

Criminal Defendant Denied Access to Reality Show

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A trial court judge in Charlotte ruled Thursday that a defendant in a murder case is not entitled to unaired footage from the A&E series *The First 48*. The case presented an interesting twist on shield law issues.

Jonathan Fitzgerald has been charged with the murder of Oscar Alvarado Chavez, who was stabbed to death in his car in August 2010 in Charlotte. The Charlotte-Mecklenburg Police Department has entered into a contract with the producers of *The First 48* to give the show access to officers investigating homicides. The premise of the show is that if a suspect is not identified within the first 48 hours after a crime is committed, the likelihood of solving the crime drops precipitously.

The First 48 devoted one of its episodes to the CMPD's investigation of Chavez's murder, including the ultimate arrest of Fitzgerald. In the course of the criminal case against Fitzgerald, which is still pending, Fitzgerald requested that the district attorney produce all unaired video footage captured in connection with the production of the episode. His attorney argued that because the CMPD had the right under its contract with the producers to review a rough cut of the episode before it aired, the producers were operating essentially as an agent or investigator of the police department. This, the attorney argued, meant the footage constituted part of the file that the defendant was entitled to review under the open file discovery rules in criminal cases.

This approach, of course, allowed the attorney to sidestep North Carolina's shield law, which requires parties who subpoena journalists to pass a rigorous three-part test before they can obtain material. We've previously written about shield laws here. Thus, the case presented two interesting issues. First, whether the unaired material was in the possession of the district attorney's office for purposes of the criminal discovery statute. If not, the next question was whether the show's producers constituted journalists for purposes of the shield statute and, if so, whether Fitzgerald could overcome the qualified privilege against production.

I discussed this issue with WFAE reporter Julie Rose before the court issued its ruling. As her report indicates, my own view was that because the contact made clear that the footage was the property of the producers of the show, Fitzgerald should not be able to obtain the material from the district attorney. As to the application of the shield statute, my view was that the producers of a television show of this nature -- which focused on the activities of local law enforcement in

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investigating an actual high-profile crime -- fit within the broad definition of a "journalist" under North Carolina's shield statute.

It appears that the judge who heard the issue was likewise skeptical of Fitzgerald's attempt to tie the television show producers to the district attorney's office. According to the report of his ruling in the News & Observer, Judge Eric Levinson ruled that the shield statute applied and that Fitzgerald was not entitled to the footage because he could not demonstrate that it was essential to his defense of the case.