

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JAMES ELMER SHAW,

Plaintiff,

vs.

DENNIS KAEMINGK, SECRETARY OF CORRECTIONS; INDIVIDUAL AND OFFICIAL CAPACITY; ROBERT DOOLEY, DIRECTOR OF PRISON OPERATIONS; INDIVIDUAL AND OFFICIAL CAPACITY; DARIN YOUNG, WARDEN; INDIVIDUAL AND OFFICIAL CAPACITY; JENNIFER DRIESKE, DEPUTY WARDEN; INDIVIDUAL AND OFFICIAL CAPACITY; JENNIFER STANWICK-KLEMIK, DEPUTY WARDEN; INDIVIDUAL AND OFFICIAL CAPACITY; TROY PONTO, ASSOCIATE WARDEN; INDIVIDUAL AND OFFICIAL CAPACITY; ARTHOR ALCOCK, ASSOCIATE WARDEN; INDIVIDUAL AND OFFICIAL CAPACITY; DAVID LENTSCH, UNIT MANAGER; INDIVIDUAL AND OFFICIAL CAPACITY; DERRICK BIEBER, UNIT MANAGER; INDIVIDUAL AND OFFICIAL CAPACITY; AL MADSON, UNIT MANAGER; INDIVIDUAL AND OFFICIAL CAPACITY; JOSH KLEMIK, UNIT MANAGER; INDIVIDUAL AND OFFICIAL CAPACITY; TAMMI MERTINS-JONES, CULTURAL ACTIVITIES COORDINATOR; INDIVIDUAL AND OFFICIAL CAPACITY; ELIZABETH VITETTA, UNIT COORDINATOR; INDIVIDUAL AND OFFICIAL CAPACITY; BRITINEY

4:17-CV-04116-KES

ORDER GRANTING MOTION TO FILE DOCUMENTS UNDER SEAL FOR IN CAMERA INSPECTION

ULMER, UNIT COORDINATOR;
INDIVIDUAL AND OFFICIAL CAPACITY;
MELISSA MATURAN, ADMINISTRATIVE
REMEDY COORDINATOR; INDIVIDUAL
AND OFFICIAL CAPACITY; STEVE
BAKER, MAJOR; INDIVIDUAL AND
OFFICIAL CAPACITY; LINDA MILLER-
HUNHOFF, MAIL SUPERVISOR;
INDIVIDUAL AND OFFICIAL CAPACITY;
SHARRON REIMANN, MAILROOM;
INDIVIDUAL AND OFFICIAL CAPACITY;
JORDAN STOREVIK, MAILROOM;
INDIVIDUAL AND OFFICIAL CAPACITY;
NICK ANDERSON, CORRECTIONAL
OFFICER, SDSP; PRESTON PERRETT,
CORRECTIONAL OFFICER;
INDIVIDUAL AND OFFICIAL CAPACITY;
JUDY JACOBS, CORRECTIONAL
OFFICER; INDIVIDUAL AND OFFICIAL
CAPACITY; LISA FRASIER,
CORRECTIONAL OFFICER;
INDIVIDUAL AND OFFICIAL CAPACITY;
NICK REDDMAN, TEACHER;
INDIVIDUAL AND OFFICIAL CAPACITY;
DR. MARY CARPENTER, MD;
INDIVIDUAL AND OFFICIAL CAPACITY;
ER REGIER, MD; INDIVIDUAL AND
OFFICIAL CAPACITY; BRAD ADAMS,
PA-C; INDIVIDUAL AND OFFICIAL
CAPACITY; JESSICA SCHREURS, RN;
INDIVIDUAL AND OFFICIAL CAPACITY;
HEATHER BOWERS, RN; INDIVIDUAL
AND OFFICIAL CAPACITY; UNKNOWN
DEPARTMENT OF
HEALTH/CORRECTIONAL HEALTH
SERVICE (DOH/CHS) EMPLOYEES,
INDIVIDUAL AND OFFICIAL
CAPACITIES; CBM CORRECTIONAL
FOOD SERVICES, INDIVIDUAL AND
OFFICIAL CAPACITIES; JOHN
TWEIRWEILLER, CBM DISTRICT
MANAGER; INDIVIDUAL AND OFFICIAL
CAPACITY; UNKNOWN CBM
EMPLOYEES, INDIVIDUAL AND
OFFICIAL CAPACITIES; DELMER

WALTER, CONTRACTED DOC
ATTORNEY; INDIVIDUAL AND
OFFICIAL CAPACITY; AND MARK
BIDNEY, CONTRACTED DOC
PARALEGAL; INDIVIDUAL AND
OFFICIAL CAPACITY;

Defendants.

Defendants, Steve Baker, Derrik Bieber, Jennifer Drieske, Tammi Mertens-Jones, Linda Miller-Hunhoff, Jordan Storevik, Elizabeth Effling, Darin Young, Robert Dooley, Jennifer Stanwick-Klimek, and Dennis Kaemingk, move to seal copies of the magazines at issue in plaintiff's lawsuit. Docket 226. Defendants state that the magazines were rejected and not delivered to plaintiff because they were found to contain "nudity" or "sexually explicit" content, in violation of South Dakota Department of Corrections policy. *Id.* at 1.

Defendants assert that if the magazines themselves are attached as exhibits to the affidavits filed with the court and served on plaintiff, plaintiff will have a copy of the very materials that defendants refuse to provide him. *Id.* Courts have found that inmates may not obtain materials through litigation that had been denied by their penological institution. *See Roberts v. Apker*, 570 F. App'x 646, 649-50 (9th Cir. 2017); Order Granting Motion to Seal, *Maday v. Dooley*, 4:17-cv-04168-KES (D.S.D. Nov. 8, 2018); Order Granting Motion to File Documents Under Seal for In Camera Inspection, *Hughbanks v. Dooley*, 4:10-cv-4064-KES (D.S.D. May 3, 2011); *Lindell v. McCaughtry*, No. 01-C-209-C, 2003 WL 23198120 at *1 (W.D. Wis. July 21, 2003). Here, defendants provided plaintiff with a summary of the denied materials along with specific

images and photos that led defendants to conclude that the material contained “nudity” and was “sexually explicit.” “While [plaintiff] may not be able to view the [materials] he was denied, he has sufficient information to challenge defendants’ reasons for denying him the [materials].” Order Granting Defendants’ Motion to File Documents Under Seal for In Camera Inspection at 4, *Hughbanks*, 4:10-cv-4064-KES.

Good cause appearing, it is

ORDERED that defendants’ motion to file documents under seal for in camera inspection (Docket 236) is granted.

DATED March 9, 2020.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE