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State v. Collins Appellant's Brief Dckt. 41462

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 41462
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2011-13966
v.)	
)	
JONATHAN A. COLLINS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

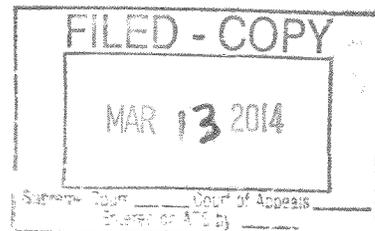
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STATEMENT OF THE CASE

Nature of the Case

Amy Tobiasson, who had a history of lying to the police and had been previously cited for a false report of rape or sexual assault, accused Jonathan A. Collins of committing lewd conduct. Mr. Collins was charged with felony lewd conduct with a minor under sixteen. After Mr. Collins gave notice of his intent to use evidence that the Ms. Tobiasson had lied to police officers in the past, the district court granted the State's motion to dismiss the lewd conduct charge. Mr. Collins subsequently filed a motion to seal the court record pursuant to Idaho Court Administrative Rule 32(i). The district court denied Mr. Collins' motion to seal the court record. On appeal, Mr. Collins asserts that the district court abused its discretion when it denied his motion to seal the court record.

Statement of the Facts and Course of Proceedings

Ms. Tobiasson contacted the Boise City Police Department and alleged that her three-year-old daughter, A.T., had told her that Ms. Tobiasson's boyfriend, Mr. Collins, had touched A.T.'s "bum." (R., p.54.) However, A.T. refused to speak to an officer when the officer later contacted A.T. and Ms. Tobiasson. (R., p.54.)

Additionally, Ms. Tobiasson had a history of lying to the police. (R., pp.69, 79; see R., pp.91-98.) On one occasion, where Ms. Tobiasson was charged with DUI and cited for leaving the scene of an accident, she told the police that her friend had been driving the vehicle, although all the witnesses stated that Ms. Tobiasson had been the one driving. (R., pp.91-92.) Later, Ms. Tobiasson falsely accused a man of rape or sexual assault, before admitting to the police that she had lied about the incident and

made up the entire story. (R., pp.93-95.) Ms. Tobiasson “was actually cited and not arrested for the false report.” (R., p.98.)

After Mr. Collins told his probation officer about the allegation, the probation officer told him he had no choice but to take a polygraph test. (R., p.54.) Later, Mr. Collins arrived at the Boise City Police Department to take the polygraph test. (R., pp.54-55.) Mr. Collins underwent an extended pre-polygraph interview with a police detective, and after three hours of police questioning he admitted to touching A.T.’s vagina, over her clothes, for approximately one second. (R., p.55.)

A CARES examination over two months after the alleged incident did not reveal any physical evidence that A.T. had been abused. (R., p.56.) During the CARES examination, A.T. did not repeat, with any specificity, the statements she allegedly made to Ms. Tobiasson. (R., p.56.)

The State then filed a Complaint alleging that Mr. Collins had committed the crime of lewd conduct with a minor under sixteen, felony, in violation of Idaho Code § 18-1508. (R., pp.6-7.) After Mr. Collins waived the preliminary hearing, the magistrate bound him over to the district court. (R., p.25.) The State then filed an Information charging Mr. Collins with the above offense. (R., pp.28-29.) Mr. Collins entered a not guilty plea to the charge. (R., p.32.)

Mr. Collins subsequently filed a Notice of Intent to Use I.R.E. 404(b), notifying the State that he intended to use evidence showing that Ms. Tobiasson had lied to police officers in the past. (R., pp.69-70.) About a week later, the State filed a Motion to Dismiss, requesting that the district court dismiss the lewd conduct charge because, “In the interest of justice, the State no longer wishes to proceed with this matter.”

(R., p.71.) The district court then issued an Order to Dismiss, dismissing the lewd conduct charge. (R., p.72.)

Later, Mr. Collins filed a Motion to Seal Court Record, pursuant to Idaho Court Administrative Rule 32(i). (R., pp.74-81.) Mr. Collins requested that the district court seal his court file, because “public access to Mr. Collins’ case has caused him financial hardship due to two prospective employers denying him employment because of his association with this case,” and because “public access to this case might be libelous or threaten the safety of Mr. Collins.” (R., p.74.) The motion noted that “the charge was stigmatizing in nature and the state moved to dismiss just days after Mr. Collins filed his Notice of Intent to Use I.R.E. 404(b).” (R., p.79.) Mr. Collins also stated that he “has been denied employment two separate times due to public access to this case on the repository.” (R., p.79.) Further, Mr. Collins “regularly attends Alcoholics Anonymous with parolees and probationers who, he fears, could harm him if they were to discover he had once been charged with a sex offense.” (R., p.79.) Additionally, because “these allegations stemmed from Amy Tobiasson, who, on two separate occasions, lied to law enforcement, one time alleging she was a victim of rape . . . the documents or materials in this case could contain libelous statements.” (R., p.79.) The motion concluded that “[t]he public’s ‘right to know’ is outweighed by the privacy interests of Mr. Collins.” (R., p.79.)

At the hearing on the motion to seal his court record, Mr. Collins rested on his brief, while the State deferred to the district court. (R., p.101.) The district court then denied the motion to seal Mr. Collins’ court record. (R., p.101.) The district court explained its decision as follows:

This is, to me, a very, very close call as far as weighing the interest of the public to view the record versus Mr. Collins’s interest in privacy, and

whether this is a libelous statement, whether it's something that balancing the economic harm that he can experience as a result of the record being open to the public is something that the Court, in its discretion, should seal.

However, having reviewed several times the motion to seal the court record, the applicable rules, the case law on point, I do believe that the public interest in looking at this court record outweighs Mr. Collins's desire and interest, economic interest, to have the court record sealed. There's just a very strong expressed preference in the law for transparency in government, as reflected by the default, that all records should be public.

(Tr., p.5, Ls.5-23.)

In its subsequent Order Denying Motion to Seal Court Record, the district court stated that it "weighed the public's interest in information and the government's obligation for transparency against the Defendant's need and desire to seal his court file." (R., pp.107-08.) While no affidavit had been presented in support of the motion, the district court "assumed for the purpose of deciding the motion that [Mr. Collins'] claims were true—that [Mr. Collins] was challenged in finding employment and stigmatized by the accusation of a sex offense." (R., p.108 n.1.) "After weighing the competing interests, the Court denied Defendant's motion to seal the record." (R., p.108.)

Mr. Collins filed a Notice of Appeal timely from the district court's decision to deny the motion to seal his court record. (R., pp.102-05.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Collins' motion to seal his court record pursuant to I.C.A.R. 32(i)?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Collins' Motion To Seal His Court Record Pursuant To I.C.A.R. 32(i)

Mr. Collins asserts that the district court abused its discretion when it denied his motion to seal his court record pursuant to I.C.A.R. 32(i), because it did not act consistently with the applicable legal standards. While the district court recognized that this case was a “very, very close call” (Tr., p.5, Ls.5-6), the district court did not act consistently with the applicable legal standards because it did not adequately consider Mr. Collins’ predominating privacy interests.

“Decisions of the district court to grant or deny relief under Idaho Court Administrative Rule (I.C.A.R.) 32 are reviewed for abuse of discretion.” *State v. Gurney*, 152 Idaho 502, 503 (2012). An appellate court will affirm the decision of the district court if the district court “(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reached its decision by an exercise of reason.” *Id.* (internal quotation marks omitted).

Governing access to court records, I.C.A.R. 32 acknowledges that “[t]he public has a right to examine and copy the judicial department’s declarations of law and public policy and to examine and copy the records of all proceedings open to the public.” I.C.A.R. 32(a). However, physical and electronic records “may be disclosed, or temporarily or permanently sealed or redacted by order of the court on a case-by-case basis.” I.C.A.R. 32(i). “Any person or the court on its own motion may move to disclose, redact, seal or unseal a part or all of the records in any judicial proceeding.” *Id.* “[T]he party moving to seal or redact records bears the burden of proof.” *Gurney*, 152 Idaho at 504 n.1.

“In ruling on whether specific records should be disclosed, redacted or sealed by order of the court, the court shall determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates.” I.C.A.R. 32(i). “If the court redacts or seals records to protect predominating privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests.” *Id.*

Before a court may enter an order redacting or sealing records, it must also make one or more of the following determinations in writing:

- (1) That the documents or materials contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person, or
- (2) That the documents or materials contain facts or statements that the court finds might be libelous, or
- (3) That the documents or materials contain facts or statements, the dissemination or publication of which may compromise the financial security of, or could reasonably result in economic or financial loss or harm to, a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or
- (4) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals, or
- (5) That it is necessary to temporarily seal or redact the documents or materials to preserve the right to a fair trial.

Id. “In applying these rules, the court is referred to the traditional legal concepts in the law of the right to a fair trial, invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate or financially sensitive materials about persons.” *Id.*

The district court abused its discretion when it denied Mr. Collins’ motion to seal his court record pursuant to I.C.A.R. 32(i), because it did not act consistently with the applicable legal standards. The district court did not act consistently with the applicable legal standards because it did not adequately consider Mr. Collins’ predominating

privacy interests. Specifically, the district court did not adequately consider that the documents or materials in Mr. Collins' court records contain facts or statements that might be libelous. A district court may seal court records after making a written determination that "the documents or materials contain facts or statements that the court finds might be libelous." I.C.A.R. 32(i)(2).

As discussed above, I.C.A.R. 32(i) states that, "In applying these rules, the court is referred to the traditional legal concepts in the law of . . . defamation" I.C.A.R. 32(i). Mr. Collins submits that a district court may therefore look to Idaho's defamation laws when determining whether documents or materials contain facts or statements that might be libelous. "Libel" is defined as "a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending . . . to impeach the honesty, integrity, virtue or reputation, or publish the natural or alleged defects, of one who is alive, and thereby to expose him to public hatred, contempt or ridicule." I.C. § 18-4801. A statement imputing that a person is guilty of a serious crime such as lewd conduct is defamatory per se. See *Wiemer v. Rankin*, 117 Idaho 566, 570 (1990); *Barlow v. International Harvester Co.*, 95 Idaho 881, 890 (1974).

The court records in this case include documents or materials containing facts or statements that might be libelous. Specifically, the Complaint and Information contain statements that Mr. Collins committed the crime of lewd conduct. Ms. Tobiasson, the original source of the allegation against Mr. Collins, had lied to police officers in the past. (R., pp.69, 79; see R., pp.91-98.) When viewed alongside the State's request that the district court dismiss the charge against Mr. Collins "in the interest of justice," a request that closely followed Mr. Collins' giving notice of his intent to present evidence on Ms. Tobiasson's past lies (see R., pp.69-72), Ms. Tobiasson's history of lying

indicates that she was also lying about Mr. Collins' alleged lewd conduct. Thus, the statements that Mr. Collins committed the crime of lewd conduct are defamatory *per se*. Because the documents or materials here contain facts or statements that might be libelous, the district court should have sealed Mr. Collins' court records. The district court did not adequately consider that the documents or materials in Mr. Collins' court records contain facts or statements that might be libelous.

The district court also did not adequately consider the financial loss Mr. Collins has suffered as a result of public access to the court records in this case. A district court may seal court records after making a written determination that the documents or materials, if disseminated or published, could reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials. I.C.A.R. 32(i)(3). The Idaho Court of Appeals recently concluded that "Rule 32(i) gives the court discretion to consider the many types of economic or financial loss that may be reasonably asserted as a claimed justification for sealing court records, including financial harm asserted by those convicted of crimes." *Doe v. State*, 153 Idaho 685, 690 (Ct. App. 2012). It follows that a district court would also have jurisdiction to consider financial harm asserted by those, such as Mr. Collins, who were merely charged with crimes and later had those charges dismissed. *See State v. Turpen*, 147 Idaho 869 (2009) (discussing a person's motion to seal his criminal case file on grounds of economic harm, where the person had been acquitted of a misdemeanor offense).

Here, the documents or materials could reasonably result in economic or financial loss or harm to Mr. Collins. Indeed, Mr. Collins has already suffered "financial hardship due to two prospective employers denying him employment because of his association with this case." (R., p.74; see R., p.79.) Thus, the district court should have

sealed the court records. The district court did not adequately consider the financial loss Mr. Collins has suffered as a result of public access to the court records in this case.

Further, the district court did not adequately consider that public access to the court records may threaten Mr. Collins' safety. A district court may seal court records after making a written determination that the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals. I.C.A.R. 32(i)(4). In the motion, Mr. Collins stated that he "regularly attends Alcoholics Anonymous with parolees and probationers who, he fears, could harm him if they were to discover he had once been charged with a sex offense." (R., p.79.) Because the court records contain facts or statements that might threaten the safety of Mr. Collins, the district court should have sealed the court records. The district court did not adequately consider that public access to the court records may threaten Mr. Collins' safety.

Because the district court did not adequately consider the above predominating privacy interests, it did not act consistently with the applicable legal standards. Thus, the district court abused its discretion when it denied Mr. Collins' motion to seal his court record pursuant to I.C.A.R. 32(i), because it did not act consistently with the applicable legal standards.

CONCLUSION

For the above reasons, Mr. Collins respectfully requests that this Court vacate the district court's order denying his motion to seal his court record pursuant to I.C.A.R. 32(i), and remand the case to the district court with instructions to grant the motion.

DATED this 13th day of March, 2014.

A handwritten signature in black ink, appearing to read "BP" followed by a stylized flourish.

BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of March, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JONATHAN A COLLINS
717 HAYS APT 6
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DISTRICT COURT JUDGE
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