

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR MILLARD COUNTY, STATE OF UTAH

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
MILLARD COUNTY

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STATE OF UTAH
Plaintiff

vs.

ROBERTO MIRAMONTES ROMAN and
RUBEN CHAVEZ-REYES

Defendants.

DESERET NEWS, THE SALT LAKE
TRIBUNE, AND THE UTAH HEADLINERS
CHAPTER OF THE SOCIETY OF
PROFESSIONAL JOURNALISTS,

Intervenors.

MEMORANDUM DECISION

Case: 101700001

Case: 101700003

Judge: DONALD J. EYRE

Date: May 4, 2010

Clerk: CTJ

The above entitled matter came before the Court upon the Media Intervenor's Motion to Quash Subpoena to Deseret News Reporter Pat Reavy and for Entry of Protective Order. The Court has reviewed the memorandum of law filed by the Intervenors in support of the Motion and also the memorandum of law filed in opposition of said Motion.

The Court now makes the following findings and decision after having reviewed said memorandum and arguments of counsel.

1. The above numbered criminal cases stem from the murder of Millard County Deputy Sheriff Jose Fox on January 5, 2010. As the investigation of the murder progressed that day and subsequent thereto, several search warrants were issued, both by Judge Robert Hilder, Third District Court, Salt Lake City, and by Judge David Mortensen, Fourth District Court, Utah County.

2. On January 19, 2010, Deseret News reporter Pat Reavy obtained a copy of Search Warrant No. 1027871, with supporting affidavit from the Salt Lake City Police Department pursuant to a GRAMA request. On January 20, 2010, the Deseret News published the contents of said search warrant documents.
3. On January 22, 2010, the State of Utah filed its Motion for Order Sealing Search Warrants pursuant to Rule 40(m) of the Utah Rules of Criminal Procedure.
4. On February 1, 2010, the Court granted the motion of the Media Intervenors to intervene in the cases, and on that same date the Intervenors filed their Motion for Access to Search Warrant Records.
5. The State of Utah filed its objection and response to the Media Intervenor's Motion on February 17, 2010. The Intervenors filed their Reply Memorandum on March 5, 2010, together with the Declaration of Pat Reavy, the Deseret News reporter, wherein he states how he got a copy of the No. 1027871 search warrant documents.
6. The Court set the Media Motions for oral arguments on March 31, 2010.
7. On or about March 15, 2010, the State of Utah had served upon Pat Reavy a subpoena to appear at Court in Fillmore, Utah on March 31, 2010, to testify at a hearing.
8. The Media Intervenors filed a Motion to Quash the Reavy Subpoena on March 29, 2010, which Motion and supporting memorandum had been faxed to the State of Utah on March 26, 2010. Counsel for the State requested a telephonic conference with the Court and counsel. At the telephonic conference counsel for the State requested a continuance of the March 31st oral arguments to permit it time to respond to the Motion to Quash. The Court denied the request for continuance, and indicated it would not permit live witnesses on March 31st.

9. Because of the Court's decision at the March 29th telephonic conference, the State agreed to suspend Mr. Reavy's obligation to appear on March 31, pursuant to the subpoena. Oral argument on the Intervenor's Motions for access was held on March 31, 2010.
10. The State of Utah on April 9, 2010, filed a response to the Media's Motion to Quash Subpoena, and subsequently the Media Intervenors filed their Reply Memorandum.

ANALYSIS

Pursuant to Rule 40(i)(1) a search warrant and all supporting documents are to be automatically sealed by the Court for 20 days after its issuance unless the time is extended or reduced pursuant to section (m) of Rule 40. The State filed a Motion to extend the period of sealing and the Media Intervenors have filed objections to that Motion.

Section (i)(2) discusses the ways and means by which the search warrant and supporting documents filed with the Court pursuant to Rule 40 may be sealed such that the general public may not have access to it. Rule 40 deals with search warrants and supporting documents filed with the Court, but does not deal with copies of those same documents that may have been retained by law enforcement agencies.

The search warrant and supporting affidavit, which were the subject of Mr. Reavy's article in the Deseret News, No. 1027871 was issued by Judge Robert K. Hilder of the Third District Court. Said search warrant was issued pursuant to an affidavit of Detective Cordon Parks of the Salt Lake City Police Department. The Salt Lake Police Department must have retained copies of the search warrant and supporting affidavit.

Mr. Reavy made a request to the Salt Lake City Police Department pursuant to the Government Records Access and Management Act (GRAMA) sec. 63G-2-101 et.seq. U.C.A. for a copy of the search warrant and supporting documents, and the Salt Lake Police Department

released copies of the requested documents the same day as the request. The Salt Lake Police Department could have classified the requested documents as either private, controlled or protected pursuant to GRAMA, and probably should have, which would have prevented their release to the media.

Rule 45 of the Utah Rules of Civil Procedure governs the issuance of subpoenas. The State of Utah issued a subpoena to Pat Reavy to appear at oral argument on the pending Media Motion on March 31, 2010, in Fillmore, Utah. The Media Intervenor filed a Motion to Quash the Subpoena pursuant to Rule 45. In an e-mail dated March 17, 2010, from Patrick Nolan, Assistant Attorney General, to Jeffrey J. Hunt, attorney for the Media Intervenor, Mr. Nolan states: "We intend to question Mr. Reavy, on the record and under oath, concerning his decision to publish the contents of our sealed search warrant, and its supporting documents, in this case."

The Court after reviewing all of the applicable memorandum of law and argument of Counsel cannot find any basis upon which Mr. Reavy's "decision to publish" the subject documents is relevant or material to the issues raised in the Media Intervenor's Motion for Access to Search Warrant Records and the State of Utah's response thereto. The State in its memorandum says that the Court should be concerned that a sealed search warrant was released. It is concerning to the Court that there appears to be a loop-hole in the sealing process for search warrants, but the closing of that loop-hole is not one of the issues presently before the Court, and can only be resolved by Court Rule or statute.

For the above reasons the Court grants the Media Intervenor's Motion to Quash the Subpoena to Pat Reavy.

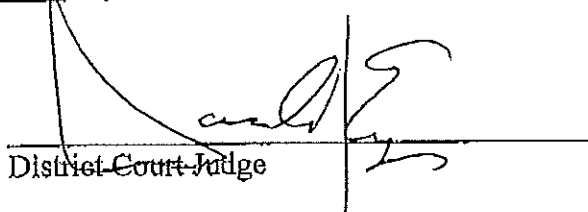
The Media Intervenor has also asked to recover their attorney's fees. Rule 45(e)(1) requires an attorney responsible for issuing a subpoena to take reasonable steps to avoid

imposing an undue burden or expense on the person subject to a subpoena and permits the Court to issue appropriate sanctions, including the award of attorney fees for any breach of this duty. Mr. Reavy was never required to actually appear pursuant to the subject subpoena and therefore he did not lose any wages or incur any travel expense. The Media Intervenors did place Mr. Reavy's testimony somewhat at issue when it filed his Declaration with the Court as part of its pleadings in support of its Motion for Access. Although the Court has now quashed the subject subpoena it is the Court's determination that the award of sanctions would not be appropriate in this case. The Court denies the Intervenor's request for attorney's fees.

Counsel for the Intervenors is requested to prepare an order consistent with this decision, submit it to opposing counsel for review and then to the Court for execution.

Dated this 11th day of May, 2010.




District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 101700003 by the method and on the date specified.

MAIL: STEPHEN R MCCAUGHEY 10 WEST BROADWAY, SUITE 650 SALT LAKE CITY, UT 84101

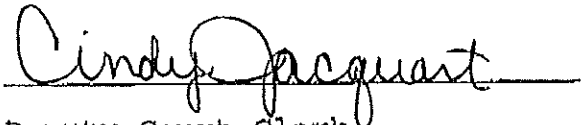
MAIL: JEFFREY J HUNT 185 S STATE ST STE 800 SALT LAKE CITY UT 84111

MAIL: PATRICK B NOLAN CRIMINAL JUSTICE DIVISION 5272 S COLLEGE DR STE 200 MURRAY UT 84123

MAIL: JAMES K SLAVENS 885 S PARK AVE STE 102 FILLMORE UT 84631

MAIL: RICHARD T WADDINGHAM Millard County Attorney 765 S Highway 99 Ste 3 Fillmore UT 84631

Date: 5-4-10


Deputy Court Clerk