

Santa Barbara News-Press, November 6, 2006

Impact of 'Alpha Dog' debated

By Dawn Hobbs, News-Press Staff Writer

The courts have long said television producers can release movies about accused criminals, but a twist in the high-profile Jesse James Hollywood murder case has legal experts debating whether the major motion picture "Alpha Dog" -- a fictional account about the homicide suspect -- will be released in January as scheduled.

"Alpha Dog," featuring Emile Hirsch, Justin Timberlake, Bruce Willis and Sharon Stone, may also become the first major motion picture based on a criminal case in the U.S. shown in theaters before the trial in that case even begins.

What makes this high-stakes death penalty case so unusual, however, is that the movie is based on material a veteran prosecutor from the Santa Barbara County District Attorney's office provided to the filmmaker.

Defense lawyer James Blatt recently requested that a federal court delay the release of the film, claiming it would poison the jury pool. The film is closely based on the prosecution's version of the kidnapping and slaying of 15-year-old Nicholas Markowitz in 2000. Lawyers for Universal Studios, who could not be reached for comment, have until later this month to file a response.

Legal experts expressed a range of views on whether the federal court will see merit in the defense request -- a motion that stirs interesting legal debate and pits the defendant's Sixth Amendment right to a fair trial against the entertainment industry's First Amendment right to publish without prior restraint.

Made-for-TV movies have been released in several criminal cases that had pending legal matters, most recently "The Perfect Husband: The Laci Peterson Story," which aired in 2004 prior to the murder trial of Scott Peterson, who was convicted of killing his pregnant wife.

But Mark Geragos, Mr. Peterson's defense lawyer, told the News-Press there was a difference between his case and the Hollywood case.

"I think Jim (Blatt) has a fighting chance because all of the case material was turned over by the prosecution," Mr. Geragos said. "So the argument is that the state facilitated this movie. This may be one of the only exceptions where there might be a way to get around the prior restraint law . . . Here you can argue that this is the fruit of the poisonous tree, so to speak, from the

(sharing) of the documents by the prosecution."

Entertainment lawyer Rex Heinke, who has also represented media outlets in First Amendment matters, pointed out two rulings by the Ninth U.S. Circuit Court of Appeal allowing the release of television movies based on criminal cases with pending legal matters: the "Billionaire Boys Club" in 1987 and "The Billion Dollar Bubble" in 1976. Mr. Heinke reasoned those rulings would also apply to motion pictures.

"The Ninth Circuit Court ruled in both of those cases that there would have been a violation of the First Amendment if the movie had been held back," said Mr. Heinke, who represented NBC in "The Billionaire Boys Club" case.

"The issue in the end is not whether or not the government provided information to the filmmaker or how much information was provided, it's whether the defendant can get a fair trial . . . The courts have repeatedly held there are all sorts of ways to ensure you get a fair trial that doesn't involve enjoining the broadcast."

However, Mr. Blatt insisted: "I wouldn't waste my time if Universal did this picture and did it on their own. I filed this motion because they worked in partnership with (the prosecutor) to develop this film, destroying the presumption of innocence."

The Court of Appeal recently removed Senior Deputy District Attorney Ron Zonen from the case because he shared the file with the filmmaker, but the justices preliminarily denied Mr. Blatt's request to reconsider recusing the entire District Attorney's office. That decision is expected to become final today. Mr. Blatt indicated Friday he plans to take the matter up with the state Supreme Court.

Officials from the District Attorney's Office had no comment Friday about any of the legal developments or about whether they've decided to challenge the appellate decision concerning Mr. Zonen's recusal.

Mr. Zonen has previously said he cooperated with the filmmaker in hopes of capturing Mr. Hollywood, whose whereabouts were unknown at the time. Mr. Zonen worked with filmmakers in 2003, and Mr. Hollywood was captured in 2005.

In another high-profile trial in Santa Barbara County, Michael Jackson was acquitted of child-molestation charges last year even after a documentary called "Michael Jackson's Secret World, with Martin Bashir" aired shortly after the jury was seated. It was Mr. Bashir's first controversial documentary, "Living with Michael Jackson," that prompted the charges in the first place.

Mr. Jackson's lawyer, Thomas Mesereau, noted: "I believe American juries, generally speaking, are very independent minded and when they get in a courtroom (they) understand the gravity of

what they need to do and they follow the judge's instructions."

However, Mr. Mesereau said the circumstances of the Hollywood case are such that a defense lawyer would be remiss not to request an injunction against the release of the movie.

"I think it's an uphill battle for the defense, but it's not irrational," Mr. Mesereau said. "Typically in a case like this, the defense is concerned about a completely independent movie or television show possibly prejudicing the jury pool.

"But this is a case," he added, "where the prosecution worked hand in glove with the film producer in a way that would taint the jury pool."

However, Laurie Levenson, a former federal prosecutor and professor at Loyola School of Law said: "Believe it or not, not everyone is going to watch that (movie) . . . It can't possibly be more damaging than the Michael Jackson TV show was and a lot more people watch television than go to the movies."

"'Living with Michael Jackson,' " she said, "was extraordinarily damaging, and not only did we go on to have a trial, but the defendant was acquitted."

First Amendment lawyer Doug Mirell said: "I think the likelihood the court would approve the injunction preventing release of the movie is next to none."

Mr. Mirell also noted other safeguards the court could exercise, such as disqualifying those who had seen the movie.

"No matter how big counsel happens to think this case is, it ain't bigger than O.J.," Mr. Mirell said. "And we all know what happened in O.J. Notwithstanding the fact that there were made-for-television movies and other pretrial publicity that lots more people were exposed to than would ever see this movie, and he was acquitted in the criminal trial."