

DISTRICT COURT FREMONT COUNTY, COLORADO 136 Justice Center Road Cañon City, Colorado 81212 (719) 269-0100	DATE FILED: July 22, 2021 6:21 PM CASE NUMBER: 2021CV30042
NEXSTAR MEDIA GROUP, INC., and ROB LOW, Plaintiffs v. RANDY KELLER, Fremont County Coroner, Defendant.	▲ COURT USE ONLY ▲
	Case Number: 2021CV30042 Div.: 2 Ctrm.: 301
FINDINGS AND ORDER DENYING PLAINTIFFS' CLAIMS AND REQUESTED RELIEF	

THIS MATTER came before the Court July 22, 2021 for hearing on the Plaintiffs' Complaint filed on June 8, 2021 and the Court's Order to Show Cause Regarding Inspection of Record pursuant to Colorado Open Records Act (CORA), §§ 24-72-201 *et seq.*, C.R.S.

Counsel, Rachael Johnson, appeared on behalf of Plaintiffs Nexstar Media Group, Inc. and Rob Low, reporter for Nexstar Media Group, Inc. Defendant Randy Keller, Fremont County Coroner, was present with Fremont County Attorney Brenda L. Jackson. All parties, witnesses and counsel were authorized to appear by Webex video. The Webex video and telephone access remained open to the parties and the public and on the record throughout the hearing. Testimony was presented by Defendant Fremont County Coroner Randy Keller and subpoenaed witness Special Agent Amber Cronan of the Federal Bureau of Investigation.

FINDINGS

1. This Court has jurisdiction over the claims herein under § 24-72-204(5) of the Colorado Open Records Act (CORA), § 24-72-201 *et seq.*, C.R.S. based upon belief that the public records that are at the center of this action can be found in this judicial district.

2. Plaintiffs seek access to public records related to an autopsy of Mr. LaMarcus Hillard who was, at the time of his death, incarcerated in the ADX "Supermax" Federal Correctional operated by the Federal Bureau of Prisons and located in Fremont County, Colorado, in the jurisdiction of Fremont County Coroner Keller. The records Plaintiffs seek are in the possession, custody, or control of the Fremont County Coroner Keller.

3. Plaintiffs have made a number of Colorado Open Records Act (CORA) §24-72-201, et seq. C.R.S.) requests for some of the autopsy photos to the El Paso Coroner's Office, El Paso County Attorney, Fremont County Coroner's Office, and Fremont County Attorney, which have all been denied by the respective offices. Plaintiffs assert that the autopsy photos are part of the Autopsy Report, and are therefore public records subject to disclosure under §24-72-204 (3)(a)(I).

4. Defendant Fremont County Coroner Keller contends that, while not part of the Autopsy Report, the photographs in the possession of Coroner Keller are part of the autopsy records, i.e. the supporting documentation used to develop the report, along with notes, emails, tangible evidence, examinations, discussions and other information.

5. Coroner Keller testified that is not statutorily qualified to perform autopsies and therefore, the El Paso County Coroner's Office performed the autopsy, with Coroner Keller and others in attendance. See §30-10-606.5, C.R.S.

6. Following the autopsy, various items of evidence were distributed to the Federal Bureau of Investigation, Federal Bureau of Prisons and Coroner Keller. Coroner Keller received fingerprints, autopsy photos (on CD), and a blood ard. These items of evidence remain in his custody and control. The FBI received the various items of physical evidence and the autopsy photos (on CD). All parties received the Autopsy Report (Exhibit A)

7. An Autopsy Report is a public record as defined in §24-72-202(6)(a)(I) and §24-72-202(7), C.R.S. and is subject to the CORA requirements for public inspection and disclosure. An autopsy report is arguably a medical record of a deceased person, but CORA specifically requires disclosure of coroner's autopsy reports as an exception to the mandated nondisclosure of an individual person's medical records. See §24-72-204(3)(a), C.R.S. That being said, CORA provides that the custodian of criminal justice records shall allow any person the right of inspection of such records or any portion thereof, **except** (emphasis supplied) pursuant to §24-72-204(2)(a)(I), C.R.S. the specific language of which is as follows:

(2)(a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(I) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any other law enforcement purpose.

8. The Coroner is an officer of a political subdivision as described in CORA (§24-72-202(2) & (5), C.R.S.), maintaining "public records" (§24-72-202(6)(a)(I), C.R.S.) However, when investigating a death with criminal implications, the Coroner's Office also meets

the definition of a “criminal justice agency” as defined in the Colorado Criminal Justice Records Act (CCJRA), §24-72-301, et seq. C.R.S.

9. The CCJRA definition of a “criminal justice agency” includes any agency of any county that performs any activity directly relating to the detection or investigation of crime and criminal identification activities. See §24-72-302(3), C.R.S. As noted above, the Coroner is a peace officer whose duties include investigation of the cause and manner of death in conjunction with law enforcement agencies if criminal activity is suspected.

10. In the present case, the Federal Bureau of Investigation and Bureau of Prisons had personnel in attendance at the autopsy, including FBI Special Agent Amber Cronan and Coroner Keller.

11. Testimony presented by Coroner Keller indicated that he is the authorized official custodian having personal custody and control of the criminal justice records in question. (§24-72-302(5), C.R.S.) Coroner Keller provided the Autopsy Report (Exhibit A) to Plaintiffs as required but denied the inspection of the records as the records were part of an ongoing criminal investigation and were files compiled for law enforcement purposes. The photographs were part of all medical evidence and documentation gathered through the autopsy process, along with body radiograph, blood card, fingernails, and toxicology, all of which comprises the medical documentation regarding Mr. Hillard, used to determine manner and cause of death. CORA prohibits disclosure of medical records under §24-72-204 (3)(a)(I), C.R.S.

12. FBI Special Agent Amber Cronan testified that she has collected and maintained the chain of custody of the evidence that she brought to the autopsy. She stated that there is an ongoing active investigation of the death of Mr. Hillard that includes acquiring records and evidence from other agencies and sources. FBI Agent Cronan testified that the release of the requested records would damage the investigation.

13. In the present case, the role of the Court is to consider whether Coroner Keller abused his discretion when denying access to the autopsy records under §24-72-304, C.R.S. and §24-72-305, C.R.S.

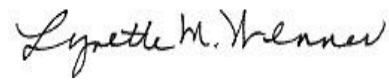
14. The Court finds that Coroner Keller balanced the interests at the time of the request for the Autopsy Report, Exhibit A, and determined that disclosure was warranted. The Court further finds that Coroner Keller did not abuse his discretion in denying disclosure of the investigatory files, and specifically photographs, based on his determination that disclosure would be contrary to the public interest. Coroner Keller has a legal basis under both CORA and CCJRA for denying disclosure of additional supporting documents, information, and evidence (including photographs of evidence) that pose additional risks that could impede or compromise the investigation. Coroner Keller properly considered and determined that further disclosure of photographs is contrary to the public interest.

THEREFORE,
IT IS ORDERED AS FOLLOWS:

- A. Plaintiffs' claims for Unlawful Denial of Access to Public Records Under CORA are denied.
- B. Plaintiffs' claim that they are entitled to copy and inspect autopsy photos is denied.
- C. Plaintiffs' request for an award of attorney's fees and costs is denied.

So ordered July 22, 2021.

BY THE COURT:

A handwritten signature in cursive script, reading "Lynette M. Helmer".

District Court Judge