

People v Trovato

2007 NY Slip Op 34547(U)

September 13, 2007

Supreme Court, Westchester County

Docket Number: 06-1047

Judge: Barbara G. Zambelli

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FILED
AND
ENTERED
ON 9/17/2007
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
THE PEOPLE OF THE STATE OF NEW YORK

- against -

ANNE TROVATO,

Defendant.

DECISION & ORDER

Indictment No.: 06-1047

FILED
SEP 17 2007
TIMOTHY S. JERONI
COUNTY CLERK
COUNTY OF WESTCHESTER

ZAMBELLI, J.

Defendant has been indicted for the crimes of murder in the second degree (two counts), burglary in the second degree and criminal possession of a weapon in the fourth degree (two counts), which charges arise out the homicide of Patricia Mery, the defendant's mother, on or about and between May 11 and May 14, 2006. The case has been the subject of some local media attention, including an article which appeared in The Journal News on September 10, 2007.

On the same day that article was published, defendant made an oral motion to close the courtroom for the pre-trial hearing to be held pursuant to the People's motion in limine and People v. Ventimiglia, 52 N.Y.2d 350 (1981), in which the People seek the admissibility at trial on their direct case of allegations concerning uncharged bad acts of the defendant. Pursuant to this request, the Court notified the interested members of the news media and on September 12, 2007, provided them with an opportunity to be heard on the defendant's

motion (see Matter of New York Times Co. v. Demakos, 137 A.D.2d 247, 252 (2d Dept. 1988)). On that date, the Court heard argument regarding the motion from defendant and the People, as well as from Mark Fowler, an attorney representing The Journal News. Mr. Fowler submitted a memorandum of law in opposition to the defendant's motion and the defendant submitted a memorandum of law in support thereof. The People orally opposed the motion.

Defendant argues that her right to a fair trial will be prejudiced should the hearing on the People's Ventimiglia application and motion in limine be open to the public. Defendant submits that there is a substantial probability of prejudice because if the information that is the subject of the hearing is published, it is so inflammatory that it will poison the jury pool, and that no reasonable alternatives to courtroom closure exist which will protect the defendant's fair trial rights. Defendant argues that this crime is of "an inflammatory or lurid nature" given that the victim was the daughter of the former Ossining police chief, was the defendant's mother and was stabbed 24 times and bludgeoned 6 times. Defendant submits that the community where the crime occurred, Ossining, is a small community in a county where crimes like this do not often happen, and thus, when they do occur, people take notice of the publicity given to them because they are unusual and sensational events. Defendant further submits that material which is the subject of a Ventimiglia hearing is by its nature inherently prejudicial, as it involves allegations of uncharged bad acts, and that the Court may well rule that none or only some of the evidence sought to be used by the People will be admissible at trial. Lastly, defendant submits that a balance may be struck between her right to a fair trial and the public's right to know by having the Court narrowly tailor its ruling and seal the transcripts of the hearing

only until after the jury is sworn, resulting in a delay of the public dissemination of the material of only about a week.

The People oppose the defendant's motion and note that while this case has received some media attention, pre-trial hearings in news worthy cases have been held in open courtrooms in this courthouse and that juries have been able to be selected without prejudice to the defendants involved in such cases. The People argue that a reasonable alternative to closure exists in conducting a careful voir dire of potential jurors to exclude anyone who could not be fair and impartial.

Counsel for The Journal News also opposed defendant's motion and argued that the closure of the courtroom would impinge upon the presumptive constitutional right of access of the press and public. While he acknowledged that his client did publish some articles on this case, he noted that the press attention here did not rise to the level of that in other cases where motions for closure were denied. Like the People, counsel also submitted that a reasonable alternative to courtroom closure existed through a careful voir dire of potential jurors.

Courtroom proceedings are presumptively open to the public and the press, who have a First Amendment right of access thereto, including access to pretrial hearings (see Matter of Assoc. Press v. Bell, 70 N.Y.2d 32, 38 (1987); Matter of Gannett Westchester Rockland Newspapers v. LaCava, 158 A.D.2d 495, 496-7 (2d Dept. 1990)). Because of the presumption of openness, a motion to exclude the press and public from a courtroom is a request for extraordinary relief (see Poughkeepsie Newspapers, Inc. v. Rosenblatt, 92 A.D.2d 232, 234 (2d Dept. 1983), aff'd, 61 N.Y.2d 1005 (1984)). However, it has been recognized that the right of access is not absolute, as such hearings pose a risk that

pretrial publicity could inflame public opinion and taint the jury pool by exposing potential jurors to inadmissible, highly prejudicial evidence (Matter of Assoc. Press v. Bell, supra, citing Press Enterprise v. Superior Ct. of California ("Press Enterprise II"), 478 U.S. 1 (1986)).

A defendant who contends that her right to a fair trial may be compromised by a hearing held in open court bears the burden of proving that contention (Matter of Assoc. Press v. Bell, supra at 39; People v. Burton, 189 A.D.2d 532, 536 (3d Dept. 1993)). In order to override the presumption of openness and the rights of the public and the press to access, the defendant must show that there is a substantial probability that her right to a fair trial will be prejudiced by publicity that courtroom closure would prevent and that no reasonable alternatives to closure exist which would adequately protect her fair trial rights (Matter of Assoc. Press v. Bell, supra at 39, citing Press Enterprise II, supra at 14). Thus, closed proceedings may only be held for cause shown which clearly and compellingly outweighs the value of openness (Matter of New York Times Co. v. Demakos, supra at 251). A hypothetical risk of prejudice is insufficient to justify a denial of public access (Matter of Gannett Westchester Rockland Newspapers v. LaCava, supra at 497; Matter of Capital Newspapers v. Lee, 139 A.D.2d 31, 36 (3d Dept. 1988)). Rather, the test requires specific findings which demonstrate the necessity of closure in order to prevent prejudice (see Press Enterprises II, supra at 13-14).

Defendant fails to meet her burden in demonstrating a substantial probability of prejudice to her will result should the hearing in this case on the People's Ventimiglia application and motion in limine proceed in open court. Despite defendant's contention that the sensationalist nature of this crime has attracted much public concern and curiosity

in what she asserts is the small community of Ossining, the jury pool will be drawn from the whole county, not just Ossining. According to the U.S. Census Bureau, Westchester County has a population of approximately 950,000 as of 2006, hardly a small number from which to draw a jury pool. As to media coverage, while it is recognized that there has been some coverage in this matter, coverage has largely been in The Journal News, which has run approximately fifteen articles to date since the discovery of the crime in May, 2006. The Journal News is a newspaper local to the Westchester County area; however, it is hardly the only media in the area, as Westchester is part of the greater tri-state area and is served by several other newspapers as well as numerous television news channels. As pointed out by counsel for The Journal News, this is not a case where the courtroom is packed with members of the press (cf. Matter of Assoc. Press v. Bell, *supra* (the Robert Chambers "Preppy Murder" case wherein defendant's motion for closure was denied)). Moreover, despite defendant's contention that many of the allegations that are the subject of the People's Ventimiglia application and motion in limine have not yet been made public, an inspection of the application reveals that references to most of the allegations have already been made in documents that are part of the public record (see, e.g. Matter of Assoc. Press v. Bell, *supra* at 39)).

In light of these facts, defendant has failed to show more than a possibility of prejudice which could potentially impair the selection of an impartial jury. As noted by the Court of Appeals, this possibility of prejudice is an insufficient basis upon which to premise the denial of public access to courtroom proceedings, as such possibility of prejudice can very likely be alleged in all pretrial hearings in every publicized case (*Id.* at 40). Thus, defendant has failed to provide sufficient evidence here of "intensive publicity surrounding

the trial sufficient to support a finding that access by the press to the hearing would undoubtedly raise a significant danger that information concerning the substance of the challenged evidence would reach the jurors" (Matter of Gannett Westchester Rockland Newspapers v. LaCava, supra at 497).

Defendant has also failed to present sufficient evidence demonstrating that no reasonable alternatives to closure exist which would adequately protect her fair trial rights. Given the relatively limited amount of press exposure in this case, coupled with the size of the jury pool in Westchester County, if any prejudicial information reaches the potential jurors, its effect may be dissipated through a careful and searching voir dire aimed at excluding those who have been exposed to such information (see Press Enterprises II, supra at 15; Poughkeepsie Newspapers, Inc. v. Rosenblatt, supra at 235).

The defendant's motion to close the courtroom for the hearing on the People's Ventimiglia application and motion in limine is denied.

Dated: White Plains, New York
September 13, 2007


BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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