

**IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, TENNESSEE
DIVISION III**

ROBERT GLEN COE,
Movant,

vs.

STATE OF TENNESSEE,
Respondent.

No. B-73812

Death Penalty

**ORDER DENYING DEFENDANT'S MOTION TO PRECLUDE ELECTRONIC MEDIA
COVERAGE, PHOTOGRAPHERS, TELEVISION PERSONNEL, AND RADIO
BROADCAST PERSONNEL FROM THE COURTROOM**

This matter comes before this Court on a MOTION TO PRECLUDE ELECTRONIC MEDIA COVERAGE, PHOTOGRAPHERS, TELEVISION PERSONNEL, AND RADIO BROADCAST PERSONNEL FROM THE COURTROOM, filed by Movant, Robert Glen Coe on February 19, 2000.

FINDINGS OF FACT

Movant was convicted of first-degree murder, aggravated rape, and aggravated kidnaping in the Criminal Court of Shelby County on February 28, 1991. He was sentenced to death on the murder charge, and to life imprisonment on the remaining charges. The Tennessee Supreme Court affirmed the conviction and sentence, State v. Coe, 655 S.W.2d 903 (Tenn. 1983), and the United States Supreme Court denied certiorari. Coe v. Tennessee, 464 U.S. 1063 (1984).

Movant filed three petitions for post conviction relief, and two petitions for habeas corpus relief. Ultimately, both Movant's conviction and sentence were upheld.

On December 15, 1999, the Supreme Court of Tennessee issued an order holding that Movant had exhausted the standard three-tier appeals process, and set an execution date of March 23, 2000 for Coe. The Court also held that the time was ripe for Movant to challenge his present mental competency to be executed, and remanded the issue to this Court, where Movant was

originally tried and sentenced, in accordance with the procedures adopted and set forth by the Supreme Court in Van Tran v. State, S.CT.NO. W1998-00175-SC-R11-PD, Nov. 23, 1999. Coe v. State, S.CT.NO. M1999-01313-SC-DPE-PD, Dec. 15, 1999.

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On December 29, 1999, Movant filed a Petition to Prohibit Execution Under Common Law, Ford v. Wainwright, 477 U.S. 399 (1986) and the Tennessee Constitution, requesting among other things that this Court grant him a hearing to determine his present mental competency to be executed.

On January 3, 2000, this Court granted in part and denied in part the Petition to Prohibit Execution. In doing so, this Court granted Movant's request for a competency hearing, and set a date of January 24, 2000, at 1:30 p.m. for said hearing.

Movant filed his present motion on January 19, 2000 and moves this Court to bar electronic media coverage of Movant's competency hearing proceedings.

BASIS FOR RELIEF

Movant asks this Court to grant him relief on the following matters:¹

1. This Court enter an order barring photographic equipment, television equipment, radio receivers from the courtroom in this proceeding; and
2. Alternatively, that this Court hold an evidentiary hearing for the defendant to put on proof as to the effect live media coverage on this proceeding.

CONCLUSIONS OF LAW

In support of his request that this Court bar photographic equipment, television equipment, and radio receivers from the courtroom in this proceeding, Movant cites Estes v. Texas, 381 U.S. 531 (1965), Gannet Co. v. DePasquale, 433 U.S.368, 380-81 (1979), and

This Court first notes that attempts to locate the cases in accordance with the cites listed

¹ The grammar, spelling, capitalization, language and case names and cites in Movant's requests for relief appear in this order exactly as they do in Movant's Motion to Preclude Electronic Media Coverage, Photographers, Television Personnel, and Radio Broadcast Personnel from the Courtroom. The designation (sic) is not used to identify grammar, spelling, capitalization, or case cite errors in the allegations.

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by Movant for Estes and Gannett proved fruitless. The cites given were incorrect. Therefore as this Court was unable to find support from case law in accordance with Movant's case cites, this Court will evaluate Movant's request in accordance with Chandler v. Florida, for which the correct cite is given.

Movant is correct in his assertion that the Supreme Court discussed the fact that any criminal case that generates a great deal of publicity presents some risk that the publicity may compromise the right of the defendant to a fair trial, and that trial courts must be vigilant to guard against any impairment of the defendant's right to a verdict based solely upon the evidence and relevant law. Chandler, at 574.

Movant fails to consider the next paragraph of the Chandler opinion, in which the Court explicitly stated that an absolute constitutional ban on broadcast coverage of trials cannot be justified simply because there is danger that prejudicial broadcast accounts of pretrial and trial events may impair the ability of jurors to render a verdict uninfluenced by extraneous matters. Id., at 575. The Court did discuss the fact that if it could be demonstrated that the mere presence of photographic and recording equipment and the knowledge that the event would be broadcast invariably and uniformly affected the conduct of participants so as to impair fundamental fairness, then prohibition of broadcast coverage of trials would be required. Id. However, the Court further held that a defendant must show with specificity that media coverage would adversely affect any of the participants of a trial in order to show that media coverage would somehow compromise the trial. Mere conclusory allegations of a defendant that media coverage

might affect the testimony of a witness are not enough to warrant exclusion of the media from the courtroom.² Accordingly, this Court finds that Movant's assertion that the testimony of a witness who may or may not be called by Movant, and whose testimony might be adversely affected by electronic media coverage is not sufficient to warrant exclusion of electronic media coverage from the courtroom.

Movant also alleges that to the extent that Supreme Court Rule 30 allows for television access in this case, such rule would be unconstitutional as applied.

² The Chandler Court also discussed the fact that no one had been able to present empirical data sufficient to establish that the mere presence of the broadcast media inherently has an adverse effect on the judicial process, or that all broadcast trials would be inherently tainted. Id., at 579.

The Supreme Court of Tennessee adopted Supreme Court Rule 30 in December of 1995, as a one-year pilot project to govern media coverage of judicial proceedings. On December 30, 1996, the Court entered an order making Rule 30 permanent.

Section (A)(1) of Rule 30 authorizes media coverage of public judicial proceedings in the appellate and trial courts of the state of Tennessee. However, the media coverage is subject at all times to the authority of the presiding judge to (i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair and impartial administration of justice in the pending cause.

Although the Movant contends that electronic media coverage will affect witness testimony, he does not offer any specific reasons as to the ways in which testimony might be affected or the proceedings disrupted, nor does Movant proffer any affidavits of potential witnesses as to the negative effects that electronic media coverage would have on their testimony. In the absence of proof that electronic media coverage will compromise one of the important interests set forth in section (A)(1) of Rule 30, it is clearly within this Court's discretion to deny the motion to limit electronic media coverage from the courtroom. State v. Pike, 978 S.W.2d 904, at 917 (1998). See also, Chandler, at 581-582.

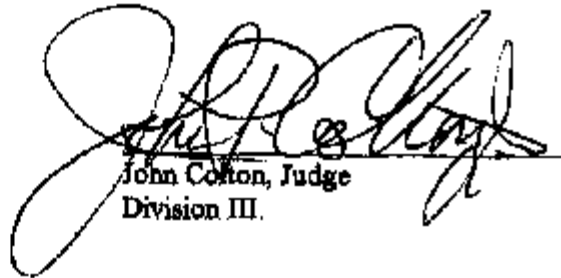
Furthermore, given the absence of proof that the integrity of the hearing will be compromised, and the lack] of specific allegations or affidavits from potential witnesses that their testimony will be adversely affected by electronic media coverage, Movant's alternative request that this Court hold an evidentiary hearing for the Movant to put on proof as to the effect of live media coverage on this proceeding is also denied.

CONCLUSION

This Court has considered the **MOTION TO PRECLUDE ELECTRONIC MEDIA COVERAGE, PHOTOGRAPHERS, TELEVISION PERSONNEL, AND RADIO BROADCAST PERSONNEL FROM THE COURTROOM**, and finds that it is wholly without merit and must be dismissed.

It is therefore **ORDERED, ADJUDGED, AND DECREED** that the **MOTION TO PRECLUDE MEDIA COVERAGE, PHOTOGRAPHERS, TELEVISION PERSONNEL, AND RADIO BROADCAST PERSONNEL FROM THE COURTROOM** is **DENIED**.

Entered this 21st day of January, 2000.


John Cotton, Judge
Division III.

FILED 1-21-00
WILLIAM E. KEY, CLERK
BY [Signature] D.C.