

IN THE COUNTY COURT OF FORREST COUNTY
STATE OF MISSISSIPPI
YOUTH COURT DIVISION

IN THE INTEREST OF:

Certain unidentified minors
within the Jurisdiction of
the Youth Court

Cause No. MIS #37

FINAL ORDER GRANTING INJUNCTIVE RELIEF

On December 30, 2010 the State of Mississippi, Forrest County through the youth court prosecutor requested the Youth Court for an issuance of an injunction, without notice, preventing the disclosure of certain video and audio tapes that were obtained unlawfully from the Forrest County Juvenile Detention Center. Further, it was presented to the Youth Court that the videotapes were in the possession of Tawana Lavada Bolton,(Bolton), agents and representative of WDAM TV station, and other unknown individuals.

It was presented that WDAM through its representatives and agents had acknowledged to the youth court prosecutor and the Forrest County Sheriff's office that such videotapes existed and were in its possession. The videotapes were believed to have been provided to WDAM by Bolton, a former employee of the Forrest County Detention Center, and possibly others unknown.

The audio and video tapes were said to depict approximately six juveniles (within the jurisdiction of this court) being held in the Forrest County Juvenile Detention Center. These juveniles and the Forrest County Detention staff were alleged to be shown in a physical altercation. The juveniles were unnamed in the Motion For Injunctive Relief to prevent disclosure of their identities.

The Youth Court Law protects the interest of the juveniles involved as well as the interest of all juveniles within the youth court's jurisdiction.

The youth court prosecutor showed that these videotapes were confidential under the Youth Court Law Section 43-21-261 of the Mississippi Code Annotated (2010).

To disclose the videotapes was against the best interest to the State and the juveniles within the Youth Court's jurisdiction.

Disclosure of all youth court records and all records involving children while under the jurisdiction of the Youth Court are not be disclosed without an order from the Youth Court, and then only under certain conditions and to certain agencies or persons authorized by statute. Further, Bolton, WDAM, other media outlets and the general public were not within the authorized individuals, agencies or institutions which the statute allows disclosure to be made.

These videotapes were said to be evidence of a criminal investigation and were the property of the Forrest County Detention Center and the Forrest County Sheriff's office.

Further, these videotapes were not provided to WDAM, Bolton, or any other person or media outlet by anyone authorized by the Forrest County Sheriff's office or the Forrest County Detention Center. Specifically, it is believed that these videotapes were gained through unauthorized and possibly unlawful means.

The youth court prosecutor requested that Tawana Lavada Bolton, the agents/representatives of WDAM, and any other media outlet be permanently enjoined from further disclosing the contents of the videotapes.

This Youth Court agreed with the youth court prosecutor and an Order was signed that date at 1:40 p.m. and delivered to WDAM and Bolton.

On December 30, 2010, the same day the injunction was entered, WDAM, filed its Motion to Dissolve the Court's December 30, 2010 Order Granting Injunctive Relief pursuant to Rule 65 of the Mississippi Rules of Civil Procedure.

On January 6, 2011 a hearing on the merits of WDAM's motion was held. Present and taking part in the hearing were the youth court prosecutor, the attorney and guardian ad litem for the juveniles, counsel for the Forrest County Sheriff's office, counsel and representatives of WDAM and Bolton.

Background and Findings

WDAM contends in its motion that the Youth Court's Injunctive Order of December 30, 2010 is procedurally and substantially defective and that the Youth Court violated Mississippi Rules of Civil Procedure Rule by issuing the injunctive relief.

In addressing that contention and finding no merit, the Youth Court looks to Mississippi statutes and the rules of the courts.

Rule 81(a) of the Mississippi Rules of Civil Procedure (M.R.C.P.) states that Youth Court proceedings are not governed entirely by the M.R.C.P.

Section 43-21-153 of the Mississippi Code Annotated (2010) specifically gives the youth court full power and authority to issue injunctions necessary to the exercise of jurisdiction and to carry out the purpose of the Youth Court Law.

The issuance of the injunctive relief by the Youth Court under the circumstances presented is resolved by considering the Youth Court Law's statutory intent and provision.

This Youth Court is of the opinion that the Order Granting Injunctive Relief dated December 30, 2010 was appropriate pursuant to the Youth Court Law.

The case-specific nature of this Youth Court's findings show at the time of the altercation incident the Forrest County Youth Court had jurisdiction of the juveniles pursuant to Section 43-21-151 (1) & (2) of the MCA (2010). The juveniles in the Forrest County Detention Center had been placed in secure detention (administered and operated by the Forrest County Sheriff's office pursuant to Section 43-21-109 MCA (2010)) by Order of the Forrest County Youth Court.

That the electronic video recording in the detention center are deemed an official court record involving a juvenile under the Youth Court's jurisdiction pursuant to Section 43-21-259 of the MCA (2010).

No one may obtain an electronic or mechanical copy of the recording without a court order. That disclosure of the videotapes was unauthorized as the videotapes were obtained by WDAM television station through Bolton, a former Forrest County Sheriff's Office Juvenile Detention Officer who without authority of the Forrest County Sheriff's Office obtained and intentionally disseminated the videotapes to WDAM.

That Bolton violated the confidentiality of the juvenile records statute of the Mississippi Youth Court Law and the State's interest cannot justify publication or broadcasting of the videotapes.

That Bolton has been dismissed from her position with the Forrest County Detention Center and was not authorized to have in her personal possession any records of the Forrest County Detention Center or Forrest County Sheriff's office. Bolton through electronic or mechanical unauthorized means made copies of videotapes from the detention center.

Though not involved with how the videotapes were obtained by Bolton, television station WDAM acknowledged that it obtained a videotape of the altercation incident involving several juveniles and detention staff that occurred in the Forrest County Detention Center.

Further, even though WDAM has possession of the videotapes, said videotapes have not been published or broadcasted in WDAM's news reports on the altercation incident.

WDAM desires to play the videotapes in furtherance of its news reports on the altercation at the detention center.

And it is the position of WDAM that the videotapes, under the First Amendment to the United States Constitution, are a matter of public concern. That the Youth Court confidentiality statutes should give way to the interest of WDAM in airing the videotapes as a matter of public concern.

Confidentiality

Generally, it has been held that there is no constitutional confidentiality right for an adjudicated delinquent. Yet in Mississippi there is a State's interest in protecting the anonymity of juveniles within the jurisdiction of the Youth Court.

Confidentiality is mandated by our state law in our Mississippi Youth Court Law.

The records of the juvenile detention center having custody of a delinquent youth under court order are confidential and shall be kept confidential except as authorized by Mississippi Youth Court Law Miss. Code Ann. 43-21-259 (2010).

As indicated in the comments to our Rules of Uniform Youth Court Practice, this confidentiality requirement is conducive to the protection and rehabilitative purposes of the Youth Court.

In the United States Supreme Court case of *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979), then Justice William Rehnquist in a concurring opinion stated:

It is a hallmark of our juvenile justice system in the United States that ... its proceedings have been conducted outside of the public's full gaze and the youths brought before our juvenile courts have been shielded from publicity.,... This insistence on confidentiality is born

of a concern for the welfare of the child,... The prohibition of publication of a juvenile's name is designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State,... Publication of the names of juvenile offenders may seriously impair the rehabilitative goals of the juvenile justice system....

Juvenile codes in many states now allow names and sometimes even pictures and court records of juveniles involved in delinquency proceedings to be released to the media. See Howard N. Snyder and Melissa Sickmund, Juvenile Offenders and Victims: 1999 National Report (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1999), 101.

The National Center for Juvenile Justice identified themes and trends in state laws targeting juveniles, one of which was less confidentiality of juvenile court records and proceedings for serious, violent and chronic juvenile offenders. See: Patricia Torbet et al., Executive Summary of State Responses to Serious and Violent Juvenile Crime: Research Report (Washington, D.C.: National Center for Juvenile Justice) xi.

The decisions of the United States Supreme Court on the issue of confidentiality of juvenile records is shown in the cases, *Oklahoma Publishing Co. v. District Court*, 430 U.S. 308 (1977) and *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979). Both cases sought to balance the confidentiality of juvenile records with First Amendment freedom of the press.

In the Oklahoma case, the United States Supreme Court ruled that a state court was not allowed to prohibit the publication of information obtained in an open juvenile proceeding. The case involved an 11-year-old boy suspected of homicide, who appeared at a detention hearing where photographs were taken and published in local newspapers. When the local district court prohibited further disclosure, the publishing company claimed that the court order was a restraint in violation of the First Amendment, and the Supreme Court agreed.

The Smith case involved the discovery and publication of the identity of a juvenile suspect in violation of a state statute prohibiting publication. The United States Supreme Court, however, declared the statute unconstitutional because the Court believed the state's interest in protecting the child's identity was not of such a magnitude as to justify the use of such a statute. Therefore, if newspapers **lawfully obtain (emphasis added)** pictures or names of juveniles, they may publish them.

Based on these decisions, it would appear that the Supreme Court favors the constitutional rights of the press over the right to privacy of the juvenile offender where the information is lawfully obtained.

Interestingly, though as stated by Justice Stevens in a concurring opinion in the judgment in the United States Supreme Court case of Nebraska Press Association v. Stuart 427 U.S. 539 (1976) was this comment:

I agree that the judiciary is capable of protecting the defendant's right to a fair trial without enjoining the press from publishing information in the public domain, and that it may not do so. Whether the same absolute protection would apply no matter how shabby or illegal the means by which the information is obtained, no matter how serious an intrusion on privacy might be involved, no matter how demonstrably false the information might be, no matter how prejudicial it might be to the interest of innocent persons, and no matter how perverse the motivation for publishing it, is a question I would not answer without further argument. See Ashwander v. TVA, 297 U.S. 288, 346-347, 56 S. Ct. 466, 482-483, 80 L.Ed. 688 (Brandeis, J., concurring).

Key issues are whether or not the information about a juvenile within the jurisdiction of the youth court is in the public domain and lawfully obtained.

It is the position of WDAM that based on these decisions, and several others that this Youth Court has read and considered, that it appears our United States Supreme Court favors the constitutional rights of the news media over the right to confidentiality of a delinquent youth.

Conclusion

This Youth Court is generally not opposed to allowing access to juvenile records where there are findings of fact and conclusions of law made by the Youth Court of extraordinary and compelling circumstances for disclosure.

In this case WDAM has not presented evidence of a "need" for disclosure of the videotapes. Certainly while the confidentiality requirements may frustrate WDAM in its reporting of the altercation incident involving juveniles detained at the Forrest County Detention Center, there is nothing in this Order that bans, prohibits or restricts WDAM from broadcasting any information concerning the altercation where WDAM has acquired that information in a legal fashion.

Within the authority of the Youth Court Law the judge has discretion to allow for the disclosure of records involving youths pursuant to Section 43-21-261(1) of the MCA (2010). Though records so disclosed are subject to the confidentiality requirements of Section 43-21-261(2) of the MCA (2010). These discretionary decisions to disclose are made on a case-by-case basis as Justice Stevens pointed out in his concurring opinion in the Nebraska Press Association case.

As for disclosure of records in this case this Court finds that we are at a juncture as stated in comments of the Uniform Rules of Youth Court Practice that "Media and electronic media access to youth court proceedings is seldom consistent with the philosophy expressed in section 43-21-103 of the Mississippi Code." Confidentiality of Youth Court records is an important interest, both for the child and the State.

Under the circumstances presented in this case, to allow the dissemination of and airing of the videotapes of juveniles under the jurisdiction of the Youth Court in the Forrest County Detention would erode the confidentiality of Youth Court records and proceedings.

This day and age there are all types of electronic devices that can record video and audio. Now to open the door for allowing unauthorized video or audio tapes that are made and then disseminated to be published or broadcast by the news media would cause significant problems for the Youth Court.

This type of unauthorized and illegal activity would give unbridled license to record or videotape juveniles in the jurisdiction of the Youth Court. Then the media regardless of how the record was obtained would be able to publish or broadcast the juvenile proceedings or record.

Such a course of action would seriously impair the rehabilitative goals and objectives of the Mississippi juvenile justice system.

A final point is that WDAM, not in its motion but during the hearing on January 6, 2011, sought on motion ore tenus for the Youth Court pursuant to Section 43-21-261 MCA (2010) to allow disclosure of the videotape that identifies the juveniles in the altercation incident.

WDAM did not present a written request under Section 43-21-261 of the MCA (2010) pursuant to the requirements of the Mississippi Youth Court Law for the disclosure of the Forrest County Detention Center records. Even that form of request is inappropriate under the circumstances of this proceeding.

This Youth Court finds and concludes under the circumstances presented and the reasons herein set forth that WDAM should and is precluded from disclosing and broadcasting the videotapes of the juveniles in the altercation at the Forrest County Detention Center.

That the order of December 30, 2010 should remain in full force and effect.

THEREFORE, IT IS ORDERED AND ADJUDGED that the audio, video or photographic image that depicts juveniles in an altercation incident with detention staff while in the Forrest County Detention Center were unauthorized by the Forrest County Sheriff's office and are not for public use, dissemination or broadcast and shall not be disclosed. Further, Tawana Lavada Bolton, agents/representatives of WDAM television, and any other person or agent of other media outlets that may come into possession of said videotapes are hereby enjoined from disclosing, publishing or broadcasting the contents of said images or videotapes to any other person or agency.