

People v Bedi

2012 NY Slip Op 33847(U)

May 31, 2012

Supreme Court, Westchester County

Docket Number: 10-1485

Judge: Barbara G. Zambelli

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FILED
AND
ENTERED ON
May 31 2012
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK

- against -

VICKRAM BEDI, DATALINK COMPUTER
PRODUCTS, INC. a/k/a DCP, INC.

Defendants.

-----X
ZAMBELLI, J.

DECISION & ORDER

Indictment No.: 10-1485

FILED
MAY 31 2012
TIMOTHY C. IDOM
COUNTY CLERK
OF WESTCHESTER

The defendants have been indicted for grand larceny in the first degree allegedly committed on or about and between August 5, 2004 and August 26, 2010 in the County of Westchester. Defendants now move by notice of motion with supporting affirmation for omnibus relief. The People's response consists of an affirmation in opposition and a memorandum of law. Upon consideration of these papers, as well as review of the grand jury minutes and exhibits and the consent discovery order entered in this case, the motion is disposed of as follows:

1. MOTION TO DISMISS FOR FACIAL INSUFFICIENCY

Defendants move to dismiss the indictment on grounds of facial insufficiency. Specifically, defendants argue that the People have failed to specifically indicate the times, places and manners in which defendant Bedi is alleged to have made representations to the victim or money was exchanged. They argue that as the indictment alleges that the crime occurred over an approximate six year period from "on or about and between August 5, 2004 and August 26, 2010", that this time frame is too lengthy to enable defendants to

prepare a defense and that the bill of particulars and amended bill of particulars provided by the People fail to cure this alleged defect; defendants further argue that the time frame at issue, six years, is, as a matter of law, unconstitutional. They also take issue with the locations given for the crime as insufficiently specific, as the amended bill of particulars indicates that the crime occurred at "165 Main Street, Mount Kisco, New York and elsewhere in the State of New York."

The People oppose the motion and argue that there is no set time frame which would render an indictment insufficient and that each case must be considered on its own facts. They further argue that the indictment herein is not defective because the amended bill of particulars provides the defendants with sufficient notice upon which to prepare their defenses. The People also submit that "as is indicated by the totality of defendant's motion and his attempts at offering explanations and a defense, he is well aware of the acts which constitute the crime he is charged with committing."

As to the defendants' argument that the indictment is defective as a matter of law because of the six year time frame, this argument is without merit. The People charged the defendants under a continuing crime theory. In such situations, where the larceny is held to be "pursuant to a single intent and one complete, illegal scheme, it matters not the length of the period over which the takings continued." (People v. Cox, 286 N.Y. 137, 142). Moreover, despite the defense's contention to the contrary, time periods equivalent to and longer than the time frame at issue in this case have been upheld by the courts (see, e.g. People v. Arnold, 15 A.D.3d 783 (3d Dept. 2005) (upheld grand larceny convictions where defendant was charged with having committed crimes over periods of ten and seven years, respectively), lv. denied, 4 N.Y.3d 851 (2005)).

As to defendants' argument that in this case, the time frame is too long and the bill of particulars fails to provide sufficient information to enable defendants to prepare a defense, CPL §200.50(6) provides that an indictment must contain, inter alia, "a statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated period of time." The purpose of an indictment is to provide the accused with notice of the nature of the charges against him and the time and place of the alleged conduct, so as to enable him to prepare an adequate defense (People v. Morris, 61 N.Y.2d 290, 293 (1984)). Where an indictment provides overly broad periods of time during which a crime is alleged to have been committed, a bill of particulars may be employed to narrow the time allegations (Id. at 293-94). The requirements for a valid indictment vary with regard to the particular crime charged, and the determination as to whether a defendant has received sufficient specificity to adequately prepare a defense must be made on an ad hoc basis by considering all relevant circumstances (Id., at 295).

It is noted that in addition to moving to dismiss the indictment for facial insufficiency in regard to the failure to allege sufficiently specific time and place details for the offense charged, defendants also move for a further bill of particulars. As the Court has granted defendants' request for a further bill (Section 6, infra), their motion to dismiss the indictment for facial insufficiency on the ground that the time frame in the indictment is too long and the bill of particulars fails to provide sufficient information to enable defendants to prepare a defense is denied as moot.

2. MOTION TO DISMISS - DUPLICITY

Defendants also move to dismiss the indictment as defective on the ground that it is duplicitous, in that the amended bill of particulars provides allegedly general and non-

specific facts which the defendants submit are wholly conclusory and contradictory, and which may impair their ability to assert the protection against double jeopardy in a future case.

The People oppose the motion and allege that the indictment is not duplicitous because the separate larcenies were properly aggregated into a single count, as it is alleged that the defendants stole the money from the same owner, regardless of the time which elapsed between takings, as part of a single intent in executing a common fraudulent scheme.

Defendants' motion to dismiss the indictment on the ground of duplicity is denied. CPL §200.30 provides that an indictment is duplicitous where one count charges more than one offense. However, grand larceny may be charged under a continuing crime theory as a series of single larcenies governed by a common fraudulent scheme or plan even if the successive takings extended over a long time period (People v. Rosich, 170 A.D.2d 703 (2d Dept. 1991), lv. denied, 77 N.Y.2d 1000 (1991)). Here, the evidence before the grand jury was sufficient to establish that defendant Bedi stole property from the same victim in a series of acts pursuant to a single intent and design and in execution of a common fraudulent scheme and that defendant Datalink was the conduit used by defendant Bedi to process the victim's money (see People v. Cox, supra at 141; see also People v. First Meridian Planning Corp., 86 N.Y.2d 608, 615-16 (1995)). Accordingly, defendants' motion to dismiss on the ground that the indictment is duplicitous is denied.

3. MOTION TO DISMISS COUNT 1 AS UNCONSTITUTIONAL AS APPLIED

Defendants also move to dismiss the indictment on the grounds that grand larceny in the first degree is unconstitutional as applied to them as it is being used to ignore valid

and negotiated contracts entered into by the parties. Defendants contend that the September 20, 2004 contract addendum between Bedi and the victim included specific language that acknowledged Bedi could tell "fictitious" stories to the victim (Defendant's Exhibit C). The People oppose the motion.

Defendants' motion is denied. A law enacted by the Legislature is presumptively valid and a defendant seeking to invalidate it bears a heavy burden of demonstrating its alleged unconstitutionality (People v. Stuart, 100 N.Y.2d 412, 421 (2003); People v. Foley, 94 N.Y.2d 668, 677 (2000); People v. Tichenor, 89 N.Y.2d 769, 773 (1997); People v. Bright, 71 N.Y.2d 376, 382 (1988)). Defendants' conclusory allegations are insufficient to demonstrate that the statute is unconstitutional as applied to him. Defendants' arguments regarding the contracts are a defense to be asserted at trial and will be an issue for the finder of fact to resolve.

4. MOTION TO INSPECT/DISMISS/REDUCE

This application is granted to the extent that the Court has conducted an in camera inspection of the minutes of the grand jury proceedings. Upon review of the evidence presented, this Court finds that all counts were supported by sufficient evidence and that the instructions given were appropriate; the claim of right defense did not have to be charged in this case. As to defendants' allegations, largely made "upon information and belief", that the People have presented fraudulent evidence before the grand jury, these allegations are conclusory, self-serving and unsupported by any other evidence. There was no other infirmity which would warrant a dismissal of the indictment. Accordingly, that branch of the motion which seeks dismissal of the indictment is denied. The Court further finds no facts which would warrant releasing any portion of the minutes of the grand jury

proceedings to the defense (CPL §210.30[3]).

5. MOTION FOR DISCOVERY AND INSPECTION

This application is granted to the limited extent of ordering that the People are to provide the defendants with materials and information, the disclosure of which is required pursuant to the provisions of CPL §240.44 and §240.45. To the extent that the People maintain that discovery has been stayed in this matter, they are incorrect and there is no such stay. The defendants' demand for disclosure of items or information to which they are entitled pursuant to the provisions of CPL §240.20(1) (a) through (l) is granted upon the People's consent; to this end it is noted that the Court's review of the grand jury minutes included the defendant's testimony, and as this testimony has been transcribed, the People are directed to produce the same to the defense. It is also noted that in regard to the hard drives, the People addressed this issue in a letter to the defense dated May 14, 2012 indicating that the hard drives provided by the defense were defective and requesting that replacement hard drives with specific storage capacities be provided. The application is otherwise denied as it seeks items or information which are beyond the scope of discovery and the defendants have failed to show that such items are material to the preparation of their defense (CPL §240.40 [1][a]).

6. MOTION FOR EXCULPATORY INFORMATION

The People are reminded of the continuing obligation to provide exculpatory information to the defendants (Brady v. Maryland, 373 U.S. 83). Exculpatory information includes any information that would be "favorable to the defense, material either to guilt or punishment, or affecting the credibility of prosecution witnesses," (People v. Baxley, 84 NY2d 208, 213). The People are directed to disclose any such information to the defense.

Where a question exists as to whether a particular item should be disclosed, the People are directed to submit the material or information to the Court, which will conduct an in camera examination to resolve the issue.

While defendants allege in their motion that “[u]pon information and belief, the evidence against Mr. Bedi was provided by a third party, a private investigator firm known as “The Fairfax Group, LLP”, and that, if true, this constitutes Brady material, as an initial matter, defendants fail to specify, other than an oblique reference to “email”, exactly what evidence they contend was provided by this third party or establish how this would constitute Brady material. While defendants allege in double hearsay that defendant Bedi’s former fiancé allegedly told him that Hall threatened her and sought her assistance to “set defendant up”, as noted above, defendants’ allegations are conclusory, self-serving and unsupported by any other evidence.

7. MOTION FOR A FURTHER BILL OF PARTICULARS

Defendants’ motion for a further bill of particulars is granted. While all of the information requested by defendants need not be disclosed (People v. Sanchez, 278 AD2d 889), the People are directed to file a further bill of particulars which provides greater specificity as to the theory of prosecution and which sets forth greater detail regarding the acts alleged to constitute the crime, including the false pretenses defendants are accused of using to steal property from the victim. As to the time frame and location for the crime, upon this Court’s review of the grand jury minutes, it is apparent that the People have information which provides significantly greater specificity as to certain acts which are alleged to have constituted part of the crime, as well as providing more detail regarding the amounts involved. For instance, the People are in possession of financial records which

indicate the dates of transactions which the People contend constitute part of the alleged grand larceny, and given that the transactions were numerous, documents summarizing them in table form were made by an expert testifying on behalf of the People and were introduced to the grand jury as Exhibits 36 and 37; these documents specifically relate to alleged charges allegedly made by the defendants to the victim's American Express credit cards. The People are directed to provide those exhibits to the defense along with their further bill of particulars. The review of the grand jury minutes also makes clear that the People have information regarding the alleged \$10,950,000.00 transfer from the victim to defendant and how and when this transfer occurred as per the records relating to defendant Bedi's accounts with Wachovia Securities, which were part of grand jury Exhibit 33; to the extent that they have not already done so, the People are further directed to provide these records regarding this transaction to the defense. The People's amended bill of particulars should also address the \$1.8 million transfer between the victim and defendant Bedi's fiancé and clarify as to whether that transfer is included in the grand larceny charge against the defendants.

8. MOTION TO SUPPRESS STATEMENTS

The People have served the defendant Bedi with one CPL §710.30 notice regarding his grand jury testimony. The defendant moves to suppress the noticed statement on the grounds that it was involuntary.

This Court's review of the grand jury minutes reveals that the testimony before the grand jury did not constitute a statement requiring notice within the meaning of CPL §710.30, notwithstanding any notice thereof by the People, and that the testimony was clearly voluntary (People v. Jones, 236 AD2d 217, 219 (1st Dept. 1997), lv. denied 89 NY2d

1036 (1997). Accordingly, defendant's motion to suppress is summarily denied.

9. MOTION TO PRECLUDE UNNOTICED STATEMENTS

The defendants move in advance to preclude the People from introducing any statements at trial which were not noticed to them pursuant to CPL §710.30. Defendants do not allege that the People have actually served any such notices outside of the statutory time frame. The defendants' motion is therefore denied as moot with leave to renew in the event that the People seek to serve such notices in the future.

10. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendants seek suppression of the physical evidence recovered pursuant to the search warrants issued in this matter and seeks hearings pursuant to Franks v. Delaware, 438 U.S.154, contesting the veracity of the affiants to the affidavits, which have been produced to the defense. Defendants also challenge the searches that were conducted as being improperly executed, inaccurately descriptive of premises to be searched and property seized, as beyond this court's jurisdiction, and that the searches exceeded the scope of the warrant and that property was seized beyond that authorized by the warrants.

The People oppose the motion and argue that as to the search warrants, a review of the warrant affidavits will reveal that the warrants are supported by probable cause. As to the search of defendant Bedi's person, the People argue that this search was valid because the police had probable cause to arrest the defendant and anything seized incident to arrest would be lawfully obtained.

As to the evidence recovered pursuant to the search warrants issued in this case, upon the review of the four corners of the search warrant affidavits, which have been

provided to the defendants, the Court finds that the warrants were supported by probable cause (see People v. Keyes, 291 AD2d 571 (2d Dept. 2002)). Moreover, after a review of the warrants themselves, the Court finds that they particularly described the items to be searched and seized and were not overbroad and were within the jurisdiction of the issuing court. As to defendants' argument that items were seized beyond the scope of the search warrant, it is noted that the warrants covered financial records as well as the content of safes. As to defendants' specific contention that defendant Bedi's mother's medical records were seized, such documents are beyond the scope of the warrants, and thus the Court grants the motion to suppress solely as to those medical records. As to defendants' request for a hearing pursuant to Franks v. Delaware, *supra*, the motion is denied. While defendants allege that the sources of the information in the affidavits, namely defendant Bedi's fiancé and the victim, are "believed false and made, at least in the case of [the fiancé] under duress" and because they were made "knowing that the contracts fully exonerate Mr. Bedi", (Giordano Affirmation, ¶95), it is noted that the search warrant affidavits were all executed by a police officer (People's Exhibit 4). "A defendant is entitled to a hearing in which he may challenge the truthfulness of the allegations in the affidavit supporting a search warrant only where he attacks the veracity of the police officer affiant and not where . . . the credibility of the source of the information is challenged." (People v. Leggio, 84 A.D.3d 1116, 1117 (2d Dept. 2011), quoting People v. Slaughter, 37 N.Y.2d 596, 600 (1975)). Thus, as defendants herein challenge the source of the information in the affidavits, they are not entitled to a Franks hearing. It is again noted that, while defendants contend the contracts "fully exonerate" them, the People contend otherwise, and this is an argument which may be asserted to the finder of fact at trial. To the extent

that there was additional evidence recovered from defendant Bedi's person upon his arrest, the Court grants the defendant's motion to the extent that a hearing will be held to determine whether any property seized should be excluded as the product of an unlawful seizure or other violation of the defendant's rights (Mapp v. United States, 367 US 642; People v. Holmes, 81 NY2d 1056; People v. Selby, 220 AD2d 544).

11. MOTION TO DISQUALIFY DISTRICT ATTORNEY
AND TO APPOINT SPECIAL DISTRICT ATTORNEY

The defendants move to disqualify the ADA's who are prosecuting this case on behalf of the People. Defendants allege that the ADA's have inappropriately "worked hand in glove" with individuals working on behalf of the victim and have coordinated efforts to place holds on what defendant Bedi claims is his legitimate money for the sole purpose of making it difficult for defendant to make bail. Defendants allege that the People have misrepresented to the Court that defendant Bedi is a flight risk. They allege that the People are biased against them and have deliberately caused delays in this case. Defendants request that the ADA's be disqualified and that a special prosecutor be appointed. Defendants allege that one prosecution witness was threatened by an individual working on behalf of the victim and request an order prohibiting these "outside influences" from interfering in the case. They further request that the Court authorize an investigation and prosecution into any criminal activities by the People as well as by the civil parties allegedly working on behalf of the victim, which were directed at defendants, their attorneys and family members. The People oppose the motion.

Defendant's motion is denied. As a general rule, a public prosecutor may only be removed by a court to protect a defendant from actual prejudice arising from a

demonstrated conflict of interest or a substantial risk of an abuse of confidence (Matter of Holtzman v. Schumer, 60 N.Y.2d 46, 55 (1983); People v. Williams, 37 A.D3d 626 (2d Dept. 2007); lv. denied, 11 N.Y.3d 836 (2008)). A defendant seeking removal should demonstrate "actual prejudice or so substantial a risk thereof as could not be ignored." (Matter of Holtzman v. Schumer, *supra*; People v. Williams, *supra*). Defendant's unsupported allegations are insufficient to meet this high burden.

12. MOTION TO DISMISS IN THE FURTHERANCE OF JUSTICE

The defendants move to dismiss the indictment in the interests of justice pursuant to CPL §210.40. He argues that the factors set forth in CPL §210.40(1) support his application. The People oppose the motion.

Dismissal of an indictment in the interest of justice "is required as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant...would constitute or result in injustice" (CPL §210.40; People v. Clayton, 41 A.D.2d 204 (2d Dept. 1973)). In determining whether such compelling factor, consideration or circumstance exists, the statute sets forth several factors, each of which are addressed by this Court as follows:

(a) The seriousness and circumstances of the offense

Defendants argue that this factor should be counted in their favor because while the charge is serious, "the circumstances of the offense prove that Mr. Bedi acted with the knowledge and cooperation of the alleged victim." They submit that they are being prosecuted because the People cannot admit that they made a mistake and arrested the wrong person. The People submit that this is a serious offense, as defendant is charged with stealing approximately \$20 million from the victim.

The Court finds that the crime involved is serious. It is also noted that the evidence before the grand jury was legally sufficient to sustain the charge against the defendants. Defendants' arguments may be asserted before the trier of fact.

b) The extent of the harm caused by the offense

Defendants argue that there was no harm caused by the offense except the violation of defendant Bedi's civil rights. The People argue that the victim suffered great harm as, they allege, \$20 million was stolen from him by defendants over a six year period.

The Court finds that there was significant harm cause by the offense.

c) Evidence of guilt

Defendants argue that the case is "incredibly" weak and that the victim has allegedly perjured himself and will have to do so again at trial, noting "[i]t should be fun to watch." The People argue that their case is strong.

Defendants' numerous challenges to his prosecution are denied elsewhere in this Decision, and the evidence presented to the grand jury was found to be legally sufficient. Accordingly, this Court finds that this factor does not inure to the defendant's benefit.

d) History, character and condition of defendant

Defendant Bedi argues that this factor should be decided in his favor because he is a 37 year old man with a bachelor's degree who has run the co-defendant business since his father's death in 1998 who has only one prior misdemeanor conviction from more than ten years ago. Defendant notes that he has received "numerous charitable, civic and business accolades", is credited with building the first Pentium laptop and has received a Congressional medal of merit for exports to Japan. Defendant also notes that his father was a professor at Bernard Baruch college who had significant achievements in his career, and

that he is a descendent of a fifteenth century Hindi guru. The People note defendant's misdemeanor conviction and argue that the nature and extent of his illegal conduct in this case is "massive" and reflects poor character.

Defendant's history mitigates in his favor; however, as noted by the People, the crime herein is significant and raises character issues and legally sufficient evidence to maintain the charge against defendants were presented to the grand jury. The achievements of defendant's father and distant ancestors are irrelevant as to defendant's character and have no bearing herein.

e) Misconduct by law enforcement

Defendants argue that there has been "much" misconduct by law enforcement in this matter and the People have made intentionally false bail representations, have inappropriately tied up defendant Bedi and his family's financial holdings to prevent him from making bail, and alleges "upon information and belief, literally hundreds of thousands of dollars is believed missing from funds removed from [his] home during the search." Defendant further alleges that he was denied his right to counsel, was assaulted by the police chief, has had his name and reputation slandered by the People and has been the subject of a grand jury presentation involving allegedly false evidence. The People dispute that there was any misconduct by law enforcement or the prosecutors in this matter and deny his allegations that he was injured in police custody or that he was denied his right to counsel.

As to defendants' allegations of misconduct on behalf of the People, these allegations are conclusory, self-serving and unsupported by any other evidence.

f) Purpose and Effect of Imposing the Authorized Sentence

Defendants argue that no purpose would be served in imposing a sentence against them; the People argue that punishing defendants would have a deterrent effect against future violations and that "a fraud on such a massive scale requires penal sanctions."

Defendants' contention that no purpose would be served by imposing the authorized sentence is based upon their allegations that they did not commit the crime herein, which is, of course, the ultimate issue in this case to be decided by the trier of fact. The Court agrees that the imposition of an authorized sentence upon any conviction of defendants would have a deterrent effect on others.

g) Impact of dismissal on public confidence &

h) Impact of the dismissal on the safety and welfare of the community

Defendants argue that a dismissal of the indictment would have a negligible effect on public confidence or on the safety and welfare of the community. The People argue that a dismissal without compelling circumstances would have an adverse impact on public confidence and upon the welfare of the community, as the larceny statutes exist to protect people from the wrongful taking of their property.

Given that this case involves allegations that defendants stole approximately \$20 million dollars from the victim, the Court finds that a dismissal of the indictment under the facts of this case would have a negative impact on public confidence and the safety and welfare of the community.

i) Attitude of complainant or victim

The People advise that the victim is vehemently opposed to the dismissal of this case.

j) Any other relevant fact that a judgment of conviction would serve no useful purpose

Defendants do not address this prong of the statute and the People contend that it is because it cannot be argued that a conviction would serve no useful purpose.

In balancing the above factors, the Court finds that defendants have failed to advance a compelling reason for the dismissal of the indictment. The Court therefore declines to exercise its discretion and, defendants' motion is denied.

13. MOTION TO SUPPRESS PRIOR BAD ACTS (SANDOVAL AND VENTIMIGLIA)

Granted on consent of the People to the extent that this Court directs that a hearing be held immediately prior to trial. Prior to the commencement of jury selection, the People will disclose to defendants all specific instances of their prior uncharged crimes and bad acts the People expect to introduce at trial for impeachment purposes (CPL §240.43). Defendants must then sustain his burden of informing the Court of the prior convictions and misconduct which might unfairly affect they as witnesses in their own behalf (People v. Matthews, 68 NY2d 118, 121-122). In the event the People seek to introduce defendant's prior bad acts on their direct case, the burden is on the People to seek a Ventimiglia hearing to determine the admissibility of such evidence (People v. Ventimiglia, 52 NY2d 350).

14. MOTION TO CONDUCT PRETRIAL HEARINGS 20 DAYS BEFORE TRIAL

This motion is denied. In accordance with the long standing practice of the Westchester County Court, pre-trial hearings granted on a post-indictment motion to suppress are held immediately prior to trial unless otherwise ordered by the Supervising Judge of the Trial Assignment Part.

15. MOTION FOR A SUBPOENA FOR PSYCHOLOGICAL RECORDS

The defendants move for an order requiring the People to disclose the name and address of the victim's alleged psychiatrist so as to allow a subpoena or HIPPA authorization to be served upon the doctor so that the records can be reviewed to determine whether they contain exculpatory material. Defendants allege "upon information and belief" that the victim in this case suffers from an unspecified long standing mental illness, has been under psychiatric care for years and is allegedly prescribed numerous drugs "which it is believed includes antipsychotic medication." Defendants further allege "upon information and belief" that the victim suffers from what the defendants believe to be a persecution personality disorder. Defendants maintain that this alleged mental illness is relevant to this case because, they allege, the victim has chosen "fantasy play acting" as a method to treat the alleged illness, which fantasy play acting allegedly formed the basis for the various fictitious scenarios regarding plots and threats that defendant Bedi allegedly told the victim. Thus, defendants submit that the alleged fantasy play acting was the basis for the September 20, 2004 contract addendum between Bedi and the victim which included specific language that acknowledged Bedi could tell "fictitious" stories to the victim.

The People oppose the motion. As an initial matter, the People aver that they are not in possession of, nor are they aware, of any such psychological records. They argue that even if such records did exist, they would be privileged and the privilege would be invoked. The People further argue that defendants have offered only speculative assertions that such records exist and that they would be exculpatory to them.

In reply, defendants reiterate their request for the records, but should the records

be denied them, they alternatively seek a hearing with the victim as a witness to his mental state and contractual relationship with defendant Bedi.

The defendants motion is denied. As an initial matter, the People have indicated that they have no such records in their possession, nor are they aware of the existence of any such records. Thus, the People have no obligation to produce the same (People v. Tissois, 72 N.Y.2d 75, 78 (1988)). In any event, defendants' allegations made upon information and belief are entirely speculative and insufficient to support their request, as is their allegation that the records would contain exculpatory information (see People v. Gutkaiss, 206 A.D.2d 628, 630 (3d Dept. 1994), lv. denied, 84 N.Y.3d 936 (1994)). Defendants offer nothing other than their own opinion that the victim suffers from a mental illness and as defendants are not psychiatrists or other mental health care professionals, their opinion is unqualified, as well. As a further matter, any such records would be privileged (CPLR §§4504, 4507) and defendants have failed to assert the applicability of any exceptions to the prohibition of disclosure (People v. Tissois, supra).

16. MOTION TO DISMISS FOR FAILURE TO PROVIDE A SPEEDY TRIAL

Defendants seek dismissal of the indictment on statutory grounds pursuant to CPL §§30.20, 30.30. Defendants allege that more than six months have passed since the arrest. Defendants do not specifically refer to any particular adjournments which they contend should count against the People. Instead, they argue that while the People may contend that "much of the adjournments have been on consent", it is the defense position that they were misrepresented into consenting by alleged "false pretenses by the prosecutor's office, in false settlement claims" and "bait and switch misconduct" by the People; defendants seek a hearing on the issue.

The People oppose the motion and argue that they are within the six month time frame set forth in CPL §30.30. They argue that the only period chargeable to them was from the date defendants rejected the SCI offer on October 12, 2011 until they announced readiness on December 6, 2011 - a period of 55 days. The People submit that all other adjournments were at the request of the defense. As to defendant's allegations of misconduct on their behalf, the People argue that this is not a statutory factor to be considered by CPL §30.30. As to defendant's motion pursuant to CPL §30.20, the People submit that pursuant to the five factor test set forth in People v. Taranovich, 37 N.Y.2d 442 (1975), defendant does not have a cognizable speedy trial claim.

As to defendant's allegations pursuant to CPL §30.30, it is noted that the felony complaint in this matter was filed in the Village of Mount Kisco Justice Court on November 4, 2010; thus the People had until May 4, 2011 to announce readiness (Marciano Affirmation, p. 4). The People announced their readiness on December 6, 2011 (Id.). Thus, the People need to exclude 214 days. Defendants do not specifically dispute that any of the adjournments listed by the People in their response as being attributed to them were not at their request; rather, as noted above they assert that any such adjournment was induced by the People's alleged misconduct. The People allege that all adjournments were on consent of the defense and also note that during the approximate seven month delay in the case, defendant went through five different attorneys and continued SCI conferences to consider a plea offer and also assert that one delay was due to defendant Bedi's request to appear in the grand jury on a different date than that proposed by the People. Defendants' motion is granted solely to the extent that a hearing is ordered (CPL §210.20 (1)(g) and §210.45 (6)).

As to defendants' motion pursuant to CPL §30.20, defendants' conclusory assertions are insufficient to warrant dismissal pursuant to CPL §30.20 and their motion on this ground is summarily denied (see People v. Vernace, 96 N.Y.2d 886 (2001); People v. Santos, 303 A.D.2d 695 (2d Dept. 2003); People v. Taranovich, 37 N.Y.2d 442 (1975)).

17. REQUEST FOR ADDITIONAL MOTIONS

The defendant's request for permission to make additional pretrial motions is denied. Additional motions will only be considered upon good cause shown pursuant to CPL §255.20(3).

Defendants' Cross Motion on Gomberg Matter

The People filed a motion for a Gomberg inquiry in this matter and in response thereto, defendants filed a cross motion in which they raised issues beyond the Gomberg inquiry; namely, 1) seeking dismissal of the indictment based upon alleged "gross misconduct" by the People, 2) seeking discovery of all emails, correspondence and text messages between the People, the victim and his civil attorneys and demanding a hearing in which the victim and his attorneys testify as to "evidence in their possession and deliberately kept from the defense" and 3) seeking reasonable bail.

Defendants' allegations of gross misconduct reiterate claims made and addressed above regarding the motion to inspect, dismiss or reduce the indictment, the motion for Brady material, the motion to disqualify the District Attorney and the motion for the victim's psychological records. Defendants further add allegations regarding what in defendants' "opinion" is an "unhealthy" relationship between the People, and the victim and his civil attorneys because the defense received a letter from the civil attorneys wherein it was stated that those attorneys possessed documents which will be used against defendants

in any trial herein. Defendants therefore assert that the People are inappropriately allowing an out of state attorney to possess evidence in order to prevent its production to the defendants. The People oppose the motion and aver that while the victim's civil attorneys may have access to many of the same documents to be used at trial and did provide the People with some documents at the beginning of the investigation, the People are now in possession of all evidence to be used at trial and deny that any evidence is being held by any third party. The People note that defendants have been provided discovery of all search warrants and underlying affidavits, exhibits and returns, have been given a CD with a recorded conversation between defendant Bedi, his fiancé, and two private investigators, as well as a transcript of same, and have been given all contracts between defendant Bedi and the victim, as well as other correspondence between the victim or his representatives and the defendant Bedi.

Defendants' motion to dismiss based upon allegations of "gross misconduct" on the part of the People is denied, as is their request for documents¹ and a hearing with the victim and his civil attorneys as witnesses. Defendants claims are conclusory and speculative and defendants have failed to establish that there is material in the possession of these other attorneys to which they are entitled, let alone that this material is deliberately being withheld from them by the People. In any event, it is noted that elsewhere in this Decision, the Court has directed that the People provide the defendant with certain materials and information determined to be in their possession (see Sections 5, 7, supra).

As to defendant Bedi's bail request, the motion is summarily denied, as this issue has

¹To the extent that the requested materials constitute Rosario material, the People would be obligated to provide the same to the defense in any event.

been repeatedly raised and addressed by this Court, as well as by the Appellate Division, Second Department, who on January 17, 2012 denied the defendant's writ of habeas corpus and refused to lower bail.

This Decision constitutes the Order of the Court.

Dated: White Plains, New York
May 31, 2012


BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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