

Arkansas Supreme Court Affirms Fair Report Privilege

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Posted in Fair Report Privilege

The Arkansas Supreme Court held last week in a unanimous decision that the fair report privilege protected reporters from *The Courier* newspaper who had reported allegations about a rape investigation based on the contents of a police report.

The decision arose out of a defamation claim against the paper made by Kevin Whiteside, who was named in the police report of a rape investigation in December 2006. The report said that a witness at a party hosted by Whiteside saw Whiteside with the alleged rape victim. In January 2007, *The Courier* published a story about the allegations based on the police report. The story was quite high-profile, since in 2005 Whiteside and his friend, also named by the witness, had found the dead body of a local beauty queen. In fact, at the time of the alleged rape the friend was free on bond awaiting trial on charges relating to the woman's death.

Whiteside claimed in his lawsuit, however, that after the police report was taken, but before the story was published, the witness recanted her story. While the paper published a "clarification" of this fact, Whiteside said in his complaint that it was insufficient. The trial court granted the newspaper's motion for summary judgment and subsequently denied Whiteside's motion for new trial and for relief from judgment.

On appeal, Whiteside claimed that the witness statements in the first police report should not have been released and should not be considered a report of an "official action or proceeding" under Section 611 of the Restatement (Second) of Torts. While the Arkansas Supreme Court agreed that the witness statement should not have been made available to the reporters according to police policy, the court said that the report was indeed covered under Section 611 and that the paper had done nothing improper in obtaining it.

Whiteside argued, however, that the privilege should not apply here because the paper knew, or should have known, that it was not supposed to be able to see the witness statements. Citing *The Florida Star v. B.J.F.*, the court rejected that argument, holding:

It seems clear that an inadvertent release of information is not analogous to an involuntary release or an illegal gain of information. As discussed, the record is devoid of any evidence of any wrongdoing on the part of the Newspaper in obtaining the information. It was not incumbent upon

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the Newspaper to determine what information could or could not be published after its release by the police.

Finally, Whiteside asserted on appeal that the description of the contents of the police report was not substantially accurate. Specifically, Whiteside said that the story was misleading because it interspersed comments in the report from the police officer and comments from the witness in unclear ways. The court said that the organization of the story may have been confusing, but it was essentially "an accurate and complete or a fair abridgment of the occurrence reported."

For general information on the fair report privilege, [click here](#). For a previous report we have published on the privilege, [click here](#).