

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,	)	
	)	
<i>Plaintiff,</i>	)	SECOND DIVISION
	)	
vs.	)	
	)	
RAYMOND RZEPLINSKI,	)	NO(s). 316374
	)	
<i>Defendant.</i>	)	

**ORDER DENYING IN PART AND HOLDING IN ABEYANCE IN PART STATE'S
MOTION REGARDING ATTEMPTS AT JURY NULLIFICATION**

This matter is before the Court upon the written request of the State relevant to statements made by David Tulis, a local member of the press who maintains a blog and radio show that is broadcast on NoogaRadio. The motion has been made in advance of the jury trial in this matter, which is scheduled to begin on July 30, 2024. In its motion, the State makes three specific requests: (1) that the State be allowed to challenge for cause any potential juror who listens to Mr. Tulis, reads his blogs, or has spoken with him about the case; (2) that Mr. Tulis be barred from the courtroom and/or the courthouse during the trial of this matter; and (3) that a jury instruction be given regarding jury nullification if it becomes apparent that a juror has been exposed to such an idea.

The Court will first address the State's request to bar Mr. Tulis from the courtroom. It has long been established that events that occur in a public courtroom constitute public property. State v. Montgomery, 929 S.W.2d 409, 412 (Tenn.Crim.App. 1996), *citing* Craig v. Harney, 331 U.S. 367, 374 (1947). Equally well-established is the principle that a court does not have special rights "which enables it, as distinguished from other institutions of democratic government, to suppress ... or censor events which transpire [in public] proceedings before it." Craig, 331 U.S. at 374. When there is an open, public trial, the media has an absolute right to publish any information that is disseminated during the course of the trial. Montgomery, 929 S.W.2d at 412.¹

While the media is entitled to make reports about events happening inside the courtroom, this right is not entirely without limits. As noted in the State's motion, *Rule 30* of the *Tennessee Supreme Court Rules*, coverage of a trial is subject to the authority of the presiding judge to: (1)

¹ See also Oklahoma Publishing Co. v. District Court, 430 U.S. 308, 97 S.Ct. 1045, 51 L.Ed.2d 355 (1977); Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975); Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966).

control the conduct of the proceedings before the court; (2) maintain decorum and prevent distractions; (3) guarantee the safety of any party, witness, or juror, and (4) ensure the fair and impartial administration of justice in the pending case. In addition, media coverage is specifically prohibited as to both jury selection and the identities of jurors. *Tenn. R. S.Ct. 30(C)(2)-(3)* (2023).

As the Court reads the multitudes of state and federal cases addressing the right of the media to be present in the courtroom, it is apparent that a prohibition on reporting what takes place inside a courtroom constitutes a prior restraint in violation of the First Amendment to the United States Constitution. Courtrooms must remain open to the media, even if the reporting may be biased or potentially unfair to one party or the other, in order to ensure that constitutional rights to a public trial and freedom of the process are honored.

The Court respectfully disagrees with the State that Mr. Tulis's use of his media platforms to promote jury nullification in this case constitutes improper influence of a juror. *See Tenn. Code Ann. § 39-16-509(a)* (defining the offense of improper influence of a juror as privately communicating with a juror with the intent to influence the outcome of the proceedings on the basis of considerations other than those authorized by law).

Mr. Tulis has appeared in the Second Division of Criminal Court on more than one occasion. To date, he has never disrupted a court proceeding and the Court expects he will continue to maintain decorum during the trial in question. As a member of the media, Mr. Tulis has a right to report the events of the trial, and therefore the Court declines to prevent him from attending trial in this case.

This ruling does not diminish the Court's authority to control the proceedings and ensure the impartial administration of justice. Accordingly, if there are any efforts made by any individual to personally speak with a potential juror or otherwise influence the jury panel in this case, the Court will issue an order to prevent further conduct, potentially including criminal contempt.

As to remainder of the State's motion, the Court will hold its requests in abeyance and will address each of them as the need arises. After the jury venire is sworn in this case, the Court will inquire of all potential jurors as to whether they are familiar with the parties, the attorneys, or the facts of the case. Specific inquiry will also be made as to whether the potential jurors were made aware of any media reporting in this case. Based upon the responses given, the parties may make a motion to strike for cause once that potential juror is called into the box for questioning.

Likewise, the Court will continue in its practice of admonishing all potential jurors to avoid media reporting on this case. The jury selected by the parties will also receive an instruction each time court is adjourned instructing them not to speak with any individual, including their fellow

jurors, and to avoid all media reporting relating to the case at issue until the case is finally decided. The parties can request further instructions during the charge conference at the conclusion of proof.

Therefore, the State's request to prohibit Mr. Tulis from the courtroom is **DENIED**. All other requests in the State's motion are **HELD IN ABEYANCE**.

It is so ordered.

Enter:


AMANDA B. DUNN, Judge