

ath- Joe Biesk

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
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) Plaintiff,)
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)
 -vs-) Case No 13 CF 100
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 BETHANY L. McKEE.)
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)
 Defendants)

FILED
13 AUG 29 PM 2:49
CLERK OF COURT

DECISION

This cause comes on for the Court's decision on the motion of the Defendant, Bethany McKee to divest Joseph Hosey of his reporter's privilege pursuant to 735 ILCS 5/8-903

The above Defendant is charged with six counts of First-Degree Murder, allegedly occurring on or about January 10, 2013 She was arrested for the offenses and remains in the custody of the Will County Adult Detention Facility On January 31, 2013, the Grand Jury returned an indictment for multiple counts of Murder

On January 14 2013, the Joliet Patch began to run a series of articles, The Nightmare on Hickory Street An Inside View to a Horrific Double Murder, by Joseph Hosey (Hosey) One of the articles starts off by saying that Patch obtained police reports dealing what allegedly transpired in the Hickory Street house in Joliet where two young men were choked to death in January (Emphasis added)

Following this, a series of articles have been published -- all by the same author

- a Accused Killers Confessed to Having Sex on the Bodies, Police Reports Reveal"
- b From Rape to Robbery Accused Killers Changed Their Story'
- c 'Daddies Little Girls One Dad Threatened to Call the Cops, the Other Did"
- d 'Accused Killer Wanted to Keep Dead Men's Teeth'
- e 'There s Four Mouths That Know,' Accused Killer Says. But We're All Involved Equally'"

Subsequent articles reveal that Hosey also obtained the toxicology reports from autopsies done on the two victims in this case

Following the initial release of the Joliet Patch articles, Mr Chuck Bretz, attorney for the Defendant, spoke to the First Assistant State's Attorney Ken Grey regarding the content of the articles Mr Grey indicated that it was the understanding of his office the Joliet Police Department leaked the reports in this case to the media and that the office of the Will County State's Attorney, was very disappointed"

Due to this material being made public, the Defendant filed a motion to ascertain how a reporter obtained the full reports in a double homicide within six weeks of the crime *See Generally Defendant's Motion for a Gag Order, To Seal Court Records, and for Other Relief* (Hereinafter 'Gag Order Motion)

Ultimately the Court did grant a portion of the relief requested by the Gag Order Motion Specifically it ordered all Defendants the Will County State s Attorneys' Office, and the Joliet Police Department to submit affidavits regarding any role they

played in the leak. The Court denied any relief to conduct an evidentiary hearing or to order an investigation into the leak.

Contemporaneous to filing the Gag Order Motion, the Defendant issued a subpoena to Hosey, requiring him to appear in Court and turn over the records he had obtained. Hosey objected to the subpoena and argued that the reporter's privilege precluded the release of information. *See Generally Joseph Hosey's Motion to Quash Subpoena and Memorandum in Support of Joseph Hosey's Motion to Quash Subpoena.*

All the relevant parties submitted affidavits pursuant to the Court's ruling on the Gag Order Motion. A review of the affidavits shows that each of the parties ordered to provide an affidavit, the Will County State's Attorneys' Office, the Joliet Police Department, the Will County Public Defender's Office, Chuck Bretz & Associates, the law office of George Lenard, and the law office of Edward Jaquays, are not responsible for the leak of the reports including each individual employed at the respective organizations.

Hosey has asserted a reporter's privilege pursuant to 735 ILCS 5/8-901, which states that "[n]o court may compel any person to disclose the source of any information obtained by a reporter except as provided in Part 9 of Article VIII of this Act."

735 ILCS 5/8-903 states, in relevant part, that "where a person claims the privilege conferred by Part 9 of Article VIII of this Act, the person or party body or officer seeking the information so privileged may apply in writing to the circuit court serving the county where the hearing, action or proceeding in which the information is sought for an order divesting the person named therein of such privilege and ordering him or her to disclose his or her source of the information."

In order to divest Hosey of his privilege, the petitioner must show

- a the name of the reporter and of the news medium with which he or she was connected at the time the information sought was obtained.
- b the specific information sought and its relevancy to the proceedings and
- c a specific public interest which would be adversely affected if the factual information sought were not disclosed 735 ILCS 5/8-904

The Court shall consider the the nature of the proceedings the merits of the claim or defense, the adequacy of the remedy otherwise available, if any, the relevancy of the source, and the possibility of establishing by other means that which it is alleged the source requested will tend to prove before making a ruling on divesting privilege 73 ILCS 5/8-906

To divest privilege, the Court must find

- a the information sought does not concern matters, or details in any proceeding required to be kept secret under the laws of this State or of the Federal government.
- b all other available sources of information have been exhausted and
- c disclosure of the information sought is essential to the protection of the public interest involved 735 ILCS 5/8-907

In response to the motion filed by defendant McKee, Joseph Hosey has filed a Memo and Motion in Opposition to Defendant s Motion to Divest him of his reporting privilege The issue has been extensively briefed and argued before the Court

Matter now comes on now decision The Court has attempted to review all relevant case law That would include an article entitled Privilege of News Gatherer Against Disclosure of Confidential Sources or Information" 99 ALR 3rd 37 That article

contains an extensive and updated discussion on the case law relative to this issue. Having reviewed the facts presented to the Court, the affidavits provided by the individuals who may have access to the material as well as the case law available to the Court for review, it is clear to the Court that Joseph Hosey is a reporter and works for a news medium that are intended to be covered by the Illinois law. It is also clear that Hosey gave assurances of confidentiality to his source at the time of obtaining this information. The Court also finds that the information sought does not concern matters, or details in any proceeding required to be kept secret under the laws of the State or of the Federal Government.

It is also clear that if the source of the information to the reporter is an attorney or a member of the staff of any of the attorneys involved in this matter, that the Supreme Court rules relative to discovery have clearly been violated. Specifically, Supreme Court Rule 415(c) states as follows:

Rule 415(c) reads as follows: "Custody of Materials. Any materials furnished to an attorney pursuant to these rules shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms and conditions as the court may provide."

Rule 415(g)(1) reads as follows: "willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court."

Upon further reviewing this Rule, the Court acknowledges the committee comments from the time of the adoptions of the rule. The comments relative to Paragraph C reads as follows:

"If the materials to be provided were to become, in effect, matters of public availability once they had

been turned over to counsel for the limited purposes which pretrial disclosures are designed to serve, the administration of criminal justice would likely be prejudiced. Accordingly, this paragraph establishes a mandatory requirement in every case that the material which an attorney receives shall remain in his exclusive custody. It should be noted that this paragraph also applies to the State."

The timing of the release of this information to the news media also creates a concern as to whether or not the secrecy of the Grand Jury process was violated. The secrecy of Grand Jury proceedings is fundamental to proper criminal procedure. Under the Illinois Criminal Code, pursuant to 725 ILCS 5/112-6, Grand Jury proceedings must remain secret and disclosure of information pending before the grand jury is prohibited except in limited circumstances. The statute goes on to provide that any Grand Juror or officer of the Court who discloses matters occurring before the grand jury other than in accordance with the provisions of this subsection shall be punished as a contempt of court."

It was held in some early cases that the same principle which forbid disclosure by the grand jurors applies to all persons authorized by law to be present in the Grand Jury room, whether the person be a clerk, an officer in charge, a witness or the prosecuting attorney (citation omitted). At this time the Court is not in a position to say definitively whether or not the secrecy of the Grand Jury has been violated in this case. However, if the disclosure of this information to the media was in violation of Illinois law regarding the secrecy of the Grand Jury then this Court would have a reason to attempt to determine whether a violation has occurred, and if so, take the steps that are appropriate under the law to ensure such violations does not occur in the future. In addition, the filing of a false affidavit could lead to charges or court imposed sanctions.

In order for the Court to grant a Motion to Divest a Reporter of his privilege the Court must find that all other available sources of information have been exhausted and disclosure of the information sought is essential to the protection of the public interest involved. With regard to the issue of exhaustion this Court has attempted to obtain sworn statements from each and every individual who had the opportunity to have provided the information to Respondent Hosey. Those affidavits, the Court notes, number in excess of five-hundred now are part of the court file. The question before the Court, then, is whether or not that effort is adequate to meet the criteria of the Court having exhausted all other available sources of obtaining this information. In reviewing the In Re The Special Grand Jury Investigation of Alleged Violations of the Juvenile Court Act, 104 Ill 2d 419, the Illinois Supreme Court has stated that there are varying standards that have been applied to determine whether other sources have been exhausted. That case states in our judgment Section 8-907 reflects a clear legislative intent to create a standard which balances the reporters first amended right against the public interest in the information sought and the practicable difficulties in obtaining the information elsewhere. Thus, the extent to which an investigation must be carried before the reporter's privilege should be divested could not be reduced to any precise formula or definition, but must, in view of the competing interest involved, depend on the facts and circumstances of the particular case (pg. 427). Under the facts and circumstances of this case, the Court finds that all other available sources of obtaining the information have been exhausted.

In this era of digital media where information is available to the public immediately, it is more important than ever that the Court balance the rights of the parties

appropriately. This Court cannot ignore the fact that there is the potential for financial gains that come from one reporter obtaining this information sooner than other reporters. The Court can envision instances where significant income can result from obtaining information and using that information to author articles, books, plays, screenplays, in order to profit from exclusively obtained information. This Court is aware of its duty and obligation to protect the First Amendment Rights of the reporters, but cannot envision where those rights are superior to the fair trial rights of individuals charged by the State with the most serious criminal offenses.

Once it has been determined that the Court has exhausted all efforts to obtain this information in any other way, the question then becomes a question of whether or not the information sought has relevance to the issues pending before the Court. Some of the cases that the Court has reviewed seem to indicate that relevance is defined similar to a civil discovery standard, which is that the information could lead to relevant evidence. The issue of relevancy is not essentially limited to relevancy for trial issues. As the Court has previously noted, the disclosure of this information is relative to a determination of whether or not the Rules regarding the secrecy of the Grand Jury proceedings and the Rules of the Illinois Supreme Court have been intentionally violated by individuals who are subject to such Rules. Although the Court has indicated that these inquiries may seem to be off topic when it comes to focusing on four (4) Defendants charged with Murder, this Court in no way believes that this inquiry is off the topic of determining whether or not there have been violations of Illinois law or Supreme Court Rules. In the event that these charges lead to a conviction, identifying the source of this information will become an issue on appeal or in a post-conviction petition. That fact cannot be disputed.

Based upon all of the foregoing, as well as the briefs and arguments presented by counsel and made part of the record in this cause, pursuant to 735 ILCS 5/8-907, the Court finds

- (1) The information sought does not concern matters required to be kept secret by any laws of the State or Federal government,
- (2) Based upon the procedures followed by Court in obtaining sworn affidavits from all individuals potentially involved in the release of the information, all other available sources of information have been exhausted, and disclosure of the information sought is essential to the protection of the public interest involved

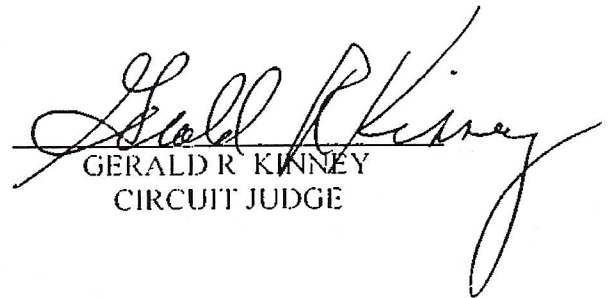
The Court therefore divests Joseph Hosey of the reporter privilege pursuant to law and directs that reporter Hosey provide to the Court, for in-camera inspection, copies of any and all documents received by the reporter Hosey and any and all information which tends to identify the source of the material provided. If the documents do not disclose the source of the material provided, the Court further directs that reporter Hosey provide the Court with an affidavit stating details of how these documents were obtained, when these documents were obtained, and who provided the documents to the reporter. The Court directs that this order be complied with within twenty-one (21) days of the entry of this order. The Court will determine the specific relevance of the disclosure and further disclose the information only as the Court deems necessary to address the issues in the appropriate manner. The media's right will be protected as well as possible by the limited disclosure. The Court finds that these protective conditions are necessary and

appropriate This cause will be set for status on October 3, 2013 at 9 30 a m

Respondent Hosey is directed to appear at that time

DATED THIS 29th DAY OF AUGUST, 2013

ENTER


GERALD R KINNEY
CIRCUIT JUDGE