

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

IN THE PEOPLE OF THE STATE CALIFORNIA VS. SCOTT LEE PETERSON

NATURE OF HEARING: RULE 980 DECISION **NO:** 1056770

JUDGE: A. GIROLAMI
Clerk: M. Nickles

Bailiff: L. Sweatman
Reporter: none

Date: AUGUST 15, 2003
Modesto, California

Appearances: None

The Court, having taken the matter under submission and after considering both the arguments and comments of counsel and the comprehensive (almost 1000 pages) points and authorities and exhibits, hereby decides as follows:

The applications to permit cameras (television and still) and recording devices during the Preliminary Hearing are denied.

Although the Court is not required by Rule of 980 (e) (4) to make findings or a statement of decision before ruling on such applications, see *KFMB -TV Channel 7 v. Municipal Court* (1990) 221 Cal. App. 3rd 1362, 1369, the following statement of decision is provided to fully inform the parties of the Court's reasoning:

The Media has the right to attend and report on open judicial proceedings, but does not have a constitutional right to photograph or otherwise electronically record them. Electronic recording of judicial proceedings is subject to the discretion of the Court. *Nixon v. Warner Communications, Inc.* (1978) 435 U.S. 589,610.

The photographing or electronic Media recording of courtroom proceedings is governed by California Rule of Court 980 which permits such recording only on written order of the Court. Rule 980 is consistent with the principle that electronic Media coverage is a right created by consent of the judiciary which has always had control over its courtrooms. Notwithstanding the importance of the considerations underlying the First Amendment of the Constitution of the United States, the promulgation of Rule 980 reflects a commitment to the Court's inherent right to control public access to court proceedings. *Marin Independent Journal v. Municipal Court* (1993) 12 Cal App. 4th 1712.

It does not automatically follow from a determination that the Preliminary Hearing will be open to the public, that television coverage is appropriate. Broadcast Media argue that Defendant's motion to close the Preliminary Hearing was merely an effort to manipulate this Court into adopting a "middle ground." The Court does not ascribe such motives to any counsel herein and will not be manipulated. The Court has independently considered the briefs setting forth the various participants' positions as to television coverage as well as the voluminous exhibits submitted in support of such coverage.

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While there is clearly a presumptive right of the public to attend the Preliminary Hearing in this matter, that right does not mandate the presence of cameras in the courtroom. This Court has allowed the Media to cover the precursors of Defendant's Preliminary Hearing, most of which pertained to procedural issues and issues regarding pretrial publicity generated by the Media. In other words, the camera has been allowed to witness discussions as to peripheral issues in this case. The Preliminary Hearing is an entirely different proceeding. It involves members of the public who never asked to be involved in a high profile case and who would, under almost all other circumstances, retain significant privacy rights in having their likenesses broadcast over national television; it involves the victims' families who will be forced to relive their worst nightmare in a very public way, which unfortunately is necessary to the process. Televising these passionate proceedings is not, however, necessary to the process.

The value of open Preliminary Hearings and trials is that persons not actually attending can have confidence that standards of fairness and justice are being observed. *Press Enterprise v. Superior Court* (1984) 464 US 501. While this value may arguably be enhanced by television coverage of a public proceeding, it is not negated when cameras are excluded. Rather, the Media can, and do, continue to act as the public surrogate without "gavel to gavel" camera coverage of the proceedings which are available both on the Internet and in local and national newspapers and magazines. Additionally, many of the reporters who fill the 21 seats assigned to them in the courtroom will verbally share their experience with members of the public via various television shows. There is no doubt that the public will know every nuance of what occurs in the courtroom despite the lack of television coverage. As for accuracy, a reporter's transcript will be available once certified by the Court.

Rule 980 specifies particular criteria that the Court should consider in ruling on the application. The Court has considered all of the criteria, and cites the following as the most critical to its decision:

(i) Importance of Maintaining Public Trust and Confidence in the Judicial System.

A "public" Preliminary Hearing, which will occur in this case, maintains the public's trust and confidence in the judicial system. Representatives of the Media will be allowed to attend the Preliminary Hearing and report to those members of the public who cannot be physically present in the courtroom.

The Court notes that most of the various Media outlets reporting on the matter employ the services of reporters with special legal expertise. These representatives of the Media do, for the most part, an accurate job of interpreting what occurs in the courtroom. The Court does not believe that television coverage of the Preliminary Hearing is necessary to maintain public trust and confidence in the judicial system.

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(ii) Importance of Promoting Public Access to the Judicial System.

It has never been required that all possible members of the public who are interested in a case have an actual seat in the courtroom. In fact, in the overwhelming majority of the cases, the public seats of the courtroom are empty save for a few persons who are directly involved. What is important about the issue of public access is that all members of public who wish to ascertain what occurred during the proceedings can do so. The "crucial prophylactic aspects of the administration of justice cannot function in the dark". *Richmond Newspapers Inc. v. Virginia* (1980) 448 US 555, 571.

The Preliminary Hearing in this matter will be a public event. While the information derived from the Preliminary Hearing may be "stale" or "filtered" as the Media argue, there is no reason to presume that the information will not be factually accurate. The inherent value of the information is its content, not the medium by which it is presented. Additionally, to the extent that this argument applies to "second hand" accounts of what occurs in the courtroom, the same might be said of the proceedings as seen through the eye of the camera. Such information is usually subject to editing at the hands of the Media.

(iii) Parties' Support of or Opposition to the Request.

Although clearly not entitled to a veto power, the Court finds particularly compelling that the victims' family has requested that the Preliminary Hearing not be filmed. While the Media cite a "community therapeutic value" in favor of coverage, the Court believes that whatever therapeutic value there may be in the evidence of this case becoming public is sufficiently served by it being available to members of the public via other modes such as the Print Media and the Internet.

(iv) Nature of the Case.

The Court finds that the nature of the case dictates against cameras in the courtroom. While it is true that the Police, Defendant, and Victims' families all sought the public's help in finding the Victims through the Media, it does not logically follow that their utilization of a willing Media to publicize their search requires the existence of cameras in the courtroom as a quid pro quo.

At any rate, the Court perceives this criteria more fundamentally to mean a consideration of the type of case at hand and its logical consequences. As this is a death penalty case, the Court must carefully and cautiously consider the impact cameras in the courtroom may have on providing a fair trial and balance them with the public's right of access. The Court is continually considering these competing rights due to the nature of this case.

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Potential jurors in this case, whether residing in Stanislaus County or elsewhere, will, the Court believes, have a more difficult time avoiding in the first place, and disregarding in the second, something they have seen replayed many times on television in living color as opposed to something they have read about a few times in black and white. To the extent, therefore, that such coverage will taint potential jurors in this case, and because there is no pressing need for cameras in the courtroom, the Court finds that the nature of this case warrants their exclusion.

(v) Privacy Rights of all Participants in the Proceeding, including Witnesses, Jurors, and Victims.

While Rule 980 does not draw any distinctions between usual criminal trials and high profile criminal trials, this court must consider the sheer volume of publicity this case has received, a "frenzy" as described by our Appellate Court, in any analysis of the privacy rights of the participants. And to the extent that the participants must relinquish some amount of privacy rights when involved in a criminal trial, it simply does not follow that one must become fair game for such invasive publicity as has been generated in this matter. Any invasion of the participants' privacy rights can be limited by excluding cameras from the courtroom. The Court believes under the circumstances of this case, and the specific, personal nature of the criteria, the scale weighs against the presence of cameras.

(vii) Effect on the Parties' Ability to Select a Fair and Unbiased Jury.

This is the most compelling factor for exclusion of cameras at the Preliminary Hearing. At no point during these proceedings has the Court actively encouraged the Media activity accompanying this case. In fact, this Court has done everything it deems constitutionally permissible to limit it in order to protect the compelling rights of the Defendant and the People to a fair trial. The simple fact is that, if cameras are allowed in the courtroom, the potential jury pool will be saturated with live television coverage and replays of the evidence introduced during the Preliminary Hearing. This volume of exposure is likely to result in preconceived decisions as to guilt or innocence that will either make it difficult to obtain prospective jurors with an open mind, or more importantly, possibly selecting jurors in which probing voir dire fails at exposing a bias. In a death penalty case, if there is a chance that lack of cameras will protect certain jurors in a jury pool from being tainted, this Court believes it is important to take that approach.

The Court agrees with the Prosecution position that a change of venue is not a desirable option and would result in considerable hardship to the witnesses and added expense to the public. Allowing cameras at the Preliminary Hearing will significantly increase the odds of requiring a change of venue; and even if there is ultimately a change of venue, make it more difficult to select a fair jury in another county.

(viii) Effect on any Ongoing Law Enforcement Activity in the Case.

Because this case remains in its earliest stages, the possibility exists that the actual perpetrator of these crimes remains at large. To the extent that easily accessible television coverage of the Preliminary Hearing will reveal considerable facts of the case, including possibly some amount of previously sealed information, such coverage would do more harm than good.

(x) Effect on any Subsequent Proceedings in the Case.

The findings noted in (vii) and (viii) above are applicable here. While the Court acknowledges that any evidence presented at the Preliminary Hearing will be under the Court and Counsel's control, the fact remains that the fewer persons who actually directly witness that evidence being introduced and discussed, the easier it will be to select a jury without preconceived notions as to the Defendant's innocence or guilt.

(xi) Effect of Coverage on the Willingness of Witnesses to Cooperate, Including the Risk that Coverage Will Engender Threats to the Health or Safety of any Witness.

Even considering the statistical evidence presented by the Media, to argue that the prospect of appearing on national television is not daunting to the average individual is not realistic. While the prospect of having their image broadcast live to millions of persons may not overtly affect the willingness of witnesses to cooperate in this case, it will certainly make them uncomfortable at least until they get caught up in their testimony. The Court believes that it is important to reduce a witness' nervousness and apprehension. Furthermore, if a witness is embarrassed in some way at the Preliminary Hearing and such activity were widely disseminated, that witness would certainly be reluctant to testify at any actual trial. These dangers can be prevented by excluding television cameras from the courtroom at the Preliminary Hearing.

(xii) Effect on Excluded Witnesses who would have Access to the Televised Testimony of Prior Witnesses.

A standard order in any trial, requested routinely, is a witness exclusion order. While it may be possible for many witnesses in this case to avoid the television coverage, the fact remains that they will have access to it and might accidentally witness it, which may affect any trial testimony.

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(xv) Security and Dignity of the Court.

While the Court's general impression of the coverage so far has been positive, the Preliminary Hearing is a different matter altogether. It is important to the Court that its security and dignity be maintained. Although the Court acknowledges that the Media's motives in attempting to secure television coverage are pure and are bolstered by important public access rights, the fact remains that securing television coverage of this particular matter is an economic benefit to the networks. To the extent that the television coverage would transform this very serious criminal trial into a "reality" television show, the Court is reluctant to allow it. Although the Media would abide by Rule 980's proscriptions with regard to coverage, once the videotape is released to the public, the Court cannot control its use. This loss of control over the videotape of the Preliminary Hearing troubles the Court.

(xviii) Maintaining Orderly Conduct of the Proceeding.

While there have been a few instances of violations of the Rule 980 dictates as noted by the People in opposition to the motion, they have not been so flagrant that they have disrupted the orderly conduct of the proceedings in this case. But for the concerns the Court has regarding the other criteria in this matter, this factor would weigh in favor of the proceedings being televised.

Dated: 8/18/03


A. Girolami
Judge of Stanislaus Superior Court

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Copy sent to:

Mark Geragos, Esq.
350 South Grand Avenue
39th Floor
Los Angeles, California 90071

Kirk W. McAllister, Esq.
1012 11th Street, Suite 101
Modesto, California 95354

Rick Distaso, DDA
Office of the District Attorney
Courthouse
Modesto, California

David Harris, DDA
Office of the District Attorney
Courthouse
Modesto, California

Gloria Allred, Esq.
6300 Wilshire Blvd.
Los Angeles, California 90048

Charity Kenyon, Esq.
2500 Venture Oaks Way, Suite 220
Sacramento, California 95833