

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-090059

03/31/2021

HONORABLE TRACEY WESTERHAUSEN

CLERK OF THE COURT
C. Avena
Deputy

JOHN DOE

ANDREW IVCHENKO

v.

TRAVIS PAUL GRANT, et al.

DAVID S GINGRAS

KYLE DAVID GRANT
100 MYRTLE ST # 304
LONGWOOD FL 32750
JUDGE WESTERHAUSEN

MINUTE ENTRY

Ruling denying in part and granting in part Defendants' Motion to Dismiss.

According to his Complaint, Plaintiff John Doe was arrested in March 2018 by the Maricopa County Sheriff's Office. Item 1, Para. 25 ("Item" refers to the document's number in iCIS, the in-house docketing system used by the Court and the Clerk) 1/6/2021 Filing ID 12397422. Following the arrest, the sheriff's office photographed Doe. The sheriff's office made the photograph (the "mugshot") publicly available on a government website. Item 1, Para. 26. Doe alleged that Defendants Travis Grant, Mariel Grant and Kyle Grant reside in Florida, and operate businesses in Florida. Item 1, Para. 14. Defendants own and operate websites that publish mugshots. Item 1, Para. 14. They published Doe's mugshot on the websites. Item 1, Para. 28.

Doe sued under the mugshot statutes, A.R.S. §§ 44-7901 and 44-7902. He claimed irreparable injury, damages and statutory damages from the publication of his mug shot.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-090059

03/31/2021

Two Defendants, Travis and Mariel Grant, have been served with the Complaint, and they filed a Motion to Dismiss for Lack of Personal Jurisdiction. Item 16 2/17/2021 Filing ID 12553509. Plaintiff responded, "Plaintiff's Response to Defendants' Motion to Dismiss for Lack of Personal Jurisdiction," Item 25 3/8/2021 Filing ID 12630019. The defense replied, "Reply in Support of Defendants' Motion to Dismiss for Lack of Personal Jurisdiction." Item 27 3/11/2021 Filing ID 12643274. The Court held oral argument on March 22, 2021.

Under the mug shot statutes, "A mugshot website operator that publishes a subject individual's criminal justice record for a commercial purpose on a publicly accessible website is deemed to be transacting business in this state." A.R.S. § 44-7902.A. The defense calls this the "nexus" provision. The "deemed to be transacting business" phrase is an effort to confer personal jurisdiction in the Arizona state courts over the mug-shot web-sites. And the law, in its effort to confer jurisdiction, is valid, as long as the statute comports with federal constitutional law regarding personal jurisdiction. "Arizona's long arm statute is contained in Rule 4(e)(2) of the Arizona Rules of Civil Procedure and is intended to give Arizona residents the maximum privileges permitted by the Constitution of the United States." *Houghton v. Piper Aircraft Corp.*, 112 Ariz. 365, 367 (1975). "(D)ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945) (internal punctuation omitted).

The parties agree on the test to be applied to determine whether the minimum contacts are sufficient:

(1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections; (2) the claim must be one which arises out of or results from the defendant's forum-related activities; and (3) exercise of jurisdiction must be reasonable.

Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 416 (9th Cir. 1997) (internal punctuation omitted).

On the first point, the words of the U.S. Supreme Court, written before the age of the internet, are still resonant:

Jurisdiction in these circumstances may not be avoided merely because the defendant did not **physically** enter the forum State. Although territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-090059

03/31/2021

reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985) (bold and italic in original).

The Court finds that a defendant who actively "scrapes"¹ the arrest details that the sheriff's office publishes on its website is purposely availing himself of the privilege of conducting activities in the forum (the first prong). This is true even though the defendant, as here, charges no fee to remove a mugshot. The only money that Defendants make in the instant matter is from Google, based on the number of views of each page and the number of views of each ad on the websites.²

John Doe claims to have suffered injury and damages in Arizona from the publication of his mug shot on Defendants' websites (the second prong of the test).

In looking at the activity – scraping the sheriff's office website – and the injury that Doe claims from that activity in Arizona, it is reasonable to exercise jurisdiction over Travis Grant (the third prong).

Travis Paul Grant is subject to the jurisdiction of this Court. Further, the Court finds that A.R.S. § 44-7902.A meets constitutional muster.

The Court finds, however, that Mariel Grant is not subject to the jurisdiction of this Court. She produced evidence that although her name appears in Florida public records as a manager of an entity, not named in the complaint, related to the web-sites, she has nothing to do with them. Thus, Mariel argues, she is not a "mugshot website operator" under the statutes.³ Also, Florida is not a community property state. There is no basis to join her in this action.

¹ Travis Grant's affidavit described the process this way, "After this information is published online by the arresting agency, my system uses software to automatically copy and compile the records into our database."

² Whether the commercial purposes (attracting third party advertisers to the website and generating pay-per-click advertising revenue) are prohibited by the mugshot act is not before the Court on this Motion.

³ A.R.S. § 44-7901.4: "Mugshot website operator" means a person that publishes a criminal justice record on a publicly available internet website for a commercial purpose."

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-090059

03/31/2021

Finally, this Court does not see, as Doe does, *Macpherson v Taglione*, 158 Ariz. 309 (App. 1988) as similar. Unlike Mariel, Defendant Taglione was intimately involved in the subject business and the transaction in question.

All of the discussion above is moot, if Doe's state law claims under the mugshot statutes are pre-empted by federal law. The federal law in question is the Communications Decency Act of 1996, 47 U.S.C.A. § 230 ("CDA").

As the defense points out, Congress has largely preempted civil liability in the realm of interactive computer services, i.e., websites. "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C.A. § 230.e.4. Under the CDA, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C.A. § 230c.1.

Doe argues that the sheriff's office did not "provide" the mugshot information to Defendants under circumstances where the recipient (Defendants' websites) reasonably believed the information was tendered for publication.

That is reading into the CDA more than is there. There is no requirement that the sheriff's office made the mugshot information available for the very purpose of publishing (or republishing) on another website. This Court cannot re-write the statute. "Although courts properly construe statutes to uphold their constitutionality, courts cannot salvage statutes by rewriting them because doing so would invade the legislature's domain." *In re Nickolas S.*, 226 Ariz. 182, 186, ¶ 18 (2011). Here, the domain isn't the state legislature, but Congress.

The Court agrees that the CDA pre-empts the mugshot act. The Court grants the Motion to Dismiss.