

Denied

/s/ Peter H. Bornstein
Honorable Peter H. Bornstein
October 28, 2022

THE STATE OF NEW HAMPSHIRE

COOS, SS

SUPERIOR COURT

Clerk's Notice of Decision
Document Sent to Parties
on 10/28/2022

214-2019-CR-00078

State v. Volodymyr Zhukovskyy

Boston Globe Media Partners, LLC.’s Motion for Reconsideration

Now Comes Boston Globe Media Partners, LLC., publisher of the Boston Globe (“Boston Globe”), and moves the Court to reconsider and amend its October 19, 2022 Order (“Order”). In support of this motion the Boston Globe represents:

1. In its Order, the Court acknowledged that it “must balance the Boston Globe’s interest in accessing the jurors’ names and addresses with the jurors’ interest in maintaining confidentiality, particularly in light of the media attention their verdict received.” Order at 2. Continuing, the Court stated “[i]n light of the concrete interests that each juror has in this proceeding,” it appointed Philip R. Waystack, Jr. as amicus counsel to represent the jurors’ interests, citing *United States v. Chin*, 913 F.3d 251, 254 (1st Cir. 2019). *Id.*

2. In *Chin*, WBUR public radio station sought the names and addresses of the jurors who sat on a criminal case. After the verdict, the district court ordered release of the jurors’ names and hometowns in which they lived, but not their addresses. WBUR appealed. Neither the government nor defendant opposed release of the jurors’ addresses, so the First Circuit appointed amicus counsel to support the district court's order. *See* Brief of Court-Appointed Amicus Curiae in Support of Affirmance, 2018 WL 4266407 at *1 (“*Amicus* was appointed ... to file a brief and present oral argument in support of affirming the District Court's order”). Nowhere in the brief

filed by amicus or the First Circuit's opinion is there any suggestion that amicus communicated with any of the jurors.

3. Here, even though no one yet has appeared to represent the interests of the jurors in connection with the Globe's request for their names and addresses, both the Defendant and New Hampshire Association of Criminal Defense Lawyers (the "Association") advocated on their behalf by expressing concern for their safety and privacy if their names were made public. See Defendant's Objection at ¶13 ("a sufficiently compelling interest which outweighs the public's right of interest to [juror names and addresses] ... that being the safety of the jurors themselves"), and at ¶19 ("The jurors who served in this case gave up three weeks of their lives, and were no doubt subjected to a lot of pressure from people in their communities ... Having performed their responsibilities without fear or favor, they should be entitled to privacy"); Association's Motion/Memorandum at 10 ("Allowing identification of the jurors under these circumstances exposes them to further attack – including potential physical violence – should they not be foresighted enough to demand anonymity from Boston Globe's reporters").

In replying to those arguments, the Boston Globe stated that New Hampshire case law makes clear that "a generalized concern for personal privacy is insufficient to meet the ... burden of demonstrating the existence of a sufficiently compelling reason to prevent public access," while a generalized concern for their safety or being subjected to pressure or threats of physical violence unsupported by "empirical evidence" or any facts was, likewise, insufficient. See Reply to Defendant's Objection at ¶¶6-7; Reply to the New Hampshire Association of Criminal Defense Lawyers at ¶5.

4. The Boston Globe objects to the appointment of Attorney Waystack to obtain the information requested by the Court, to wit, to "ascertain each juror's position with respect to the

relief requested and the juror's reasons therefor." Order at 2. While a skilled and experienced trial attorney with years of valuable public service,¹ he has not been trained as or been a journalist – a journalist practiced in the skill of seeking out and explaining to sources why they might have information that will enhance the public's understanding about important issues. Here, a criminal case where, according to the Defendant, "the public was subjected to a barrage of largely one-sided prejudicial publicity over the course of three years," with "the jury's verdicts of acquittal ... [coming] as a surprise to the public ... [being] an understatement." See Defendant's Objection at ¶¶14-15.

While the Boston Globe does not know for certain, it seems unlikely that Attorney Waystack attended the twelve-day trial, or watched coverage of it, and is aware of the evidence the State and Defendant presented to the jury in support of their respective positions. Without knowledge of that evidence, he will be handicapped to explain to jurors the reasons why a Globe reporter wants to speak with them and, thus, why they might come to understand that they have information about the criminal justice system that serves core First Amendment values.

5. Instead of appointing Attorney Waystack as amicus, the Boston Globe requests the Court to permit Globe reporter Laura Crimaldi to interview the jurors about the case. Ms. Crimaldi has been covering the news in New England since 2001. In 2021, she shared a Pulitzer Prize in investigative reporting for the Globe's series, "Blind Spot," which included articles about the Defendant and the accident giving rise to the criminal charges against him. Also in 2021, she shared a media award from the Massachusetts Psychological Association for coverage of an unlicensed counseling program for students sanctioned for years by the Boston Public

¹ According to the firm's website, Attorney Waystack "currently serves as a member of the board of directors of the New Hampshire Public Defender Program." See <https://waystackfrizzell.com>

Schools. In 2009, her coverage of the foreclosure crisis was recognized with the Sevellon Brown Public Service Award from the New England Associated Press News Executives Association and she was named a finalist for a Livingston Award.

Ms. Crimaldi did not attend trial in this case. Rather, she watched the live stream on WMUR and wrote three articles about the trial and verdict: July 26, 2022, “Truck driver charged in deaths of seven motorcyclists goes on trial in New Hampshire;” August 9, 2022, “Mass. truck driver is acquitted in 2019 motorcycle crash that killed seven motorcyclists;” and August 10, 2022, “Legal experts react to acquittal of Mass. truck driver involved in crash that killed seven motorcyclists.” Given her background, experience and knowledge of what transpired during the trial, Ms. Crimaldi will know how to draw from those jurors willing to speak with her information that should “contribute to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjection it to the cleansing effect of exposure and public accountability.” *Nebraska Press Ass’n v. Stuart*, 427 U. S. 539, 587 (1976)(Brennan, J., concurring, joined by Stewart, J. and Marshall, J.). In addition, juror comment and insight would be particularly valuable here, where the Governor stated, “The Fallen Seven did not receive justice today, and that is an absolute tragedy.” See Petition For Access to Juror Names at ¶6.

6. The Boston Globe requests that the Court release the names and addresses of the seventeen jurors to it subject to one condition: Ms. Crimaldi shall explain to each juror she is able to contact that, although the Court has released to her the juror’s name, they have the right not to speak with her.

WHEREFOR the Boston Globe respectfully requests the Court to reconsider and amend its October 19, 2022 Order and grant the relief set forth in paragraphs 5 and 6 herein, and such other relief as may be necessary and proper.

Respectfully submitted by its attorneys,

/s/ William L. Chapman
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Certificate of Service

I hereby certify that a copy of the foregoing petition was served via the ECF system upon all parties.

Dated: October 28, 2022

/s/William L. Chapman
William L. Chapman

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