SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK - against - DONALD J. TRUMP, Defendant.	DECISION AND ORDER ON MOTION TO QUASH DEFENDANT'S SUBPOENA AND FOR A PROTECTIVE ORDER Ind. No. 71543/2023

HON. JUAN M. MERCHAN A.J.S.C.:

On April 4, 2023, Donald J. Trump, the Defendant, was arraigned before this Court on an indictment charging him with 34 counts of Falsifying Business Records in the First Degree, in violation of Penal Law § 175.10. On March 11, 2024, Defendant issued a subpoena *duces tecum* to NBC Universal (hereinafter "NBCU") seeking all materials related to the documentary film titled "Stormy" (hereinafter "Documentary") that involves a witness in the instant matter, Stormy Daniels (hereinafter "Daniels"). On March 20, 2024, NBCU filed a motion to quash the subpoena. Defendant responded on March 27, 2024 and NBCU filed a reply on April 1, 2024.

MOTION TO QUASH

CPL § 610.20 provides that any party to a criminal proceeding may issue a subpoena. CPL § 610.20(3) specifically provides that an attorney for a defendant in a criminal action may issue a subpoena of any witness whom the defendant is entitled to call in such action or proceeding. To "sustain a subpoena," the issuing party must demonstrate "that the testimony or evidence sought is reasonably likely to be relevant and material to the proceedings and that the subpoena is not overbroad or unreasonably burdensome." *See* CPL § 610.20(4); *see also*, *People v. Kozlowski*, 11 NY3d 223, 242 [2008] (the proper purpose of a subpoena *duces tecum* is to compel the production of specific documents that are relevant and material to facts at issue in a judicial proceeding). When disputes arise concerning the "validity or propriety" of a subpoena, the court must resolve whether the subpoena is enforceable. *See Application of Davis*, 88 Misc2d 938, 940 [Crim. Ct. N.Y. Co. 1976]; *see also*, *People v. Natal*, 75 NY2d 379, 385 [1990]. Because the subpoenaed materials are returnable to the court, it follows that the court retains the ultimate authority on the outer parameters of the subpoena powers. *See People v. D.N.*, 62 Misc3d 544 [Crim. Ct. N.Y. Co. 2018], *internally citing Matter of Terry D.*, 81 NY2d 1042 [1993].

The Court of Appeals has held that a subpoena is properly quashed when the party issuing the subpoena fails "to demonstrate any theory of relevancy and materiality, but instead, merely desire[s] the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable [them] to impeach witness[es]." *People v. Gissendanner*, 48 NY2d 543, 549 [1979]. A subpoena *duces tecum* may not generally be "used for the purpose of discovery or to ascertain the existence of evidence." *Id.* at 551. Conversely, courts have denied a motion to quash where the subpoena demands production of specific documents which are relevant and material to the proceedings. *See People v. Duran*, 32 Misc3d 225, 229 [Crim. Ct. Kings Co. 2011, Laporte, J] ("the defendant established that the solicited data is relevant and material to the determination of guilt or innocence, and not sought solely in the speculative hope of finding possible impeachment of witness' general credibility"); *People v. Campanella*, 27 Misc3d 737 [Dist. Ct. Suffolk Co. 2009, Horowitz, J].

When deciding a motion to quash a subpoena, "access must be afforded to ...data relevant and material to the determination of guilt or innocence, as, for example, when a request for access is directed toward revealing specific 'biases, prejudices or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand' or when it involves other information which if known to the trier of fact, could very well affect the outcome of the trial ... there is no such compulsion when requests to examine records are motivated by nothing more than impeachment of witnesses' general credibility." *People v. Gissendanner* at 548, *quoting Davis v. Alaska*, 415 US 308, 316 [1974]. Thus, this Court must determine, among other things, whether the subpoena seeks information to be used for impeachment of general credibility or is instead directed towards revealing specific biases, prejudices or ulterior motives related directly to personalities or issues in the instant matter; whether the solicited information is material to the question of guilt or innocence, or nothing more than a 'fishing expedition.'

The Civil Rights Law "provides a statutory exemption from contempt for professional journalists, newscasters and their supervisors and employers." 81 NY Jur Newspapers § 30. "New York's Shield Law provides journalists an absolute privilege from testifying with regard to news obtained under a promise of confidentiality but only a qualified privilege with regard to news that is both unpublished and not obtained under a promise of confidentiality." *Baker v. Goldman Sachs & Co.*, 669 F3d 105 [2d Cir. 2012] *citing to* NY Civil Rights Law §79-h. A party seeking unpublished "news" may overcome the qualified privilege by making "a clear and specific showing that the news: (i) is highly material and relevant; (ii) is critical or necessary to the maintenance of a party's claim, defense or proof of an issue material thereto; and (iii) is not obtainable from any alternative source. *Id.* NY

Civil Rights Law § 79-h(c) "established the qualified privilege as to nonconfidential news by requiring disclosure of nonconfidential material only as *a last resort. Matter of American Broadcasting Companies, Inc., Concerning the People of the State of New York v. Steven Crea et al., Defendants*, 189 Misc2d 805 [Sup Ct NY Cnty October 1, 2001], (emphasis in original).

DISCUSSION

For the following two reasons, non-party NBC Universal's motion to quash the instant subpoena is GRANTED in its entirety.

First, Defendant's request seeks *all* documents "that relate to the Documentary and one or more of the following topics: (a) the premiere of the Documentary, (b) the release date of the Documentary. (c) editing of the Documentary, (d) promotion of the Documentary, (e) marketing of the Documentary, (f) any form of compensation to Stephanie Clifford relating to the Documentary, (g) any rights to the Documentary maintained by Stephanie Clifford, (h) agreements between Stephanie Clifford and NBCUniversal or any of its affiliates, (p) the trial in *People v. Trump*, Indictment Number 71543-23, involving charges filed by the Manhattan District Attorney's Office, (q) Michael Cohen, and (r) Donald J. Trump." Exhibit E, Affirmation of Alexandra M. Settelmayer[1].

Unlike the subpoena in *Kozlowksi*, which Defendant relies upon, the instant subpoena is far too broad and seeks general discovery. In *Kozlowski*, the court held that the subpoena met the "minimal threshold necessary" for enforcement, but the requests there were highly specific and narrowly tailored. *Kozlowski* 869 NYS2d at 242. The defendants in *Kozlowski* made requests that sought "specifically identified statements." *Kozlowski*, at 235. In the instant matter, the Defendant seeks "all" documents, including but not limited to vague and overbroad requests for "the trial in *People v. Trump*, Indictment Number 71543-23."

Defendant claims that the materials sought by the subpoena will establish collusion between NBCU and Daniels relating to the release date of the documentary. Defendant argues that NBCU and Daniels conspired to release the Documentary as close to the start date of this trial as possible to prejudice Defendant and maximize their own financial interests. Defendant's Opposition at pgs. 5-7. NBCU argues that Defendant's claims are devoid of factual support or corroboration. NBCU Reply Memo at pg. 1. The affirmation of Erica Forstadt, Senior Vice President of Production and Development at NBC Universal Media, LLC, indicates that Daniels had no "right to approve the

[1] The Defendant has withdrawn requests 1(i) – 1(o) of the subpoena duces tecum. *See* Defendant's Opposition at pg. 1, n 1.

content of the Documentary or the timing of its release." *Id.* Because Defendant's claims are purely speculative and unsupported, his subpoena and the demands therein are the very definition of a fishing expedition.

Second, even if this Court were to find that Defendant's request was not speculative, or that it seeks general discovery, NBCUniversal's motion nonetheless would be granted because Defendant seeks unfettered access to the notes and materials of a media organization in violation of Civil Rights Law § 79-h.

This Court has considered Defendant's explanation for seeking this Court's permission to rifle through the privileged documents of a news organization and finds that he has not shouldered the very heavy burden necessary to overcome NY Civil Rights Law § 79-h.

The foregoing constitutes the Decision and Order of this Court.

April 5, 2024
New York, New York

APR 0 5 2024

Juan M. Merchan
Acting Justice of the Supreme Court
Judge of the Court of Claims

HON. J. MERCHAN