

FIFTH JUDICIAL DISTRICT COURT

IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

2007 OCT 24 AM 8:33

WASHINGTON COUNTY

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BY

STATE OF UTAH,)	
)	FINDING OF FACT AND
Plaintiff,)	CONCLUSIONS OF LAW AND
)	ORDER REGARDING THE CONTEMPT
)	OF MS. KATIE BAKER
vs.)	
)	
WARREN STEED JEFFS,)	
)	
Defendant,)	Case No. 061500526
)	

This matter came before the Court on October 17, 2007, for hearing pursuant to a Court's Order to Show Cause directed to Ms. Katie Baker, a reporter for KUTV 2 News, a division of the KUTV television station broadcasting in Salt Lake City and throughout the State of Utah. Ms. Baker appeared and was represented by her counsel, Mr. Jeffrey J. Hunt. Ms. Baker also filed an Affidavit setting forth the facts as she understood them. After having heard the arguments of counsel and having reviewed Ms. Baker's Affidavit together with the accompanying DVD of the newscast in question, and being fully advised in the premises, the Court now makes the following:

FINDINGS OF FACT

1. Katie Baker is a news reporter for the Utah television news station KUTV 2 News.
2. Ms. Baker was one of several news reporters who traveled to St. George to cover the Warren Jeffs trial.
3. In September of 2007, Ms. Baker had been employed by KUTV as a reporter and/or

weekend news anchor for approximately ten months.

4. Ms. Baker states that the Warren Jeffs trial was the first high-profile trial she had ever covered.

5. Prior to the Warren Jeffs trial, Ms. Baker had covered fewer than five criminal cases as a news reporter. In none of those cases did Ms. Baker recall the issuance of a decorum order governing the conduct of news reporters.

6. While en route to cover the Jeffs trial in St. George, Ms. Baker reviewed a copy of the Court's Decorum Order that had been provided to her from her station, KUTV.

7. In her affidavit Ms. Baker admits that she did not carefully read every paragraph of the Decorum Order and she further admitted that she should have done so. She did recall the provisions of the Decorum Order prohibiting the use of cell phones in the Courtroom and the terms of the Decorum Order that provided for a pool photographer for still photographs.

8. Specifically, Ms. Baker claims no recollection of Paragraph 3 of the "Guidelines for the Media" portion of the Decorum Order which prohibited any contact with or interviews with prospective jurors until the trial was completed and the jury in the case was excused.

9. On September 10, 2007, during the jury selection process, Ms. Baker was at the Washington County Hall of Justice covering the trial. In the afternoon of that day Ms. Baker started a conversation with Ms. Mo Webb, a prospective juror who had been excused for the day. After the brief conversation Ms. Baker asked prospective juror Ms. Webb if she would agree to be interviewed on camera, and Ms. Webb agreed. Portions of that interview were broadcast by KUTV on the evening and nighttime newscasts of September 10, 2007. Those broadcasts were seen throughout the viewing area of KUTV which includes Washington County. A DVD copy of

the newscast story including the Webb interview was filed with the Court along with the Ms. Baker's Affidavit and was viewed by the Court prior to the hearing of October 17, 2007.

10. The Court's Third Amended Decorum Order was signed by the Court and entered by the Clerk of the Court on August 29, 2007. The order was distributed to counsel for the State, counsel for the Defense, and counsel for the Media Intervenors, Mr. Hunt. This Order was also made available to all interested media by the Court's Public Information Officer, Ms. Nancy Volmer.

11. After the broadcast of the Webb interview Ms. Volmer contacted management of KUTV who then contacted Ms. Baker. Upon learning of her potential violation of the Court's Third Decorum Order Ms. Baker contacted Ms. Volmer by telephone and apologized for her "mistaken" violation of the Court's Order. Ms. Baker also asked for permission to see this undersigned judge, ex parte, to apologize, but the offer was declined in view of the Court's pressing involvement with jury selection and trial and the prohibitions against ex parte communications.

12. This particular litigation has presented challenges to this Court in conducting a fair trial in the face of substantial pressure from the media for access to all facets of the trial. In dealing with the literally international interest in this matter, the Court relied heavily on the experience and expertise of Ms. Volmer in serving as a conduit for the transfer of information between the Court and the media. The seating in the Courtroom was so restricted that members of the media were issued credentials and seating passes along with members of the public. Ms. Baker was a credentialed member of the media. In the entire proceedings, beginning on September 7, 2007 and concluding on September 25, 2007, this incident set forth above was the

only serious breach of the Court's Third Amended Decorum Order.

From the foregoing Findings of Fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. The powers of the Court in conducting its proceedings include the power to shelter the jury selection process in any case from inappropriate interference. Those powers are inherent in this Court's constitutional authority and also granted through statute. *See, e.g., Chen v. Stewart*, 2005 UT 68, ¶ 36 (Utah 2005) ("A court's authority to sanction contemptuous conduct is both statutory and inherent"); *In re Evans*, 42 Utah 282, 130 P. 217, 224 (Utah 1913) ("It is undoubtedly true that courts of general and superior jurisdiction possess certain inherent powers not derived from any statute. Among these are the power to punish for contempt..."); and Utah Code Ann. §§ 78-32-1 et seq. Additionally, Utah Rule of Judicial Administration 4-401 authorizes the Court to "permit access to the courtroom by the news media while preserving the [defendant's] right[] to ... a fair trial." In this case the Court's Third Amended Decorum Order was issued for just that purpose.

2. Ms. Baker's counsel submitted the relevant case law regarding contempt in the form of *Von Hake v. Thomas*, 759 P.2d 1162 (Utah 1988), and *State v. Hurst*, 821 P.2d 467 (Utah Ct. App. 1991). The authority cited by counsel leads the Court to the conclusion that the foregoing findings of fact must be shown by clear and convincing evidence, and they are shown by that degree of proof.

3. The elements of contempt of the Court's order are "a party must have (1) known of the duty imposed by the Court's order, (2) had the ability to comply with the order, and (3) willfully

and knowingly refused to comply." *Utah Farm Prod. Credit Ass'n v. Labrum*, 762 P.2d 1070 (Utah 1988).

4. From findings 6 and 7 above, the Court concludes that the first element of contempt has been met. Ms. Baker argues that she did not read the entire Order but the Court is not persuaded that her failure justifies the direct violation of the Court's Order. All of the other media present at the trial were able to discern the duty imposed and the Court's order would be meaningless if the "I forgot to read it all" excuse was accepted. Journalists are well capable of finding the duty imposed.

5. It is not necessary for the Court to leap any conceptual abyss to conclude that Ms. Baker had the ability to comply with the Order. All she had to do was to leave the jurors alone.

6. Finally, the interview and recording of Ms. Webb coupled with the time and effort needed to edit and produce the newscast segments is clear evidence of willful and knowing conduct that resulted in a refusal to comply with the Order. This conduct was no accident.

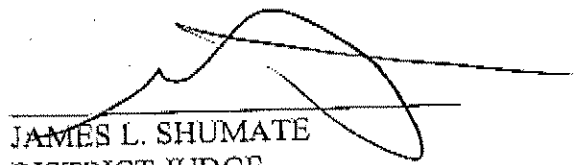
7. Therefore, the Court finds Ms. Baker in Contempt of Court for her violation of the Court's Third Decorum Order by interviewing a prospective juror in this case. The consequences of that Contempt of Court are set forth in the following:

ORDER

The imposition of sentence for the contemptuous conduct of Ms. Baker is stayed for a period of ninety (90) days from October 17, 2007. Ms. Baker may purge her contempt if, within the said ninety (90) day period she produces a newscast addressing a public need within the broadcast market of KUTV and submits a DVD copy of that newscast to the Court. There is no need for KUTV to broadcast this work. This Court does not presume to tell a television station

what is or is not worth its broadcast resources. However, the work involved in Ms. Baker's production is adequate to serve the educational objective that the Court has in this Order.

DATED this 23 day of October, 2007.



JAMES L. SHUMATE
DISTRICT JUDGE

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that on this 24 day of Oct, 2007, I provided a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER RE: CONTEMPT to each of the parties/attorneys named below by placing a copy in such attorney's file in the Clerk's Office at the Fifth District Courthouse in St. George, Utah and/or by placing a copy in the United States Mail, first-class postage prepaid, and addressed as follows:

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