

DISTRICT COURT OF WASHINGTON STATE
FOR GRANT COUNTY

STATE OF WASHINGTON,)	NO. EPC033031
Respondent,)	
v.)	MEMORANDUM IN RESPONSE
)	TO DEFENDANT'S MOTION TO
GAVIN DAVID SEIM)	ALLOW VIDEO RECORDING OF
Appellant,)	COURT PROCEEDINGS
)	

In response to the motion of the defendant to allow video recording of court proceedings, The State of Washington, by and through Marc F. Fedorak, Deputy Prosecuting Attorney, requests the court find the defendant is not "news media" for purposes of GR 16, and order video recording of court proceedings may only be done by "news media"; or alternatively order video recording may only be done by "news media" that is not a party in the case; and the State further requests the court order only one video camera be permitted in the courtroom.

ARGUMENT

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington State Constitution afford a criminal defendant the right to a public trial.

Cohen v. Everett City Council, 85 Wn.2d 385, 387, 535 P.2d 801 (1975). The right to a

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public trial includes the right to open proceedings but that right is not absolute. *State v. Bone-Club*, 128 Wn.2d 254, 259, 906 P.2d 325 (1995). Where proceedings are closed to the public the court must consider certain factors to determine whether the closure is reasonable. *Id.* at 258-259. The court is not considered closed to the public where the court conditions or limits the media's video recording of proceedings. *State v. Russell*, 141 Wn. App. 733, 739-740, 172 P.3d 361 (2007). Permission for and Regulation of video recording is prescribed under Washington State General Rule 16 and does not require a *Bone Club* analysis. *Id.*

According to GR 16, video recording "by the news media" is permitted in the courtroom conditioned on certain prerequisites. First, the judge must grant permission. GR 16 (1). Second, the "media personnel [shall] not by their appearance or conduct, distract participants in the proceedings or otherwise adversely affect the dignity and fairness of the proceedings." GR 16 (2). The court may use its own "reasonable discretion" to place "conditions and limitations with which media personnel shall comply." Limitations on video recording must be supported by "particularized findings on the record," which may be done orally or in writing.

When imposing conditions or limitations on the media, the court must be "guided by" the following three principles:

- (1) Open access is presumed; limitations on access must be supported by reasons found by the judge to be sufficiently compelling to outweigh that presumption;
- (2) Prior to imposing any limitations on courtroom photography or recording, the judge shall, upon request, hear from any party and from any other person or entity deemed appropriate by the judge; and

(3) Any reasons found sufficient to support limitations on courtroom photography or recording shall relate to the specific circumstances of the case before the court rather than reflecting merely generalized views.

GR 16 (c). According to guideline number 2 under the comment for GR 16, "Unless the judge directs otherwise, no more than one television camera should be taking pictures in the courtroom at any one time." The guideline states that "broadcast news representatives" should reach an understanding between themselves with respect to pooling their coverage of the trial.

In *Russell*, the Court of Appeals upheld a court restriction that media cameras could not record the faces of juvenile witnesses. 141 Wn. App. at 741. In that case, the court permitted "broadcast media" to have a single video camera in the courtroom to capture footage of the trial in the case. *Id.* at 736. The court limited the recording such that the juvenile witnesses' faces could not be shown unless otherwise agreed by the juveniles' parents. *Id.* at 736-737. The court reasoned the cameras could affect the witnesses' testimony because they could be "embarrassed" by the subject matter. *Id.* at 740-741. The court further reasoned that the restriction would not prevent the public from following the proceedings since all the testimony would be recorded. *Id.* Only images of the juveniles' faces would be excluded from the coverage. *Id.* The court stated the courtroom was always open throughout the trial, the "pool" camera was always running, and members of the media always had access to the courtroom. *Id.* at 741. The Court of Appeals found the court properly balanced the interests of the defendant's right to an open trial and the court's ability to control the courtroom. *Id.*

The State asks the court to find the defendant should not be permitted to video record the proceedings himself, because the defendant is not "news media." The term "news media" is defined within two different chapters of the RCWs. First, news media are protected from compelled disclosure under RCW 5.68.010 and the term is defined there as follows:

(5) The term "news media" means:

(a) Any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite station or network, or audio or audiovisual production company, or any entity that is in the regular business of news gathering and disseminating news or information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution;

* * *

RCW 5.68.010 (5) (a). Second, "news media" is defined under the chapter of the RCW regarding State expenditures. Under that chapter the definition reads as follows:

For the purposes of this section, "news media" means any member of the press or media organization, including newspapers, radio, and television, that signs up with the office of financial management to receive the public press releases by email.

RCW 43.135.031 (5).

The defendant does not fit within either definition. The defendant has a website and Facebook page that solicit donations and the defendant also earns income from videos he posts on YouTube. The online sites promote the defendant's activist agenda rather than disseminating news or information. Any discussion of current events that appears in the defendant's sites is sporadic; conversely, it cannot be said that such dissemination is in the regular course of his business. In fact, the defendant's business by his own account is a photography business. The defendant is not a newspaper, magazine or other periodical, book

publisher, news agency, wire service, radio or television station or network, cable or satellite station or network, or audio or audiovisual production company. Nor is there any evidence the defendant signs up with the office of financial management to receive the public press releases by email. The defendant cannot be found to be "news media" for purposes of GR 16.

Even if the defendant could somehow be considered "news media;" for purposes of this case, he is not acting in that capacity. The defendant is a party in the case. The spirit of GR 16 and allowing video recording of court proceedings is best served when done by independent and objective "news media." If the defendant is permitted to video record the proceedings himself, it would fly in the face of the policy of ensuring the public is properly informed as to the proceedings and has access to the entire proceedings. The State is concerned the defendant will edit the video recording in a manner that favors his case, instead of providing coverage of the entire proceedings. Following the defendant's last criminal trial, he posted a video online that showed only a portion of his testimony from the trial, not the entire trial. The State is also concerned the defendant will add commentary within the video that is biased in his favor. The concern is based on the defendant's general practice of including commentary on videos he posts online. The court cannot find GR 16 is intended to allow a party in a case to video record court proceedings himself; therefore, the court should prohibit the defendant from video recording.

The State has no objection to "news media" that is not associated with the above case pooling a single video camera for the purpose of recording court proceedings, including the trial. Such an order of the court is appropriate for purposes of complying with GR 16. The State would ask simply that the court find the defendant is not "news media." Alternatively, the State asks the court limit video recording to "news media" that is not a party to the case before it.

IV. CONCLUSION

In response to the defendants request to allow video recording of court proceedings, the State requests the court find the defendant is not "news media" for purposes of GR 16, and order video recording of court proceedings may only be done by "news media"; or alternatively order video recording may only be done by "news media" that is not a party in the case; and the State further requests the court order only one video camera be permitted in the courtroom.

DATED this 7th day of December, 2017.

Respectfully Submitted,

GARTH DANO
Prosecuting Attorney

By: 

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