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*Attorneys for City and Library Defendants*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,  
CITY OF HAMILTON, LEE  
ENTERPRISES, INC., BOONE  
KARLBERG P.C., DR. ROBERT  
BROPHY, TRISTA SMITH, NANSU  
RODDY, JERRY STEELE, STEVE  
SNAVELY, STEVEN BRUNER-  
MURPHY, RYAN OSTER,  
KENNETH S. BELL, and JENNIFER  
LINT,

Defendants.

Cause No. CV-11-064-M-DWM-JCL

**DEFENDANT CITY'S REPLY  
BRIEF IN SUPPORT OF MOTION  
TO STRIKE EXHIBIT**

## **INTRODUCTION**

Plaintiff has filed an objection, dated November 8, 2011, to the City Defendants' motion to strike exhibit. [Doc. 135.] This responds to Plaintiff's arguments against the motion to strike. Plaintiff's arguments are not supported by the law or the record.

Contrary to Plaintiff's argument, Plaintiff's use of Exhibit B (Doc. 130-2) violates a court order (Doc. 135-1), filed June 28, 2011, in *Spreadbury v. Bell and City of Hamilton*, Cause No. DV-10-639, Ravalli County District Court. It also violates Montana statutes on confidential criminal justice information, as well as the terms of Plaintiff's probationary sentence in *State v. Spreadbury*, Cause No. DC-09-154, Ravalli County District Court. Therefore, the City Defendants' motion to strike Exhibit B should be granted, and Exhibit B should be stricken.

## **DISCUSSION**

According to Plaintiff, the purpose of Exhibit B is to show that he was charged with a felony (intimidation) without probable cause. [Doc. 141, pp. 3-4.] However, that matter has already been determined by the courts.

In Cause No. DC-09-154, Plaintiff moved to dismiss the criminal information for a failure to establish probable cause to charge him with intimidation. The Ravalli County District Court denied the motion. *State v. Spreadbury*, 257 P.3d 392 ¶ 4 (Mont. 2011). Also, despite having pleaded no

contest to the charge of felony intimidation, Plaintiff still appealed to the Montana Supreme Court. In that appeal, Plaintiff argued the state district court did not have jurisdiction to try the intimidation case because there was no probable cause to believe he had committed the offense of felony intimidation. The Montana Supreme Court rejected Plaintiff's argument, and it affirmed the criminal judgment relating to felony intimidation by Plaintiff. *State v. Spreadbury, id.*, ¶¶ 6, 10-11 and 14.

As a matter of collateral estoppel and federal law, Plaintiff is prohibited from challenging in this action whether probable cause existed to charge him with felony intimidation. *Troutt v. Colorado Western Ins. Co.*, 246 F.3d 1150, 1157 (9<sup>th</sup> Cir. 2001) (collateral estoppel); *Valley Wood Preserving, Inc. v. Paul*, 785 F.2d 751, 753 (9<sup>th</sup> Cir. 1986) (collateral estoppel in a 1983 claim); *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (one cannot impugn an earlier criminal conviction in a 1983 claim). In summary, Exhibit B cannot serve the purpose intended by Plaintiff. Therefore, it should be stricken.

Plaintiff argues the Defendants have been allowed to submit information concerning the "interaction between Plaintiff and Ms. Roddy" on November 4, 2009, and therefore, Plaintiff should be allowed to submit Exhibit B. [Doc. 141, pp. 2, 4.] However, Plaintiff does not identify the information to which he refers. Presumably, it is Doc. 92, pp. 5-7. If so, Plaintiff's argument fails to distinguish

the difference between Court determinations and confidential criminal justice information, particularly the use of a police report which a State District Court has determined should be redacted and sealed. [Doc. 135-1, pp. 7-8, 16-21, 23.] In summary, Plaintiff's unequal treatment argument is without foundation and misses the point.

Plaintiff argues the police report quoted in Exhibit B is an "initial offense report." [Doc. 141, p. 3.] However, Plaintiff's argument has already been determined against him in *Spreadbury v. Bell and City of Hamilton*, Cause No. DV-10-639, Ravalli County District Court. In the State District Court, Plaintiff urged the police report quoted in Exhibit B was public criminal justice information because it was an "initial offense report." However, the State District Court determined the report included information far beyond the scope of an initial offense report, and it contained "confidential criminal justice information." [Doc. 135-1, pp. 7-8.] Addressing privacy concerns, the State District Court wrote as follows:

The Court reaches a different conclusion with respect to other statements and information in the Library Report for which a protected privacy interest exists. Under these circumstances, including Plaintiff Spreadbury's withholding of the reason for the requested disclosure, the Court concludes that the demands of individual privacy with respect to such statements and information clearly exceed the merits of public disclosure.

[Doc. 135-1, pp. 16-17.]

Having made its determinations, the State District Court in Cause No. DV-10-639 went to great effort to redact the report and seal it. [Doc. 135-1, pp. 18-21, 23.] In this connection, the report sealed by the State District Court has different and much more extensive redacting than the report quoted by Plaintiff in Exhibit B. [Doc. 130-2.] The City Defendants offer to present this Court with a copy of the report redacted by the State District Court for an *in camera* inspection.

Plaintiff argues the Order issued by Judge Haynes in Cause No. DV-10-639 was issued to protect Ms. Roddy. [Doc. 141, p. 4.] However, the Order, itself, demonstrates the great effort expended by the State District Court to issue a well-reasoned and deliberative decision. [Doc. 135-1.] Further, as Plaintiff indicates, he stipulated to keep Judge Haynes on the case. [Doc. 141, p. 4.]

According to Plaintiff, he originally published the blog, Exhibit B, on June 19, 2009, before Judge Haynes issued his Order. [Doc. 141, pp. 2-3 (“Spreadbury published the speech June 19, 2009, due to having a [sic] possession of a copy of . . . report.”), and p. 4.] However, Plaintiff’s argument misses the point. The fact that Plaintiff had a copy of the report before Judge Haynes’ Order in Cause No. DV-10-639<sup>1</sup> does not make the report public criminal justice information. *See* MCA § 44-5-103(3) (defining confidential criminal justice information). That is,

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<sup>1</sup> If Plaintiff already had a copy of the report, why did he put the State District Court, Mr. Bell and the City of Hamilton through the time and expense of litigating DV-10-639, especially if he was going to ignore the State District Court’s decision in any event?

the report still contains confidential criminal justice information. [Doc. 135-1, pp. 7-8.] The dissemination of confidential criminal justice information is restricted. MCA § 44-5-303(1). Moreover, a person like Plaintiff who accepts confidential criminal justice information “assumes equal responsibility for the security of the information . . .” MCA § 44-5-303(3).

Plaintiff does not explain how he got the report. Presumably, it was through the criminal discovery process in his felony intimidation case. *See* MCA § 46-15-322. However, Plaintiff represented to the State District Court in Cause No. DV-10-639 that the report was never given to him although he had been shown the report. [Doc. 135-1, p. 15.] In any event, a report obtained through the criminal discovery could be disclosed only to the extent necessary for the proper conduct of the criminal case. Under MCA § 46-15-326, the report “may not be disclosed to the public.”

In summary, Plaintiff’s argument about when he originally obtained the report and published the blog (Exhibit B) misses the point. Plaintiff still has obligations relating to confidential criminal justice information. Also, it does not excuse Plaintiff’s use of Exhibit B in this action when the exhibit quotes a report in contravention of Judge Haynes’ Order in Cause No. DV-10-539. [Doc. 135-1, p. 23.]

From the City's viewpoint, Plaintiff's use of the blog (Exhibit B) in this action also violates the conditions of his probationary criminal sentence in *State v. Spreadbury*, Cause No. DC-09-154, Ravalli County District Court. That sentence provides that Plaintiff must comply with all state laws. [Doc. 12-4, p. 3, No. 8]. As outlined above, Plaintiff's actions have violated Montana statutes relating to the dissemination of confidential criminal justice information. In addition, while Plaintiff has not explained how he obtained the police report, it appears Plaintiff has violated MCA § 46-15-326 regarding the disclosure of information obtained in criminal discovery.

Also, as a condition of his probationary sentence, Plaintiff is required to remove all content referring to Ms. Roddy from any website contributed to by Plaintiff. [Doc. 12-4, p. 4, No. 15.] Use of the blog as Exhibit B in this action does not comply with this sentencing condition. In this connection, Plaintiff argues that Exhibit B was published during a stay of the criminal court judgment. However, Exhibit B was filed with this Court on October 26, 2011. [Doc. 130-2.] According to Plaintiff, his stay was lifted in August 2011. [Doc. 141, p. 3.] The probationary conditions were stayed on March 8, 2011. [Doc. 135-1, p. 3, No. 3.]

Finally, as a condition to his criminal probationary sentence, Plaintiff is required to conduct himself as a good citizen. [Doc. 12-4, p. 3, No. 8.] As outlined above, Plaintiff's use of Exhibit B which quotes confidential criminal

justice information violates Montana statutes and the Court's Order in cause No. DV-10-639. Certainly, violating statutes and Court Orders is not the conduct of a good citizen.

### **CONCLUSION**

The City Defendants' Motion to Strike Exhibit B to Plaintiff's Notice of National Security Clearance, filed October 26, 2011, should be granted. Under the doctrine of collateral estoppel and federal law, Plaintiff's use of Exhibit B does not serve a legitimate purpose. Further, Plaintiff's use of Exhibit B violates state statutes and State District Court Orders.

DATED this 14<sup>th</sup> day of November, 2011.

/s/ William L. Crowley  
William L. Crowley  
BOONE KARLBERG P.C.  
*Attorneys for Defendants*  
*Bitterroot Public Library, City of*  
*Hamilton and Boone Karlberg P.C.*



## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 7(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and contains approximately 1,490 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 14<sup>th</sup> day of November, 2011.

/s/ William L. Crowley  
William L. Crowley  
BOONE KARLBERG P.C.  
*Attorneys for Defendants Bitterroot  
Public Library, City of Hamilton and  
Boone Karlberg P.C.*

CERTIFICATE OF SERVICE

I hereby certify that, on the 14<sup>th</sup> day of November, 2011, a copy of the foregoing document was served on the following persons by the following means:

  1   CM/ECF

           Hand Delivery

  2   Mail

           Overnight Delivery Service

           Fax

           E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury  
700 South Fourth Street  
Hamilton, MT 59840

/s/ William L. Crowley  
William L. Crowley  
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Library, City of Hamilton,  
and Boone Karlberg P.C.*