

PARK COUNTY CLERK
OF DISTRICT COURT
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FILED
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DEPUTY

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10 **MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY**

11 **HON. BRENDA GILBERT, PRESIDING**

12	STATE OF MONTANA,)	Cause No. DC-2015-49
13)	
14	Plaintiff,)	
15	v.)	MOTION TO RELEASE DEFENDANT'S
16)	BOOKING PHOTOGRAPH AND BRIEF
17	JOVANNE LEE ASHLEY,)	IN SUPPORT.
18)	
19	Defendant.)	

20 **COMES NOW**, the State of Montana, by and through Park County Attorney Bruce E.
21 Becker and moves that Court for an order authorizing the release of the defendant's booking
22 photograph to the Livingston Enterprise (Enterprise) pursuant to a request from the Enterprise.
23 The defendant's attorney, Mary Kramer, objected to the release of the photograph. To prevent
24 any issues which may arise by the release of the photograph, the State has filed this motion to
25 address legal concerns surrounding the release of the photograph.

26 **LAW AND ARGUMENT**

27 The Montana Constitution creates both the right of privacy and the right of the public to
28 know. When these two rights come into conflict, the Court needs to determine whether the
public's right to know trumps an individual's right of privacy. The defendant, a registered

MOTION AND BRIEF TO RELEASE PHOTOGRAPH

1 violent offender, has been charged with two serious violent offenses, attempted deliberate
2 homicide and aggravated assault.

3
4 The Montana legislature has enacted the Montana Criminal Justice Information Act
5 which defines two basic types of criminal justice information, i.e. that which is public and that
6 which is confidential. With regard to confidential criminal justice information, the Montana
7 Legislature has defined it as:

- 8
9 (a) criminal investigative information;
10 (b) criminal intelligence information;
11 (c) fingerprints and photographs;
12 (d) criminal justice information or records made confidential by law; and
13 (e) any other criminal justice information not clearly defined as public criminal
14 justice information. (§ 44-5-103 (3) Montana Code Annotated (MCA).

15 The Legislature has defined public criminal justice information as:

- 16 "(a) information made public by law;
17 (b) information of court records and proceedings;
18 (c) information of convictions, deferred sentences, and deferred prosecutions;
19 (d) information of post-conviction proceedings and status;
20 (e) information originated by a criminal justice agency, including:
21 (i) initial offense reports;
22 (ii) initial arrest records;
23 (iii) bail records; and
24 (iv) daily jail occupancy rosters;
25 (f) information considered necessary by a criminal justice agency to secure public
26 assistance in the apprehension of a suspect; or
27 (g) statistical information." (§ 44-5-103 (13) MCA).

1 While the word photograph appears in the definition of confidential criminal justice
2 information, it is not clear if that includes booking photographs. An argument can be made that
3 confidential criminal justice information includes such information and evidence necessary for
4 the investigation of a crime such as a photograph of a crime scene or of some item of evidentiary
5 value. A booking photograph would have no evidentiary value in this case.
6

7 As public justice information includes rosters of the jail, i.e. which would include the
8 identity of those incarcerated which arguably could include the photograph of such inmate.
9

10 Right of privacy versus the public right to know creates a conflict.
11

12 The public's right to know and the individual's right to privacy inevitably conflict
13 in cases involving a request for confidential criminal justice information under the
14 Act. Accordingly, in view of the purpose to protect individual privacy
15 underpinning the Act, as set forth in § 44-5-102, MCA, "it is incumbent upon a
16 party to make a proper showing in order to be eligible to receive such specific
17 confidential information." *Allstate*, 780 P.2d at 189. *Bozeman Daily Chronicle v.*
18 *City of Bozeman Police Dep't*, 260 Mont. 218 260 Mont. 218, 859 P.2d 435
19 (Mont. 1993).

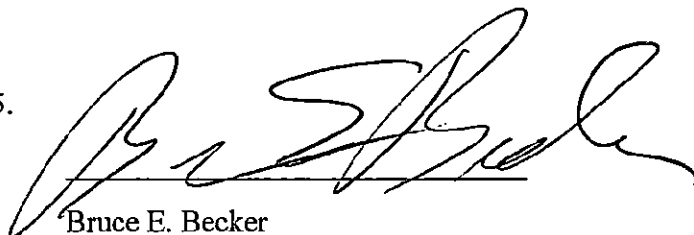
20 The Montana Supreme Court has adopted a two prong test for resolving the conflict
21 which inevitably arises in matters of criminal justice:
22

23 In order to evaluate whether the Chronicle has met its burden and has made a
24 proper showing of entitlement to receive the investigatory documents at issue, we
25 look to two previous decisions of this Court. In *Great Falls Tribune*, we utilized
26 the now-familiar two-part test to determine whether an individual has a protected
27 privacy interest under Article II, Section 10, of the Montana Constitution. This
28 test requires answering two queries: first, we determine whether the person
involved has a subjective or actual expectation of privacy; next, we evaluate
whether society is willing to recognize that expectation as reasonable. *Great Falls*
Tribune, 775 P.2d at 1268.

1 44-5-303 (1) MCA provides in relevant part that confidential criminal justice information
2 may be disseminated "... to those authorized by a district court upon a written finding that the
3 demands of individual privacy do not clearly exceed the merits of public disclosure."
4

5 **WHEREFORE**, the State requests the Court to issue an order authorizing the release of
6 the photograph or in the alternative set a hearing at which time the court can determine whether
7 the demands of individual privacy do not exceed the merits of public disclosure and therefore
8 authorize the release of the photograph.
9

10 Dated this 17th day of July, 2015.



Bruce E. Becker
Park County Attorney
As Attorney for the State of Montana

14 **CERTIFICATE OF SERVICE**

15
16 On the 17th day of July, 2015, a copy of the foregoing document was deposited into the
17 United States Postal Service in a sealed envelope, postage prepaid and addressed as follows:

18 Mary Kramer
19 Office of State Public Defender
20 502 South 19th Avenue – Suite 211
Bozeman, MT 59718

21 J. Thomas Bartleson
22 Office of State Public Defender
23 Major Crimes Unit
139 North Last Chance Gulch
24 P. O. Box 200145
Helena, MT 59620-0145

25 Courtesy copy to Livingston Enterprise

