

STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CRIMINAL DIVISION
DOCKET NO: 481-5-15FRCR

STATE OF VERMONT

V.

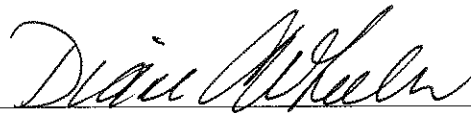
NORMAN MCALLISTER, Defendant

**STATE'S RESPONSE TO MOTIONS TO QUASH SUBPOENA
ISSUED TO SEVEN DAYS EMPLOYEE MATTHEW ROY**

NOW COMES the State of Vermont, by and through its Deputy State's Attorney,
Diane C. Wheeler, and hereby says as follows in response to the Motion to Quash
Subpoena Issued to Matthew Roy:

Based upon the representations of Counsel for Seven Days that Matthew Roy did
not write any articles nor interview either the defendant or Victim #3, the State withdraws
the subpoena for Mr. Roy.

DATED: December 31, 2015



Diane C. Wheeler
State's Attorney (Deputy)
5 Lemnah Drive
St. Albans, VT 05478
(802) 524-7920

cc: Robert Hemly, Esq.
Brooks G. McArthur, Esq.

STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CRIMINAL DIVISION
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STATE OF VERMONT

V.

NORMAN MCALLISTER, Defendant

**STATE'S RESPONSE TO MOTION TO QUASH SUBPOENA
ISSUED TO SEVEN DAYS EMPLOYEE PAUL HEINTZ**

NOW COMES the State of Vermont, by and through its Deputy State's Attorney, Diane C. Wheeler, and hereby says as follows in response to the Motion to Quash Subpoena Issued to Paul Heintz:

FACTS

Defendant Norman McAllister was arraigned on Friday, May 8, 2015 on three misdemeanor counts of Prohibited Act and three felony counts of Sexual Assault-No Consent. The Court sealed the information pertaining to the identities of the putative victims in the courtroom. Due to an oversight, however, the press received the names and contact information of the putative victims when the press requested the information and supporting affidavit at the courthouse window the day of arraignment.

Within hours of receiving the putative victim information, Seven Days reporter Paul Heintz made contact with Victim #3. Victim #3 agreed to speak with Mr. Heintz as long as her identity was not revealed.

On Sunday, May 10, 2015 Seven Days published an article authored by reporter Paul Heintz. (See Seven Days Exhibit "C" accompanying the Seven Days filing on or

about December 8, 2015). This article includes information about the criminal charges against the defendant, Norman McAllister, some of which is attributed directly to Victim #3.

As a result of this article, Paul Heintz was listed as a trial witness by the State as he spoke directly with a putative victim about the criminal investigation concerning defendant Norman McAllister.

The State issued a subpoena to Paul Heintz directing him to appear for a deposition on December 23, 2015.¹ In addition, the subpoena requested that Mr. Heintz “produce and permit inspection, copying, testing or sampling of designated electronically stored information and books, papers, documents or other tangible things in your possession, custody or control pertaining to your interview and contact with Norman McAllister or [REDACTED] and related articles concerning Norman McAllister.”

The Motion to Quash followed thereafter.

LAW AND ARGUMENT

In support of the Motion to Quash, the witness relies, in part, on *State v. St. Peter*, 132 Vt. 266 (1974). In *State v. St. Peter* the defendant in a criminal matter was attempting to discover at deposition the confidential source of a reporter concerning the reporter’s beforehand knowledge of a particular drug raid. The reporter refused to answer the question before the lower court and was held in contempt.

The Vermont Supreme Court held that a “witness can be compelled to testify as to the sources of his information without violating rights protected by the First Amendment

¹ When Attorney Hemley informed the State that the December 23, 2015 date was inconvenient as Seven Days would be closed for the holidays, the State agreed to find a mutually agreeable date in the future.

of the United States constitution” when the person seeking the information “can demonstrate to the judicial officer...that there is no other adequately available source of the information and that it is relevant and material on the issue of guilt or innocence.” *State v. St. Peter* at 271.

The matter is distinguishable from *State v. St. Peter* in that the information sought by the State lacks confidentiality: Mr. Heintz wrote an article wherein he explicitly states that he spoke with Victim #3 and goes on to quote Victim #3 in his article.

Furthermore, the information about which the State seeks to inquire was, for the most part or in total, made available to the general public in the published article.

Thus, the facts of this case are more on point with the holding in *Spooner v. Town Of Topsham*, 182 Vt. 328 (2007) in the Court’s discussion of any privilege when the information sought is not confidential, as is the information being sought in this case.

The argument of applying the privilege to a reporter’s nonconfidential information is that it would have a “chilling effect” on the press and other news media. The Vermont Supreme Court, however, noted in *Spooner v. Town Of Topsham* that “courts have recognized that the threat to free-press interests in cases involving nonconfidential information is a fairly ‘subtle one and relies more on intuition than empirical evidence...” *Id* at 335.

In addition, the State believes that the Vermont Supreme Court’s decision in *In re Inquest Subpoena (WCAX)*, 2005 VT 103 is instructive as to the issue now before the Court. Specifically, the Vermont Supreme Court held that “[the press or media] is entitled to no privilege under the First Amendment, qualified or otherwise, to refuse to

disclose...evidence that is relevant and material to a criminal investigation when properly subpoenaed.” Id. at ¶ 21.

In this case, any statements made by a complaining witness, her Victim #3, are relevant and material to a criminal investigation as the statements might contain exculpatory as well as inculpatory information and are thus, material to the issue of guilt or innocence.

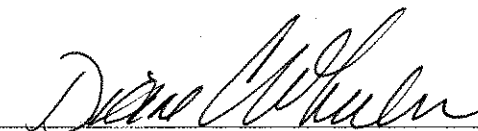
Additionally, what specific questions were asked of Victim #3 to elicit the responses published in the reporter’s article are unavailable by any other means, as only the reporter knows what he asked. Also, any unpublished parts of the interview with Victim #3 are only available from the reporter witness.

Thus, based on the above, the requirements of *State v. St. Peter* are met in any case.

WHEREFORE the State respectfully requests that this Honorable Court order the deposition of Seven Days reporter Paul Heintz subject to the following limitations:

- a. The scope of the deposition concern Mr. Heintz’s interview(s) of Victim #3;
and
- b. that Mr. Heintz bring to the deposition notes, recordings or any other documentation concerning his interview of Victim #3 to be inspected and copied by the State.

DATED: December 31, 2015



Diane C. Wheeler
State's Attorney (Deputy)
5 Lemnah Drive
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(802) 524-7920

cc: Robert Hemley, Esq.
Brooks G. McArthur, Esq.

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V.

NORMAN MCALLISTER, Defendant

**STATE'S RESPONSE TO MOTION TO QUASH SUBPOENA
ISSUED TO SEVEN DAYS EMPLOYEE MARK DAVIS**

NOW COMES the State of Vermont, by and through its Deputy State's Attorney, Diane C. Wheeler, and hereby says as follows in response to the Motion to Quash Subpoena Issued to Mark Davis:

FACTS

On Thursday, May 7, 2015 defendant Norman McAllister was approached by two detectives from the Vermont State Police and asked if he would speak to the detectives privately. The defendant agreed to do so.

During the course of the detectives' interaction with the defendant, other legislators intervened, and subsequently the defendant chose to exert his right not to speak to the officers.

Defendant was then arrested and transported back to the Vermont State Police Barracks in Saint Albans. At no time was defendant questioned by the detectives about the allegations of inappropriate sexual misconduct nor did defendant offer any comment as to the charges.

The next day, on Friday, May 8, 2015 defendant was arraigned on three misdemeanor counts of Prohibited Act and three felony counts of Sexual Assault-No Consent.

On October 14, 2015 Sevens Days published an article authored by reporter Mark Davis. (See Seven Days Exhibit "B" accompanying the Seven Days filing on or about December 8, 2015). This article includes information about the criminal charges against the defendant, Norman McAllister, some of which is attributed directly to defendant Norman McAllister.

As a result of this article, Mark Davis was listed as a trial witness by the State as he spoke directly with the defendant about the criminal investigation concerning the allegations of the defendant's inappropriate sexual misconduct.

The State issued a subpoena to Mark Davis directing him to appear for a deposition on December 23, 2015.¹ In addition, the subpoena requested that Mr. Davis "produce and permit inspection, copying, testing or sampling of designated electronically stored information and books, papers, documents or other tangible things in your possession, custody or control pertaining to your interview with Norman McAllister and related article(s)."

The Motion to Quash followed thereafter.

LAW AND ARGUMENT

In support of the Motion to Quash, the witness relies, in part, on *State v. St. Peter*, 132 Vt. 266 (1974). In *State v. St. Peter* the defendant in a criminal matter was

¹ When Attorney Hemley informed the State that the December 23, 2015 date was inconvenient as Seven Days would be closed for the holidays, the State agreed to find a mutually agreeable date in the future.

attempting to discover at deposition the confidential source of a reporter concerning the reporter's beforehand knowledge of a particular drug raid. The reporter refused to answer the question before the lower court and was held in contempt.

The Vermont Supreme Court held that a "witness can be compelled to testify as to the sources of his information without violating rights protected by the First Amendment of the United States constitution" when the person seeking the information "can demonstrate to the judicial officer...that there is no other adequately available source of the information and that it is relevant and material on the issue of guilt or innocence." *State v. St. Peter* at 271.

The matter is distinguishable from *State v. St. Peter* in that the information sought by the State lacks confidentiality: Mr. Davis wrote an article wherein it is clear that Mr. Davis spoke with the defendant about his pending charges. In fact, the defendant is quoted a number of times throughout the article.

Furthermore, the information about which the State seeks to inquire was, for the most part or in total, made available to the general public in the published article.

Thus, the facts of this case are more on point with the holding in *Spooner v. Town Of Topsham*, 182 Vt. 328 (2007) in the Court's discussion of any privilege when the information sought is not confidential, as is the information being sought in this case.

The argument of applying the privilege to a reporter's nonconfidential information is that it would have a "chilling effect" on the press and other news media. The Vermont Supreme Court, however, noted in *Spooner v. Town Of Topsham* that "courts have recognized that the threat to free-press interests in cases involving

nonconfidential information is a fairly 'subtle one and relies more on intuition than empirical evidence...' Id at 335.

In addition, the State believes that the Vermont Supreme Court's decision in *In re Inquest Subpoena (WCAX)*, 2005 VT 103 is instructive as to the issue now before the Court. Specifically, the Vermont Supreme Court held that '[the press or media] is entitled to no privilege under the First Amendment, qualified or otherwise, to refuse to disclose...evidence that is relevant and material to a criminal investigation when properly subpoenaed.' Id. at ¶ 21.

In this case, any statements made by a defendant are relevant and material to a criminal investigation as the statements might contain exculpatory as well as inculpatory information and are thus, material to the issue of guilt or innocence.

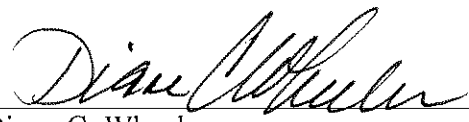
Additionally, the State cannot conduct any direct inquiry of defendant concerning his criminal matters. And the State has no knowledge that anyone else was directly privy to the interview Mr. Davis engaged in with defendant, that to elicited the information published in the reporter's article. Thus, the information is unavailable by any other means, as only the reporter knows what was said. Also, any unpublished portions of the interview with defendant are only available from the reporter witness.

Thus, based on the above, the requirements of *State v. St. Peter* are met in any case.

WHEREFORE the State respectfully requests that this Honorable Court order the deposition of Seven Days reporter Mark Davis subject to the following limitations:

- a. The scope of the deposition concern Mr. Heintz's interview(s) of the defendant Norman McAllister; and
- b. that Mr. Davis bring to the deposition notes, recordings or any other documentation concerning his interview(s) of the defendant Norman McAllister to be inspected and copied by the State.

DATED: December 31, 2015



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