IN THE CIRCUIT COURT
FOR THE THIRD JUCICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

The Alton Telegraph,	)	
	)	
Petitioner,	)	
	)	
v.	)	**08-MR-548**
	)	
The People of the State of Illinois,	)	
	)	
Respondent.	)	

ORDER

Case called for hearing on the Motion to Quash Subpoena to the Alton Telegraph. Counsel for the parties appear. Arguments heard. The Court being fully advised in the premises finds as follows:

STATEMENT OF FACTS

Shortly after the filing of the Motion to Quash Subpoena by the Petitioner, the Respondent, State of Illinois filed a first degree murder charge against Frank Price (08-CF-2058), who was indicted, for the murder of E.A., a five year old child. Thereafter, on October 17, 2008, a Subpoena Duces Tecum was issued to Mr. Jim Shrader, publisher of the Alton Telegraph to appear before the Court and produce "any records leading to full identity, including name, address and IP address for five bloggers on the Alton Telegraph website: ***john3418, purplebutterfly, mrssully, cstyle*** and ***pnbcme***."

All of these individuals, through their postings to an article published in The Alton Telegraph regarding the incident and arrest of Frank Price, revealed personal knowledge of Mr. Price as well as personal knowledge of his past physical abuse of individuals, including children.

The Petitioner argues that the subpoena should be quashed because it violates the statutory privilege newspapers and their editors and reporters have under Illinois law not to disclose newsgathering information, including the identity of confidential sources and other source material. **(See 735 ILCS 5/8-901).** Further, according to the Petitioner, the subpoena seeks to compel The Telegraph to disclose the "sources" of information it obtained over the internet. By providing information anonymously on The Telegraph's website about a newsworthy topic and in response to an article published by The Telegraph, the anonymous persons at issue are both "persons" and "sources" under section **5/8-901**. In order for the protections afforded The Telegraph to be divested the State must show that all other sources or information have been exhausted and disclosure is essential to the protection of the public interest involved. **(See 735 ILCS 5/8-907)**

In addition to violating section **5/8-901**, the Petitioner argues that the subpoena also violates The Telegraph's rights as secured by the First and Fourteenth Amendments to the United States Constitution.

The State argues that section **5/8-901** is not applicable in this instance, because they are not seeking the identity of any "sources" of the newspaper or its reporters. The Subpoena does not seek the identity of any source from whom information for the articles was obtained. The subpoena seeks identifying information for bloggers who voluntarily left comments on the website. These comments were posted after The Telegraph's articles were written, edited and published. The forum in which the five bloggers posted their comments is public. These were not individuals who approached a reporter as an anonymous or confidential source.

The State argues that individuals who post comments on The Telegraph website must first read and assent to a User Agreement, which states that "any comments, posts, feedback, notes, messages, images, audio, materials, ideas, suggestions or other communications you submit on or through the Service are not private." The Privacy Policy enumerates several instances in which a user's personal information may be disclosed including "when we have reason to believe that it is necessary to identify, contact or bring legal action against persons or entities that may be causing injury to you...or to others. We may also disclose your information when the law requires it."

Finally, the State argues that if the privilege exists under **735 ILCS 8-901**, that it is still entitled to the information sought because there is no alternative remedy available, that all sources of information have been exhausted, and that first degree murder of a child impacts the public interest.

At the hearing on the Motion to Quash the State called Sgt. Gary Burns. Sgt. Burns testified that the Sheriff's Office contacted 117 different individuals regarding the incident and had over 1000 pages of documents and reports to inspect and review. He testified that it would be a very expensive and a "monumental task" to re-interview all of those witnesses.

Sgt. Burns testified that ***john 3418*** knew the defendant, his history, and his involvement in arson. However, there was nothing in the blog of particular significance regarding the current charge. Other witnesses interviewed by Burns had known of the prior arson allegations against the defendant.

Pnbcme discussed drug usage by the defendant and his relationship with the mother of the child.

Purplebutterfly described how others and other children had suffered in the past as a result of the defendants conduct.

Mrssully observed two black eyes on the child a week before his death and seemed to have information regarding prior incidents of abuse of the child.

Cstyle wrote that the mother of the child was an enabler of "the drug slinging, alcohol guzzling, and child beating man". **(See also Respondent's Exhibit 1).**

Sgt. Burns testified that interviews of these bloggers was essential and relevant to the case, and that all reasonable means of obtaining the information had been exhausted

The parties do not dispute that 'the information sought is essential to the protection of the public interest involved".

Relevant sections of Illinois Reporter's Privilege Act ("Shield Law")

8-902(a) "Reporter" means any person regularly engaged in the business of collecting, writing or editing news for publication through a news medium on a full-time or part-time basis; and includes any person who was a reporter at the time the information sought was procured or obtained.

8-902(b) "News medium" means any newspaper or other periodical issued at regular intervals whether in print or electronic format and having a general circulation.....

8-902(c) "Source" means the person or means from or through which the news or information was obtained.

8-907 An order granting divestiture shall be granted only if the court finds:

(1) that the information sought does not concern matters, or details in any proceeding, required to be kept secret under the laws of the State or of the Federal government; and

(2) that all other available sources or information have been exhausted and.....disclosure of the information sought is essential to the protection of the public interest involved...

DISCUSSION

Under the Illinois Shield Law, "no court may compel any person to disclose the source of any information obtained by a reporter" unless "all other available sources of information have been exhausted and...disclosure of the information sought is essential to the protection of the public interest involved." **735 ILCS §§ 5/8-901, 907(2).** "In granting or denying divestiture of [the protected source] the court shall have due regard to the nature of the proceedings, the merits of the claim, the adequacy of the remedy otherwise available, if any, the relevancy of the source, and the possibility of establishing by other means that which it is alleged the source requested will tend to prove." **§ 5/8-906.**

A reporter is defined as "any person regularly engaged in the business of collecting, writing or editing news for publication through a news medium on a full-time or part-time basis; and includes any person who was a reporter at the time the information sought was procured or obtained." **735 ILCS 5/8-902(a).**

In **People v. Slover, 323 Ill.App.3d 620, 624 (Ill. App. 2001)** the Court found photographers to be reporters, because they "engaged in the business of collecting news for publication in a news medium,"

News medium is defined as "any newspaper or other periodical issued at regular intervals whether in print or electronic format and having a general circulation; a news service whether in print or electronic format; a radio station; a television station; a television network; a community antenna television service; and any person or corporation engaged in the making of news reels or other motion picture news for public showing." **5/8-902(b).**

There is no dispute that the author of the website article is a reporter, nor that the website is a news medium under the Act.

The Shield Law defines a "source" as "the person or means from or through which the news or information was obtained." While the bloggers were not used specifically to write this article, there is the possibility of the commentators becoming sources. It can be argued that the commentators are persons through which the information was obtained. However, the information is not necessarily obtained for the

purpose of gathering the news. The commentary section provides readers with a platform for discussing the case at their leisure. Bloggers feel the comfort, and sometimes too much comfort, of freely conversing with the protections normally provided through the expected anonymity of the internet. A lack of these protections and/or anonymity might well have a chilling effect on future bloggers.

The Court in **Slover** states that "the legislature clearly intended the privilege to protect more than simply the names and identities of witnesses, informants, and other persons providing news to a reporter." **323 Ill.App.3d 620 at 624**. These bloggers may become potential sources of leads for a reporter. It is unknown when or if at all a reporter will follow a blogger's posting as a lead.

No Illinois court has considered whether someone who posts an online comment following an online news article is a "source." The Illinois Appellate Court (4th Dist.) has maintained, however, that "the objective of the reporter's privilege is to preserve the autonomy of the press by allowing reporters to assure their sources of confidentiality, thereby permitting the public to receive complete, unfettered information." ***In Re Arya*, 226 Ill.App.3d 848, 851 (citing Zerilli v. Smith (D.C. Cir. 1981), 656 F.2d 705, 710-11).**

Here, it is clear that the "reporter" did not use any information from the bloggers in researching, investigating, or writing the article. In fact, none of the comments were written until after the article was published. Comments were then made between various bloggers, between themselves, without comment, input or discussion from the reporter. It would not appear that the bloggers were "sources" for the Telegraph news article.

An order granting divestiture of the Illinois Shield Law shall be granted only if "all other available sources of information have been exhausted and... disclosure of the information sought is essential to the protection of the public interest involved ... **735 ILCS 5/8-907**

The standards for determining whether "all other available sources have been exhausted" have been difficult for Illinois courts to clearly delineate. The Illinois Supreme Court in ***In Re Special Grand Jury Investigation of Alleged Violation of the Juvenile Court Act*** **(hereinafter *Warden*)** held that "the extent to which an investigation must be carried before the reporter's privilege should be divested cannot be reduced to any precise formula or definition but must, in view of the competing interests involved, depend on the facts and circumstances of the particular case." **104 Ill.2d 419, 427**. ***Arya*** further held "that 'available sources'...means those sources that are identified or known, or those sources that are *likely* to become identified or known as a result of a thorough and comprehensive investigation."**(226 Ill.App.3d 848, 860)**

Here, the unsolicited, public nature of the online comments suggests that those comments do not fall within the scope of the Shield Law. Since the Shield Law itself is silent on its applicability in the context of online bloggers, and in light of the Fourth District Appellate Court's statements regarding the purpose of the reporter's privilege, it cannot be said that the privilege applies to those individuals who voluntarily post information in a forum designed to elicit citizen's *opinions in response* to a newspaper article.

Even if the Shield Law does apply in this case, the State has satisfied its burden to divest The Telegraph of its privilege, as to some of the bloggers, because it has exhausted "all other available sources of information" and the source is relevant.

The State has conducted a thorough and comprehensive investigation. It has interviewed over 117 individuals. The task of reinterviewing both in cost and time is prohibitive. Further, the State has no remaining alternatives for obtaining information about the defendant's past propensities for violence. Applying the ***Warden*** standard, which requires the competing interests involved to be weighed in determining whether an investigation has been extensive enough to warrant divestment of the reporter's privilege, The Telegraph has an interest in protecting its online blogger's identities while the State has an interest in prosecuting someone who has allegedly murdered a child. The Telegraph's interest, while not negligible, does not go far enough to serve the larger purpose of the reporter's privilege, which is to "[permit] the public to receive complete, unfettered information." **(Arya, 226 Ill.App.3d 848, 852; Zerilli v Smith, 656 F.2d 707, 710-11)**. It cannot be said that forcing The Telegraph to reveal what information it has about voluntary, unsolicited online commentators, in this case, will make the public unwilling to express their opinions or to provide information during the course of a reporter's actual investigation, in future cases, nor does it deny the public the right to receive complete unfettered information in this and future instances.

FINDINGS

As discussed herein, it is not clear whether the unsolicited public comments made by the various bloggers whose identities are sought by the State falls within the scope of the Illinois Shield Law. It is clear that the Illinois Shield Law does not address the applicability of the Act to online bloggers. However, it is for the legislature, not this Court, to determine that applicability.

In applying the Illinois Shield Law to the instant case, the Court finds that the State has met its burden regarding the information sought for "***purplebutterfly***" and "***mrssully***", because the information sought is relevant, no remaining alternatives for obtaining the information are available regarding the defendant's past propensities for

violence, all sources of information have been exhausted, and first degree murder of a child impacts the public interest. These two bloggers have relevant information about the Defendant's prior conduct, his propensities for violence, and relationship with the child.

IT IS THEREFORE ORDERED that Petitioner's Motion To Quash Subpoena is denied as to ***purplebutterfly*** and ***mrssully.***

The comments of ***john3418, pnbcme and cstyle*** do not contain the same relevant information regarding the Defendant's prior conduct and relationship to the child, and appear to be nothing more than conversation/discussion.

IT IS THEREFORE ORDERED that Petitioner's Motion to Quash is granted as to ***john 3418, pnbcme, and cstyle***

ENTERED this 15th day of May, 2009

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Richard L. Tognarelli
Circuit Judge