

DA 17-0646

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 210N

IN RE THE DISSEMINATION OF
CONFIDENTIAL CRIMINAL JUSTICE
INFORMATION

BOBBY FRANCIS LOWRY,

Appellant,

v.

STATE OF MONTANA,

Appellee.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DV-17-896B
Honorable Rienne McElyea, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Bobby Francis Lowry, Self-Represented, Deer Lodge, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Helena, Montana

Marty Lambert, Gallatin County Attorney, Erin L. Arnold, Senior Civil
Deputy Attorney, Bozeman, Montana

Submitted on Briefs: July 18, 2018

Decided: August 28, 2018

Filed:



Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Bobby Francis Lowry challenges an Eighteenth Judicial District Court order authorizing the Gallatin County Attorney's Office to distribute certain information regarding Lowry's detention at the Gallatin County Detention Center to its retained counsel in a civil suit Lowry filed against the County. We affirm.

¶3 Lowry filed suit against the Gallatin County Sheriff's Office and Sheriff Brian Gootkin, alleging that they unlawfully deprived him of his personal property when the Gallatin County Detention Center refused to ship his property home to New Mexico or to Montana State Prison after his arrest and transfer to Montana State Prison. The Sheriff's Office still possessed the property that it had inventoried upon Lowry's arrest and offered to turn it over to a person that Lowry authorized. Lowry alleged that he had no one to pick it up on his behalf, and he could not fly someone from New Mexico to retrieve the property. Lowry claimed that Detention Center staff told him "that under no circumstances would they allow [him] to ship his property home, even if shipped at [his] own expense."

¶4 Gallatin County hired attorney Calvin Stacey as outside counsel to defend it in the civil suit. The County Attorney's Office moved the District Court for permission to

disseminate to Stacey the records regarding Lowry's detention in Gallatin County. The records included Lowry's "Booking Report, Release Report, property lists, incident reports, and kites." The County Attorney's Office alleged the purpose of the dissemination was to familiarize Stacey with the circumstances surrounding Lowry's incarceration and to allow Stacey to defend the Sheriff's Office. After conducting an *in camera* inspection, the District Court found that "the requested dissemination of the Records is necessary and that the demands of individual privacy do not clearly exceed the merits of the disclosure." The court then ordered the confidential criminal justice information and criminal history record information, excluding protected health care information, to be released to Stacey.

¶5 Lowry argues on appeal that his due process rights were violated when he was not provided a chance to respond to the dissemination request prior to the court's order. The dissemination of confidential criminal justice information and criminal history record information is governed by the Montana Criminal Justice Act of 1979 (Title 44, chapter 5, MCA). Confidential criminal justice information may be disseminated only to another criminal justice agency, to "those authorized by law to receive it," and to those a district court authorizes to receive it "upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure." Section 44-5-303(1), MCA. A court may authorize dissemination of criminal history record information to a non-criminal justice agency if "a district court considers dissemination necessary." Section 44-5-302(1)(b), MCA.

¶6 A district court properly balances the merits between disclosure and right to privacy by conducting an *in camera* inspection of the information sought. *Bozeman Daily*

Chronicle v. City of Bozeman, 260 Mont. 218, 229, 859 P.2d 435, 442 (1993). During the *in camera* inspection, the district court must take into account and balance the competing interests and may limit the release of the information in accordance with those interests. *Bozeman Daily Chronicle*, 260 Mont. at 229, 859 P.2d at 442.

¶7 The District Court did not violate Lowry's due process rights because it balanced the County's right to share the records with its lawyer against Lowry's right to privacy by conducting an *in camera* inspection of the records and ordering the release of information. When Lowry filed suit, he put the information contained in the Gallatin County Detention Center's records directly at issue. The County Attorney's Office requested the records in order for Stacey to familiarize himself with the information Lowry used as support for the civil suit and to defend the Sheriff's Office. The District Court authorized dissemination only to the parties and counsel in Lowry's civil suit and prohibited further dissemination without a new court order. By following the process prescribed by this Court, the District Court correctly interpreted and applied the law and did not violate Lowry's due process rights. The order did not authorize release of confidential medical information and no medical records were provided to Stacey. To the extent Lowry's Booking Report contains any health-related information, its disclosure to Stacey was lawful under § 50-16-529(2), MCA.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of

applicable standards of review. The District Court's interpretation and application of the law were correct. Its order is affirmed.

/S/ BETH BAKER

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ DIRK M. SANDEFUR

/S/ LAURIE McKINNON

/S/ JIM RICE