is as demonstrated by Exhibit No. 1. And no offense to anyone

1 in particular, but this is not a crowded courtroom this
2 morning or this afternoon, and it was not a crowded courtroom
3 when we began the hearing. To the extent that there is some
4 interest, I recognize a clear interest by the press, but in
5 terms of the general public, I am not sure that I agree with
6 the observation that people are beating down the doors to
7 find the rare seats in the courtroom. There are plenty of
8 seats in the courtroom. And to that extent, I disagree with
9 some of the comments made in the pleadings in connection with
10 the case.
11 That is not to say that there isn't an
12 interest, and that is not to say that the press doesn't in
13 and of itself have a sufficient interest to ask to have
14 cameras in the courtroom.
15 Rule 122 is what controls me. Though,
16 one may sometimes wish to be a Federal Judge with lifetime
17 tenure and be bound by the rules that bind them, I am not. I
18 am a State Judge and bound by the rules of our State.
19 Although, it is sometimes interesting to note the differences
20 between Federal Judges and State Judges and the rules that
21 bind them and to wonder about some of the differences, as
22 Mr. Hammond does.
23 Clearly, the defendant has a right to a
24 fair trial. I have considered the issues that are addressed
25 to the Court in connection with the case and the right of

1 both sides to a fair trial the first time, without the need
2 for subsequent trials because of error. The right to privacy
3 of the parties and witnesses.
4 But in that regard, this is a public
5 setting and a public courtroom. The public has the right to
6 observe its government, the Judicial Branch at work in
7 conjunction with defense counsel, in this case private
8 defense counsel, and the State's representatives and law
9 enforcement and the County Attorney's office.
10 I have not been presented with anything
11 that would lead me to believe that somebody, as a result of
12 coverage by cameras in the courtroom, would be less safe,
13 considering the potential jurors, considering the witnesses
14 and the parties. Though there may be high feelings about the
15 case that could impact the safety of a witness, I think at
16 this point I haven't been shown that. So it is only
17 something in potential that may be addressed later by the
18 Court.
19 Likelihood the coverage would distract
20 participants or detract from the dignity of the proceedings.
21 If the camera is indeed silent, if there are not a lot of
22 wires and cords or the like that concerned Mr. Ainley in his
23 prior experience with cameras in the courtroom, which I think
24 the rule demands, I don't see that there would be any less
25 dignified proceedings in the courtroom.

I would have a preference in a different world in a newer courthouse to have a separate facility, perhaps raised up where the camera could be in the back and out of the view and behind some type of screening device where it would not be observed in any way.

To the extent that it is placed in the back of the courtroom, I imagine that approximately where the closed and locked back door is is the most likely place in this courtroom for that, the former entrance and exit to the courtroom. That would position it in a way that would be less -- where it would be less affected by people coming and going in the right-hand side of the courtroom as you face the bench. And would be in a position where it would not, by accident or otherwise, be taking pictures of jurors.

The Court acknowledges the inadequacy of this particular courtroom, and the Yavapai County Courthouse generally, for the types of videography work or camera work that newer courthouses are able to provide. But I don't find that that is something that would prohibit cameras in the courtroom in this particular case and in this particular courtroom.

I find that this request was timely. The Court needed to address the issue in a timely fashion.

The fact that part of the hearing is done, the Court does not find affects the rights of either

1 side to a fair trial. To the extent that it affects an
2 editorial perspective on the case, there are ways to adjust
3 for that also, such as ordering a copy of the transcript and
4 providing a complete report, using the out takes that are
5 available and speaking over the top of something like that.
6 That is a matter for the First Amendment and for the State
7 and not a matter for the Court.
8 I recognize the Court loses a certain
9 degree of control, but the Court does not adopt the notion
10 that I am a dictator or in complete control over what the
11 public receives from the media. I have been in public life
12 enough to know that is certainly not possible. And I am
13 persuaded by what Mr. Bodney said about the Court being able
14 to adjust the orders appropriately as we proceed in the case,
15 either if there is some violation of Rule 122 or of the
16 Court's restrictions that are made.
17 To accommodate the defendant's interest
18 in fair proceedings, I will authorize him to appear at the
19 subsequent proceedings in civilian garb to be provided by his
20 defense counsel, so long as it is in keeping with the rules
21 of the Sheriff's Office in providing adequate safety and
22 security for the public and for Mr. Democker to, in essence,
23 dress him as though this was a trial for next week's
24 proceedings, so long as the defense is able to provide
25 appropriate attire, subject to the Sheriff's Office

1 regulations.

2 And I will direct that that dressing out
3 take place prior to coming over to the courthouse plaza area,
4 so that if there is photography of the defendant between the
5 jail van and the portals of the courthouse, at least the
6 prejudicial effect would be minimized by the defendant being
7 dressed in civilian garb, rather than jail clothing.

8 So I am not prohibiting electronic or
9 still photographic coverage of these proceedings. Though it
10 is not stated as a presumption, my view of Rule 122 is that
11 it, in essence, establishes a presumption that such coverage
12 would be the preference, because it says the Judge may limit
13 or prohibit such coverage only after making specific on
14 record findings that there is a likelihood of harm arising
15 from one or more of the above factors that outweighs the
16 benefit to the public of camera coverage.

17 And while we might argue about the nature
18 and quality of what is received from the media, generally. I
19 am not addressing this to ABC in particular or the 20/20 show
20 particularly. I have a tendency to agree with the
21 observation that it is the weird and salacious that tend to
22 get a lot of press coverage, all other things being equal.
23 And I think sometimes the media caters to the voyeuristic
24 aspect of human beings. And those tendencies still, I think,
25 in an enlightened democratic society is necessary to have

1 appropriate media coverage of important matters within the
2 government inclusive of jury trials. That has been an
3 expressed position by the Supreme Court in adopting Rule 122
4 in this Judge's opinion.
5 The other requirements of Rule 122 and
6 limitations I will adopt. In general, for any juvenile
7 witnesses, I am going to order that the media, unless you
8 bring another motion to my attention, that the adaptation of
9 videography that would fuzz out the faces and not reveal the
10 faces of the juvenile witnesses will be adopted for purposes
11 of this case. If you wanted, ABC or other media, want to
12 bring that to my attention for any particular witness, and
13 you want to be able to disclose that without fuzzing out the
14 face, you will have to bring another motion. I am going to
15 make it an across the board ruling at this point with regard
16 to that.
17 No other photography or videography of
18 the defendant, witnesses, counsel, judge in the courthouse
19 will be permitted, other than in the courtroom. So no
20 catching counsel unawares out in the hallways, for example,
21 sticking a microphone and lights, camera in their face.
22 And in accordance with the rule itself,
23 no audio recording, broadcasting conferences in the building
24 between attorneys and client, between attorneys for either
25 side, jury interviews at all, other than in the courtroom, as

1 I previously stated.

2 The cameras must not produce a

3 distracting sound. To the extent possible, no wires across

4 the areas where the gallery, people in the gallery may be

5 walking for safety purposes and otherwise will be permitted.

6 State of the art cameras, as I understand them, should not

7 cause any problems with those particular issues.

8 And as far as ABC is concerned, the

9 comings and going of the defendant from the jail and into in

10 courthouse portals I will restrict you from without prior

11 permission from the Court. You may apply again if you

12 believe it is necessary.

13 I will restrict you from taking pictures

14 on the courthouse area proper. So within the parameters of

15 the sidewalk that is around the courthouse plaza, no pictures

16 out in that area also. They may take pictures, if they wish

17 to, and do talking over commentary if they wish out on the

18 sidewalk, as far as I am concerned, or closer to the street

19 than the exterior sidewalk, but not within the exterior

20 sidewalk of the courthouse plaza grounds.

21 Any other limitations or issues that

22 either side wanted to raise?

23 MR. HAMMOND: This may have been implicit, or

24 you may have said it, but I would assume that part of the

25 order is that there be no filming of the restraints. And

1 that when filmed here in the courtroom, he either would be
2 unrestrained, which of course we would prefer, or if
3 restrained, would not be visible from a camera.
4 THE COURT: Mr. Ainley, did you want to
5 address that at all?
6 MR. AINLEY: Restraints in the courtroom are
7 subject to the Sheriff's Office, with some modification by
8 the Court. But my thought is that the order should be that
9 the defendant is not to be filmed while wearing restraints.
10 But the restraints are going to be due to an obligation of
11 the Sheriff's Office to provide security within some
12 parameters of the Court.
13 THE COURT: Here's what usually happens at
14 trial. There are light restraints but are not manacle
15 restraints. I am not going the restrict the Sheriff's from
16 using manacle restraints in the pretrial hearings, if that is
17 what the Sheriff's office believes is necessary for purposes
18 of security for the current hearing. But you are not to use
19 any video that shows the manacle restraints of the defendant.
20 The Sheriff is authorized, if he
21 believes, or the Sheriff's staff believes that it is
22 allowable within security considerations to relieve the
23 defendant of the manacles. Even if they don't, the
24 intervening party, ABC, is directed not to take pictures of
25 the defendant showing manacles, if they are present.

1 Any concerns from the Sheriff's detention
2 staff?
3 DETENTION OFFICER: It will have to be ordered
4 by our command staff. I will take it up with them, and let
5 them make the final decision how we handle it. As far as we
6 handle it, we will try to make it, at least, like a trial on
7 all his hearings where he is not being visibly seen and
8 restrained. But it ultimately comes down to the command
9 staff's decision.
10 THE COURT: I will note what that means for me
11 in the past trials in my courtroom, when a defendant is
12 manacled and being moved from place to place, usually there
13 is a jacket that goes over that allows it to be zipped up and
14 you don't see the manacles from walking from point "A" to
15 point "B," for example, going from the van to the courthouse
16 or vice versa. That is my experience in what the Sheriff's
17 office here does. Even if there were cameras taking pictures
18 outside of the courthouse proper and the defendant is
19 manacled, his jacket will cover that so it can't be shown.
20 MR. HAMMOND: Then, your Honor, when he is
21 here in the courtroom during hearings, will the restraints be
22 taken away from his hands, so that he can write?
23 THE COURT: I will reserve that issue for the
24 time being. I am not going to order that at this point.
25 MR. HAMMOND: But in any event, just so I

1 understand, to whatever extent he is restrained the
2 restraints will not be --
3 THE COURT: Videoed.
4 MR. HAMMOND: -- Videoed or broadcast, so we
5 couldn't have that issue.
6 THE COURT: Any issues or concerns,
7 Mr. Bodney, from your clients?
8 MR. BODNEY: Your Honor a quick question for
9 clarification sake. I think I understand. I want to be
10 sure.
11 You indicated the cameras would not be
12 permitted inside the exterior sidewalk surrounding the
13 courthouse building. I think before that you said that there
14 would be no video of the defendant from the van to the
15 portals of the courthouse.
16 THE COURT: I will withdraw that part of it,
17 so long as we have these other protections in place to make
18 sure there is not prejudice that results from that. If your
19 people are out on the sidewalk and take a picture where the
20 defendant is leaving, I don't think I can prevent them from
21 doing that, honestly, under the First Amendment or proper
22 exercise of my discretion under Rule 122.
23 MR. BODNEY: Thank you, your Honor. I just
24 wanted to make sure about that one point.
25 MR. HAMMOND: Your Honor, just so that I am

1 not leaving my silences as assent. I don't know exactly what
2 the mechanics are of getting from the van into the
3 courthouse, but I would assume that it can be done in a way
4 that doesn't needlessly expose him to coverage. And,
5 frankly, if it did happen, I would be back in here again
6 objecting and using this as an example for why the cameras
7 ought to be precluded. So I can see no benefit in somebody
8 trying to photograph someone getting out of the van and going
9 into the courthouse. But it may be an issue we don't need to
10 address. It may be something that nobody really is going to
11 do, and it may not be possible
12 THE COURT: I think the jail has sufficient
13 expertise to be able to get folks in here without having much
14 of any opportunity for anybody to do any photography, but
15 there are ways, I suppose.
16 MR. HAMMOND: I hope it is not an issue.
17 THE COURT: I hope it is not an issue, as
18 well.
19 I think that sufficient newsworthy
20 materials can be gathered in the courtroom, rather than
21 having to deal with that, what I think is less professional
22 journalism, by that kind of manipulation of things.
23 I will confirm then Tuesday. I will
24 leave it for the defense to try to get some clothing up to
25 Mr. Democker in the jail.

Stand in recess.

(Whereupon, these partial proceedings were concluded.)

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7 C E R T I F I C A T E
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9 I, ROXANNE E. TARN, CR, a Certified Reporter
10 in the State of Arizona, do hereby certify that the foregoing
11 pages 1 - 14 constitute a full, true, and accurate transcript
12 of the proceedings had in the foregoing matter, all done to
13 the best of my skill and ability.
14 SIGNED and dated this 10th day of January,
15 2009.
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22 ROXANNE E. TARN, CR
Certified Reporter
23 Certificate No. 50808
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