

THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

CORETTA SCOTT KING, MARTIN
LUTHER KING, III, BERNICE KING,
DEXTER SCOTT KING and YOLANDA KING,
Plaintiffs,
Vs. Case No. 97242-4 T.D.
LOYD JOWERS and OTHER UNKNOWN
CO-CONSPIRATORS,
Defendants.

BE IT REMEMBERED that the
above-captioned cause came on for Trial on
this, the 15th day of November, 1999, in the
above Court, before the Honorable James E.
Swarengen, Judge presiding, when and where
the following proceedings were had, to wit:

VOLUME I

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- APPEARANCES -

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P R O C E E D I N G S

(The Court asks members of the media to depart until after the jury has been selected.)

Statement by Mr. Pera:

Your honor, I represent the Commercial Appeal newspaper. In *Press Enterprise v. Superior Court of California*, 464 U.S. 501, the Supreme Court held in 1984 that the public and, therefore, members of the press have the right to attend jury voir dire proceedings in court. I believe three Tennessee cases have addressed this point.

State versus Drake is a 1985 case, which requires that if any part of a trial is closed, there must be specific written findings by the Court on a motion by a party that there will be prejudice if there's not a closure and specifically how the closure is tailored as narrowly as possible to meet the compelling interest of preventing prejudice.

There have been at least two other cases since then – under such short notice I can't cite their names. The Court may be familiar with a case in front of a criminal court judge across the street, a gang-related murder case in which the victims were buried alive. There were claims of misconduct ongoing in the midst of the trial. In fact, the Court itself was under 24-hour armed guard at home and at the court.

During that trial, one of the witnesses who had already testified in open court was to testify again as a rebuttal witness. The Court expressed concern about safety, and the chance that the witness might flee, and imposed a gag order closing the trial implicitly and prohibiting the reporters from printing the witness's name. The Court of Criminal Appeals reversed that ruling and said that what goes on in open court is open, again reaffirming *State vs. Drake* relying on *Press Enterprise*.

I would urge the Court to not close this hearing to members of media including my client, The Commercial Appeal, and I request that in compliance with *State versus Drake*, whatever the Court's

decision there, that there be specific findings of fact tailored to address the issues under Press Enterprise.

THE COURT: All right. First of all, I would like to refer you to Supreme Court Rule 30, Media Guidelines, under Section C(2) which reads as follows: "Jury selection. Media coverage of jury selection is prohibited."

MR. PERA: Your Honor, my impression is that Rule 30 addresses television coverage and similar media coverage. To the extent that that rule, Your Honor, either says or is interpreted to mean that voir dire may be closed by a court without constitutional foundation, the specifics which are very clear -- I can cite them to the Court if I can get my hands on State versus Drake. If that rule says that or means that or the Court interprets it to mean that, then it is unconstitutional, Your Honor.

THE COURT: Section D deals with limitations. Under 2 it says: "Discretion of Presiding Judge." That's me. "The presiding judge has the discretion to refuse, limit, terminate or temporarily suspend media coverage of an entire case or portions thereof in order to 1.) Control the conduct of proceedings before the Court. 2.) Maintain the quorum and prevent distraction. 3.)" -- and this one I am concerned with -- "Guarantee the safety of any party, witness or juror."

I feel that the jurors should be protected from public scrutiny and that the public shall not be aware of who they are. I don't want -- and I'm going to assure them when we voir dire them that they will remain anonymous. And for that reason they will feel free to participate in the trial process. That's my ruling.

MR. PERA: Has it been proposed to the Court that the proceedings take place in open court with, for example, members of the public and/or media present but nevertheless with the jurors remaining anonymous?

THE COURT: I don't feel that that's a viable solution. Once the jury selection process is completed, it will be open to the media as prescribed by court rules with cameras and with reporters and all of that. This court is not excluding the media from the trial proceeding, but it is excluding them from the jury selection process.

MR. PERA: Well, Your Honor, if the court is out to protect the jurors' anonymity and not their answers to questions about their biases or lack of biases, the Court might consider having the jurors remain anonymous but allow the questioning on bias to be explored in open court as the constitution requires. I would urge that upon the Court as a remedy that has been used elsewhere. And it would not trample on the First Amendment but it would, nevertheless, meet the Court's concerns.

THE COURT: I'm going to deny your request. The hearing is closed to members of the press and the public until the jury is sworn. You may sit here -- under a gag order. As an officer of the Court you could.

MR. PERA: I assume that what has transpired here so far, I'm under no gag order; is that correct? I may well be instructed by my client to pursue appellate relief.

THE COURT: You are free to do that.

MR. GARRISON: In the Court's ruling I think Your Honor did the proper thing.

(By Order of the Court, the Jury Selection portion of the trial was not transcribed.)

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MR. PERA: I would like to apply for permission to appeal under Tennessee Rule of Appellant Procedure 9 from the Court's earlier ruling.

THE COURT: Oh, yes. Of course.

MR. PERA: Thank you, Your Honor. May I present an order on that either this afternoon or in the morning?

THE COURT: You may.

MR. PERA: Thank you, Your Honor.

(Lunch Recess.) (Jury Selection resumed.)

THE COURT: All right. Ladies and Gentlemen, we have completed our process. We have 12 jurors now and 2 are alternates. So the rest of you I'll excuse. Thank you for your patience, and you can report to the main jury room tomorrow at 9:30.

(Whereupon the jury was sworn in.)

THE COURT: All right. Normally at this stage we would begin our trial with opening statements by the lawyers. They would tell you what they expect the proof to be as it develops in the case, and then we would start to hear the witnesses in the case. Because of the hour, I'll excuse you until 9:45 tomorrow. You should not speak with the lawyers or the witnesses or anyone else involved in the case, and you should have no contact with the media. I'll have some additional instructions for you tomorrow before we start to hear the proof.

You should not go back to the main jury room for any reason. You come directly here from now on which means that you don't report at the regular 9:30 thing over there. Mr. James will show you our jury facility back here, and that's where you should congregate until you come out as a group. Because of the nature of this case and because we don't want you to be exposed to the media, we would ask you to please not congregate in the hallways out there. If there are smokers in the crowd, then during our breaks, you can feel free to go down and do your smoking or whatever else just as long as you don't have any contact with the media. If you need a comfort break, we'll do that. We want this to be a pleasant experience for you. But it's a serious matter, and let's not forget that. All right.

(Court adjourned until 11/16/99 at 10:00 a.m.)