

1982

KUTV Inc v. Honorable Dean E. Conder and Ronald Dale Easthope : Complaint and Petition for Extraordinary Relief

Utah Supreme Court

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Case No. 18231

IN THE SUPREME COURT OF THE
STATE OF UTAH

KUTV, Inc., Deseret News Publishing Company,
KSL AM and TV, a Division of Bonneville
International Corporation, and Society of
Professional Journalists, Sigma Delta Chi, Utah Chapter

Petitioners,

Honorable Dean E. Conder, District Judge
and Ronald Dale Easthope

Respondents.

COMPLAINT AND PETITION
FOR EXTRAORDINARY RELIEF

MEMORANDUM OF POINTS AND AUTHORITIES OF KSL AM
AND TV AND SOCIETY OF PROFESSIONAL JOURNALISTS

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FILE

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MEMORANDUM OF POINTS AND AUTHORITIES OF KSL AM
AND TV AND SOCIETY OF PROFESSIONAL JOURNALISTS

Petitioners KSL AM and TV, a division of Bonneville International Corporation and Society of Professional Journalists, Sigma Delta Chi, Utah Chapter, respectfully submit this memorandum of points and authorities in support of their petition.

The petitioners challenge the district court's gag order which barred any media reference to Ronald Dale Easthope (Easthope) as the "Sugar House rapist" or to his prior criminal record during the pendency of Mr. Easthope's trial in State of Utah v. Ronald Dale Easthope, CR81-1349.

I. THE DISTRICT COURT ENTERED A GAG ORDER PRECLUDING THE MEDIA FROM REPORTING ELEVEN-YEAR-OLD FACTS.

Eleven years ago Easthope captured considerable media attention when he became known as the Sugar House rapist after the state charged him with a series of related sexual assaults in the Sugar House area of Salt Lake City. In June, 1971, Easthope was convicted of two counts of rape and sentenced to prison. Ten years later, in September, 1981, while on parol from prison, Easthope was charged with another rape. KSL radio, the Salt Lake Tribune, and the Deseret News all reported that Easthope, the man convicted of rape in 1971 and known as the "Sugar House rapist", faced new but similar charges. Later, in October, 1981, the Tribune reported the postponement of Easthope's preliminary hearing, and again referred to him as the "Sugar House rapist." (The radio broadcast transcript and newspaper articles are appended as Exhibit A.)

On February 3, 1982, when Easthope's trial began, his counsel asked the court to sequester the jury, arguing that sequestration would prevent any possible prejudice from media coverage of the trial. (Partial Transcript designated as "Judge's Order", p.2, appended as Exhibit B) The court, apparently satisfied that there was no danger of prejudice from publicity denied the motion but expressly encouraged counsel to renew it if necessary.

Near the close of the first day's testimony, defense counsel recognized a reporter from KUTV in the courtroom. The reporter was invited to chambers where the following colloquy occurred:

The Court: Let me see counsel in chambers. The record should show the proceedings are in chambers in the absence of the jury. And did you contact the news director or whoever it was? Okay. Does your station come to any conclusion?

Mr. [Dick] Allgire: I am supposed to call them back right now.

The Court: Okay. I am going to do this, because I think it would be highly prejudicial to refer to him [Easthope] in any news report as the "Sugarhouse rapist"; I am going to issue an order that none of the news media is to use the term "Sugarhouse rapist" during the course of the trial, because I think it is highly prejudicial.

Mr. Brown: Could that order go further to any comment surrounding the proceeding of Mr. Easthope ten or eleven years ago; that's the reason I made the motion to sequester the jury, Your Honor, because I anticipated that.

The Court: I think that I will extend it to any comments about Mr. Easthope's activities prior to the trial that would in any way show his involvement with the law.

Dick, I am not trying to cut the news media out. I want a fair trial, I don't want to have any statement made for publicity that would be adverse to the defendant because he is entitled to a free and fair trial.

* * *

Mr. Allgire: Can we wait? My attorney should be calling any second. They wanted me to talk to him before I say anything.

The Court: Sure. I'll talk to him if you want. Tell him the same thing. You can talk to him and you can use my phone if you want. (Tr. pp 4-6, Exh. B)

When KUTV's counsel arrived, the District Court repeated the substance of its gag order and refused to vacate it. At counsel's request the District Court signed a written order on the same terms as his oral order. ("Order," dated February 4, 1982, appended as Exhibit C). This Court refused KUTV's emergency motion to stay the criminal proceedings, and shortly thereafter, on February 4, 1982, this petition was filed. On February 8, 1982, the jury found Easthope guilty of aggravated sexual assault.*

* Although the jury in the Easthope trial has returned a verdict, this controversy is not moot. Because the gag order in a criminal trial is inherently limited by the duration of the trial, it necessarily presents an issue capable of repetition yet evading review. As such, the gag order here presents a recognized exception to the mootness doctrine. Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 546 (1976). As Justice Stewart recently noted in Wickham v. Fisher:

The principles that determine the justiciability of the instant case are the well-established rules which permit a court to litigate an issue which, although technically moot as to a particular litigant at the time of appeal, is of wide concern, affects the public interest, is likely to recur in a similar manner, and, because of the brief time any one person is affected, would otherwise likely escape judicial review. 629 P.2d 896, 899 (Utah, 1981).

The Petition now before this Court raises, for the second time in seven months, issues concerning the safeguards required by the First Amendment in cases or trials of public interest and importance. See KUTV, Inc. v. Honorable Dean E. Conder and John Preston Creer, Case No. 17822. The nature of the issues involved as well as their demonstrated repetition compel consideration of the gag order's validity.

II. GAG ORDERS MAY BE USED ONLY AS A LAST RESORT.

Courts abhor prior restraints, such as gag orders, because they constitute "the most serious and least tolerable infringement on First Amendment rights." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976). Unlike virtually any other judicial procedure, prior restraints impose an "immediate and irreversible sanction." Id. Most importantly, however, prior restraints strike at the very heart of the democratic principles which spawned First Amendment guarantees. As Justice Stewart stated in New York Times Co. v. United States, 403 U.S. 713, 728, 91 S.Ct. 2140, 29 L.Ed.2d 822, 832-33 (1971),

[A] press that is alert, aware and free most vitally serves the basic purpose of the First Amendment. For without an informed and free press there cannot be an enlightened people.

In light of these grave consequences, the United States Supreme Court has repeatedly held that "[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." Bantam Books v. Sullivan, 372 U.S. 58, 70, 9 L.Ed.2d 584, 593, 83 S.Ct. 631 (1963). See also, New York Times Co. v. United States, 403 U.S. at 714; Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 9 S.Ct. 1575, 29 L.Ed.2d 1, 6 (1971); Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931). Thus, any attempt

to impose a prior restraint "carries a heavy burden of showing justification for the imposition of such a restraint."

Organization for a Better Austin v. Keefe, supra, 402 U.S. at 419; New York Times Co. v. United States, supra, 403 U.S. at 714.

So difficult is it to overcome the presumption of unconstitutionality, that the narrow class of cases upholding prior restraints involve only war or equally extreme circumstances. New York Times Co. v. United States, supra, 403 U.S. at 726, (Brennan, J. concurring.)

III. THIS GAG ORDER WAS UNNECESSARY AND UNCONSTITUTIONAL.

A. Before a Court May Impose A Prior Restraint, It Must Observe Constitutionally Required Procedures To Determine Whether The Restraint Is Unavoidable.

In order to overcome the heavy presumption against the imposition of a prior restraint, the Constitution requires a careful and thorough procedure designed to establish a clear record requiring the restraint. As the Supreme Court stated in Carroll v. Commissioners of Princess Anne, 393 U.S. 175, 181, 89 S. Ct. 400, 29 L.Ed.2d 325, 331 (1968):

And even where this presumption [of unconstitutionality] might otherwise be overcome, the Court has insisted upon careful procedural provisions, designed to assure the fullest presentation and consideration of the matter which the circumstances permit. As the Court said in Freedman v. Maryland, [380 U.S. 58,

13 L.Ed.2d at 654, a noncriminal process of prior restraints upon expression "avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system.

At a minimum, that procedure requires first that evidence be adduced to establish that a clear and present danger would result from the challenged publication.

In each case courts must ask whether the gravity of the 'evil' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger. Dennis v. United States, 341 U.S. 494, 510, 71 S. Ct. 857, 95 L.Ed. 1137 (1951).

The landmark case of Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976), applied the standards of these earlier Supreme Court prior restraint holdings specifically to gag orders. The case began with the murder of six members of a family in a small Nebraska town, an act which immediately attracted widespread, national news coverage. The defendant quickly argued that the extensive publicity jeopardized his fair trial rights, and requested the trial court to issue a protective order banning further coverage. After an abbreviated hearing, the Court found "a clear and present danger that pre-trial publicity could impinge upon the defendant's right to a fair trial." Nebraska Press Ass'n v. Stuart, supra, 427 U.S. at 543. The Court then issued an order prohibiting newspapers from publishing certain

known facts such as the existence or contents or the accused's confession and the contents of a note he had written the night of the crime. That broad protective order was upheld by the Nebraska Supreme Court, but the United States Supreme Court found it to be unconstitutional.

The Supreme Court's opinion diagramed the Constitutional safeguards which all courts must follow before issuing a gag order. As a safeguard against judicial censorship, this rigorous procedure requires a trial judge to record findings of fact on each of the following:

"(a) the nature and extent of pretrial news coverage;

(b) whether other measures would be likely to mitigate the effects of unrestrained pretrial publicity; and

(c) how effectively a restraining order would operate to prevent the threatened danger."
Nebraska Press Ass'n v. Stuart, supra, 427
U.S. at 562.

After reviewing these procedures the Court held that the Nebraska trial court erred in issuing its gag order because it failed to make express findings that measures other than a gag order would mitigate the effects of the pretrial publicity. Specifically, the Court held that the trial court should have considered and entered findings on the following alternatives:

- (a) change of trial venue to a place less exposed to the intense publicity;
- (b) postponement of the trial to allow public attention to subside;
- (c) searching questioning of prospective jurors to screen out those with fixed opinions as to guilt or innocence;
- (d) the use of emphatic and clear instructions on the sworn duty of each juror to decide the issues only on evidence presented in open court; and
- (e) sequestration of jurors. Nebraska Press Ass'n v. Stuart, 427 U.S. at 563-564.

After examining the record, the Supreme Court determined that there was no evidence or finding that these alternative measures would have been ineffective in protecting the defendant's right. Conversely, there was no finding that the gag order would have been effective. The Court concluded that the defendant failed to meet the "heavy burden imposed as a condition to securing a prior restraint."

B. The District Court Failed To Follow The Procedure Required By The Constitution Before A Court May Limit The Media.

- 1. The record shows no evidence that media coverage created a clear and present danger.

The record in this case fails at the very first step. Nebraska Press requires a finding that media coverage posed clear

and present danger. The record before the district court in Nebraska Press suggested pervasive publicity, from the date of the crime through the court's ruling. By contrast, the record in this case reflects no inquiry into the scope and nature of media coverage. Whatever pretrial publicity may have occurred, the parties and the court were satisfied that media coverage had not affected the jury panel. (See, Exh. A) Cf. State v. Pierre, 572 P.2d 1338 1348-49 (Utah, 1977), cert. den. 439 U.S. 882. Thus, the District Court's only task was to assure the impartiality of the sitting jury during the course of a short trial. Apparently, at one point before the reporter appeared in court the court concluded that the threat of "anticipated" media coverage did not present a danger to a fair trial, and denied the defendant's motion to sequester the jury. (Partial Transcript, p. 2, appended as Exhibit B) In these circumstances, it is remarkable that the district court was so quick to enter its gag order upon the appearance of only one reporter in the courtroom. Apparently, the District Judge entered the Order based only on his notion that any publicity would affect the trial:

"Okay, I am going to do this [enter the order] because I think it would be highly prejudicial to refer to him in any news report as the

"Sugarhouse rapist". . . . (Partial Trans.,
pp. 4-5 appended as Exhibit B).*/

As Justice Brennan stated in New York Times Co. v. United States,
403 U.S. at 725,

[t]he First Amendment tolerates absolutely no
prior judicial restraints of the press predi-
cated upon surmise or conjecture that untoward
consequences may result.

Under Nebraska Press procedures, then, the district court's
failure to determine the nature and extent of the news coverage
precluded any sustainable finding of a clear and present danger.
Without that initial investigation and related finding, there can
be no legal prior restraint on the media. The district court's

*/ Disregarding the Order's impairment of the First
Amendment, the order suffers from enormous jurisdic-
tional and due process defects. Like the trial court
order in Nebraska Press, the order here purports to
apply broadly to all members of the media, even though
the court has no jurisdiction over them. Nebraska Press
Ass'n v. Stuart, supra, 427 U.S. at 565-566 n.9.
Moreover, the order purports to restrain all members of
the media from exercising fundamental rights without
affording them the opportunity to be heard. Id. Both
of those defects invalidate the gag order in this case.
The inadequacy of this record is unquestionable. There
was no evidence or finding that could lead to the
conclusion that media coverage posed a clear and present
danger. There was nothing but the Court's conjecture.

order failed at the very first step of the inquiry. Although the finding of a clear and present danger is the essential precondition to any valid restraint, it is only the beginning of the examination.

2. The trial court failed to evaluate less restrictive alternative remedies.

If the record in this case had revealed solid evidence of a clear and present danger, the Constitution would have required the Court to exhaust all alternative remedies, no matter how inconvenient, before it considered any abridgment of the First Amendment. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 100 S. Ct. 2814, 2829 (1980); Nebraska Press Ass'n v. Stuart, 427 U.S. at 569; Des Moines Register & Tribune Co. v. Hildreth, 181 N.W.2d 216, 220 (Iowa 1970).

Even if the trial court had properly reviewed the facts and found a clear and present danger, it could have avoided a constitutional conflict if it had merely considered alternatives to a gag order. But the trial court issued this gag order without even considering alternative remedies. Given the speculative basis for the inference of a danger in the first place, it is likely that the court's objective of preserving a fair trial could have been accomplished with moderate alternatives, such as instructions to the jury to avoid newspaper and electronic news during the trial and daily voir dire of jury members. Even the inconvenience that sequestration might have caused the jury is

inconsequential compared to the concern of preserving the First Amendment.

[T]he inconvenience suffered by jurors who are sequestered to prevent exposure to excluded evidence which may be published in the press is a small price to pay for the public's right to timely knowledge of trial proceedings guaranteed by freedom of the press. . . .

State ex rel. Miami Herald Pub. v. McIntosh, 340 So.2d 904, 910 (Fla. 1977).

It seems certain that if the District Court had followed the procedures described in Nebraska Press it would not have imposed a gag order, if for no other reason than the order could not prevent the perceived danger. The information barred by the order had been released to the public in official court records and had been in the public official court records and had been in the public not only ten years before, but just prior to trial. The information was openly available to the jury irrespective of the court's order. Thus, the Court's order could not insure that Easthope's title and record would not become known to the jury. In addition, as a matter of clear Constitutional law, that kind of published, historical information is simply not subject to prior restraint. "[T]he press may not be prohibited from 'truthfully publishing information released to the public in

official court records' Cox Broadcasting Corp. v. Cohen, 420 U.S. 469 (1975)." Oklahoma Publishing v. District Court, 430 U.S. 308 (1977); Nebraska Press Ass'n v. Stuart, 427 U.S. at 568.

C. In This Case There Was No Conflict Between The First and Sixth Amendments.

The gag order may have been based on a sincere but unsupported belief that the reporting of Easthope's prior criminal record would preclude his fair trial. By issuing the gag order to protect fair trial rights, however, the District Court apparently constructed a false conflict between the First and Sixth Amendments and gave the Sixth Amendment preference.

The Bill of Rights assigns no priorities between the rights of the First and Sixth Amendments. Indeed, the Supreme Court has held that neither necessarily takes ascendancy over the other and that the courts are required to preserve both. Nebraska Press Ass'n v. Stuart, supra, 427 U.S. at 566, 562. The gag order in this case violates that basic Constitutional principle by giving absolute ascendancy to the Sixth Amendment. Moreover, the District Court took that unprecedented legal posture without any basis in the record for the slightest, let alone the most stringent, of First Amendment proscriptions. Prior restraint of the press was plainly not justified in this case.

Other state courts in following the required constitutional and procedural safeguards, have refused to issue gag orders in

cases virtually identical to this one. In Arkansas Gazette Co. v. Lofton, 598 S.W.2d 745 (Ark. 1980), the defendant had been convicted of two rapes committed in the Quapaw Quarter of Little Rock. Prior to trial for another rape the trial court issued a gag order restraining the Gazette from referring to the defendant as the "Quapaw Quarter rapist" in any pre-trial stories. The Gazette took a writ to the Arkansas Supreme Court which found the order unconstitutional. In reaching that decision the court recognized that the gag order constituted constitutionally impermissible judicial censorship of the news media:

We are cited no case nor does our research reveal one which permits judicial censorship of the use of descriptive words by the news media. In effect, here the press was merely paraphrasing what the public records reveal. Use of the phrase by the petitioner is protected by the federal First Amendment and Art. 2, §6, of our own constitution. The restraint of these constitutional rights amounts to a judicial censorship which is beyond the jurisdiction of this or any court. Therefore, the restraint imposed by the court cannot pass constitutional scrutiny.

598 S.W.2d at 746-747. (emphasis added). See also, Randolph v. NBC, 7 Med. L. Rep. 1339 (N.D. Ga. 1981).

IV. CONCLUSION

For the foregoing reasons, the District Court's gag order should be vacated.

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CERTIFICATE OF DELIVERY

THIS IS TO CERTIFY that a copy of the foregoing
MEMORANDUM OF POINTS AND AUTHORITIES OF KSL AM AND TV AND
SOCIETY OF PROFESSIONAL JOURNALISTS IN SUPPORT OF THE COMPLAINT
AND PETITION FOR EXTRAORDINARY RELIEF was mailed, postage
prepaid this 13th day of May, 1982 to:

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Carolyn Zimmerman

EXHIBIT "A"

thorum: sugarhouse rapist violates parole

mmc

4pm

EXHIBIT "A" - Page 1

KSL Radio

~~THE MAN~~ IN 1971 THE MAN KNOWN AS THE SUGARHOUSE RAPIST WAS CONVICTED OF RAPE AND SENT TO PRISON. ON JULY 14TH THIS YEAR, RONAL EASTHOPE WAS PAROLED. SALT LAKE CITY ~~XXX~~ POLICE SGT. LARRY THORUM SAYS EASTHOPE WAS ARRESTED THIS WEEKEND ON ~~XXXXX~~ SUSPICION OF RAPE CHARGES.

:19

...that rape.....

"arrested a male white for a rape that occurred in the area of eleventh east and downington on the morning of Saturday the nineteenth. He was arrested Sunday morning in the downtown area and charged with that rape."

THORUM SAYS INFORMATION FROM AN UN-NAMED SOURCE LEAD TO EASTHOPE 'S ARREST. TEN YEARS AGO EASTHOPE ELUDED POLICE FOR SEVERAL MONTHS BEFORE ~~XXXXXXXXX~~ HE WAS FINALLY ARRESTED AND CONVICTED.

Deseret News

Rapist charged again

SEP 24 1981

A man who was termed the "Sugar House rapist," out of prison for two months, has been charged with the sexual assault of a 17-year-old girl.

Ronald D. Easthope, 35, 1515 W. 2280 South, was charged with aggravated sexual assault, a first-degree felony, in an information signed by Sgt. Richard Thorum, Salt Lake City Police, before 5th Circuit Judge Melvin B. Morris.

Easthope was convicted of rape in June 1971 by a jury in 3rd District Court. That conviction carried with it 10 other counts of rape, sodomy and burglary in connection with incidents in the Sugar House area during 1970 and 1971. He served nine years in the Utah State Prison.

In the most recent incident, a girl awoke early Saturday morning to find a man with a pillow case over his head with eye holes cut in it. The man threatened her with a large kitchen knife and then raped her.

The typical method of the Sugar House rapist in 1970, was to approach sleeping victims after breaking into their apartments and rape them after threatening them with a gun.

Easthope was arrested in a Salt Lake hotel coffee shop later Saturday morning.

He is currently on parole from the Utah State Prison, and has been booked into the Salt Lake County Jail. He is being held without bail.

Paroled 'Sugar House Rapist' Sept 25 - 8 Charged With Sexual Assault

A man who served nearly 10 years in prison for a series of sex offenses which led police to dub him the "Sugar House rapist," was arraigned Thursday on sexual assault charges in the rape last Saturday of a 17-year-old Sugar House girl.

Ronald D. Easthope, 35, 1515 W. 2280 South, appeared before 5th Circuit Judge Melvin H. Morris on aggravated sexual assault charges filed in a Salt Lake City police complaint on Wednesday. Judge Morris scheduled a preliminary hearing for Oct. 5.

Easthope was paroled from the Utah State Prison last July after he served more than nine years for a June 1971 rape conviction. Easthope had been

charged with 10 other counts of rape, sodomy and burglary in a series of Sugar House area sex assaults in 1970 and 1971.

Easthope was arrested last Saturday after a 17-year-old girl told police she was awakened in her home by a man who stood over her bed, wearing a pillow case over his head and wielding a large kitchen knife. The suspect robbed the woman and fled from the home.

Police picked up Easthope in a hotel coffee shop Saturday morning, hours after the assault.

He is being held in Salt Lake City-County Jail without bail on the first-degree felony charge.

Sexual Assault Case 028-83 Hearing Postponed

Preliminary hearing for Ronald D. Easthope, 35, the so-called "Sugar House rapist," has been postponed until Oct. 22 in 5th Circuit Court.

Easthope, 1515 W. 2280 South, is charged with aggravated sexual assault in the Sept. 19 rape of a 17-year-old Sugar House woman who was assaulted in her home during the early morning hours.

Easthope was charged with the offense two months after he was paroled from the Utah State Prison where he served a 10-year sentence for a series of Sugar House sex assaults in 1970 and 1971.

The defendant is being held in the Salt Lake City-County Jail without bail. The hearing continued by 5th Circuit Judge Arthur C. Christensen.

Jury Impaneled 2-4-82

Rape Trial Begins

Trial in 3rd District Court began Wednesday for Ronald Dale Easthope, 35, 1515 W. 2280 South, on charges of aggravated sexual assault in connection with the rape of a Salt Lake City woman in her home Sept. 19.

Judge Dean E. Conder impaneled an eight-member jury to hear arguments in the case against Easthope, who has been held in the Salt Lake City-County Jail since his arrest hours after the assault occurred.

The 17-year-old victim told police she was awakened in her home by a man who stood over her bed, wearing a pillow case over his head and wielding a large kitchen knife. The suspect ordered the woman to remove her clothes and then raped her.

Police arrested Mr. Easthope in a hotel coffee shop just hours after the rape.

EXHIBIT "A" - Page 3

EXHIBIT "B"

EXHIBIT "B"

1 IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
2 IN AND FOR SALT LAKE COUNTY
3 STATE OF UTAH

4 The STATE OF UTAH,

5 Plaintiff,

6 * Case No. CR. 81- 1349

7 -vs-

8 * J U D G E ' S O R D E R

9 RONALD D. EASTHOPE,

10 Defendant.

11 *
12 *
13 *
14 BE IT REMEMBERED that on the Third day of February, 1982

15 the above-entitled cause of action came on regularly for hearing
16 before the Hon. Dean E. Conder, one of the Judges of the above-
17 named Court and at the hour of ten o'clock a.m.

18 A P P E A R A N C E S

19 For the State:

20 Mr. Ernie Jones
21 Deputy Ct. Attorney
22 431 S. Third East
City

23 For the Defendant:

24 Mr. Lynn Brown
25 Legal Defenders
26 333 S. Second East
27 City
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HAL M. WALTON, C.S.R.

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IN CHAMBERS:

The Court: In the matter of the State of Utah versus Ronald Dale Easthope. You're Mr. Ronald Dale Easthope, are you sir?

Mr. Easthope: Yes, sir.

The Court: You're here represented by counsel. These proceedings are in chambers in the absence of the Jury.

Mr. Brown, I understand you have a couple of motions.

Mr. Brown: Sometime ago we filed two motions Your Honor. Filed a motion to sequester the jury and filed a motion to suppress or limit the statements of witnesses concerning any testimony regarding the fact that Mr. Easthope has been previously convicted of anything and previously incarcerated.

First, dealing with the question of the motion to sequester the jury.

Mr. Easthope in the past, has had some publicity, approximately ten or eleven years ago; considerable amount of publicity; and probably the Court remembers or is aware of some of the publicity he had at the time.

At the time this case was filed and shortly before the preliminary hearing, at least one news channel--Channel Two called me up and wanted to do interviews with Mr. Easthope and intended on covering the preliminary hearing. And I anticipated that there would be a considerable amount of news coverage involving the trial of Mr. Easthope.

For that reason I made a motion to sequester the jury to prevent any possibility that any members of the jury panel could read any news reports, hear any television coverage or talk with anybody that may know something about the case, or have

1 read any publicity or heard any television reports.
2 It might be premature at this point. In looking around the
3 Courtroom, I don't know that there is any press or television
4 people out there at this time. If the Court would take that
5 under advisement and we could observe what press or television
6 coverage that we get throughout this trial.
7 Perhaps the Court could rule on that motion this evening
8 when we recess for the day. But that concerns me, the fact
9 that there is potentially a good deal of--
10 The Court: Was there much publicity in connection with
11 the preliminary hearing?
12 Mr. Brown: No, there wasn't.
13 The Court: I didn't see any.
14 Mr. Brown: No television coverage at all at the
15 preliminary hearing, and I never sought any news coverage.
16 The Court: I am going to deny the motion at this time,
17 but leave the door open for further renewal of the motion
18 should you see if there is some problem.
19 Mr. Brown: With regard to the second motion concerning
20 the testimony of witnesses. I already talked to Mr. Jones
21 about that and he indicated that he would instruct his witnesses--
22 correct me if I am wrong--not to mention anything about the
23 fact that Mr. Easthope is in prison, or not to mention anything
24 about the fact that he has been previously convicted of anything
25 I am particularly concerned about the testimony of Mr.
26 Hanks, where he stated at the preliminary hearing that Mr.
27 Easthope made a statement to him to the effect that "I did it
28 again;" which implies that he had done something similar to
29 that in the past. If that could be regulated or---
30

1 The Court: I don't think there is any question but what
2 there should be no reference to prior offenses, if any. And
3 I have been advised that this is commonly known as the
4 " Sugarhouse rapist".

5 I am going to ask both counsel to admonish all witnesses
6 that they make no reference to any prior rapes or convictions
7 of any kind. To try this case strictly on the facts of this
8 particular case.

9 Mr. Brown: We are concerned about Mr. Jones in his
10 questioning to the victim at the preliminary hearing, quite
11 frequently referred to the Sugarhouse area. Like to get away
12 from that too; that might bring back some memories among the
13 jury panel about all these rapes that took place in the
14 Sugarhouse area.

15 The Court: I think Mr. Jones that you can refer to it
16 in a more specific--

17 Mr. Jones: Ten ten Downington Avenue.

18 The Court: --Without referreing to the Sugarhouse.
19 Ten ten Downington Avenue there is no association with it.

20 Mr. Brown: Downington Avenue is okay. That's east and
21 west.

22 (Whereupon the trial proceeded to the conclusion of the
23 victims testimony.)

24 The Court: Let me see counsel in chambers. The record
25 should show the proceedings are in chambers in the absence of
26 the jury. And did you contact the news director or whoever it
27 was? Okay. Does your station come to any conclusion ?

28 Mr. Allgire: I am supposed to call them back right now.

29 The Court: Okay. I am going to do this, because I
30 think it would be highly prejudicial to refer to him in any

1 news report as the "Sugarhouse rapist"; I am going to
2 issue an order that none of the news media is to use the term
3 " Sugarhouse rapist" during the course of the trial, because
4 I think it is highly prejudicial.

5 Mr. Brown: Could that order go further to any comment
6 surrounding the proceeding of Mr. Easthope ten or eleven years
7 ago; that's the reason I made the motion to sequester the jury,
8 Your Honor, because I anticipated that.

9 The Court: I think that I will extend it to any comments
10 about Mr. Easthope's activities prior to the trial that would
11 in any way show his involvement with the law.

12 Dick, I am not trying to cut the news media out. I
13 want a fair trial, I don't want to have any statement made
14 for publicity that would be adverse to the defendant because
15 he is entitled to a free and fair trial.

16 Mr. Allgire: May I use your phone?

17 The Court: You can call whomever you wish right now.

18 Mr. Allgire: (Speaking into phone:) We are in chambers
19 and the Judge has ordered that we make no comment about
20 Easthope's prior activities or involvement with the law.

21 We would like to have our attorney call.

22 The Court: Call that number and the baillif will put
23 you through. I think for a fair trial I am going to make that
24 an order. Do you know how to get the news to the rest of the
25 news media, as you see them, that this is going to be my order.
26 I don't want to have any adverse publicity.

27 Mr. Allgire: Well, if they aren't here, I'll tell Mike
28 Carter of the Tribune. Don't know if anyone else is aware of
29 the trial.

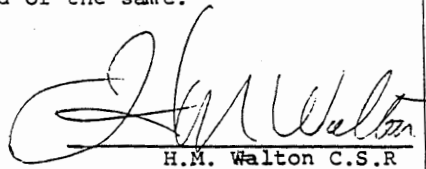
30 The Court: I don't know how else unless I call the

1 news media. Okay we'll go back in Court.
2 Mr. Allgire: Can we wait? My attorney should be calling
3 any second. They wanted me to talk to him before I say anything.
4 The Court: Sure. I'll talk to him if you want. Tell him
5 the same thing. You can talk to him and you can use my
6 phone if you want.

7 C E R T I F I C A T E

8
9 Salt Lake County)
10 State of Utah) ss.

11 I, Hal M. Walton do hereby certify that I am
12 a Certified Shorthand Reporter of the State of Utah; that on
13 the Third day of February, 1982 I took down the preceding
14 hearing in chambers and transcribed it into the preceding
15 five pages and is a true record of the same.

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H.M. Walton C.S.R.

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HAL M. WALTON, C.S.R.

EXHIBIT "C"

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH

STATE OF UTAH,)	
Plaintiff,)	<u>ORDER</u>
-vs-)	
RONALD DALE EASTHOPE,)	CR 81-1349
Defendant.)	

During the proceedings in the above-entitled matter, I requested a reporter from KUTV, Inc. to come to my chambers with the Prosecutor, the Defendant, and counsel for the Defendant. In chambers I indicated the Court's concern for the Defendant's rights to a fair trial if certain terms or past criminal records were mentioned by the news media. Accordingly,

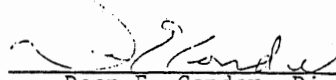
IT IS HEREBY ORDERED:

The news media in and for Salt Lake County and the State of Utah are prohibited from broadcasting, publishing or otherwise conveying to the public any of the following:

- 1) The words "Sugarhouse rapist",
- 2) Any information relating to the past convictions of defendant Ronald Dale Easthope, during the pendency of the above-entitled matter before this Court.

DATED this 4th day of February, 1982.

BY THE COURT:


Dean E. Conder, District Judge

This order to be sealed and not released to the public.

LAW OFFICE OF
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A PROFESSIONAL CORPORATION
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