

Bernans v Alaouie

2025 NY Slip Op 32511(U)

July 15, 2025

Supreme Court, New York County

Docket Number: Index No. 157353/2024

Judge: Hasa A. Kingo

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO PART 05M

Justice

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INDEX NO. 157353/2024

CARRIE BERNANS, JULIE HANSSON, KATHRINE HANSSON,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

MOHAMED ALAOUIE, KAYLA ARVIVU, VIRGIN HOTELS, NEW YORK, LLC, JLAM MANAGEMENT, LLC, LG NOMAD, LLC, THE CITY OF NEW YORK, THE CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION, THE NEW YORK CITY POLICE DEPARTMENT,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 52, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 65, 66

were read on this motion for SUBPOENA.

Plaintiffs move, by Order to Show Cause and pursuant to CPLR § 2307, for this court to so-order subpoenas duces tecum directing (a) the NYPD Criminal Records Unit to produce “any and all” reports, videos, audio recordings, photographs, officer-memo-book entries, witness and victim statements, 911 logs, CAD recordings, and related materials concerning defendant Mohamed Alaouie’s (“Alaouie”) arrest and the January 1, 2024 food-cart collision; and (b) the New York County District Attorney’s Office (“DANY”) to produce all grand-jury materials, investigative exhibits, plea offers, pre-sentence reports, and sentencing transcripts connected with the pending prosecution of Alaouie (NYSCEF Doc. No. 35).

BACKGROUND

In this personal injury action, Plaintiffs Carrie Bernans, Julie Hansson, and Kathrine Hansson (together, “Plaintiffs”) seek to recover damages for injuries they sustained on January 1, 2024, when a vehicle operated by Alaouie struck a food cart, which then struck Plaintiffs. The incident occurred in the vicinity of 7th Avenue and West 33rd Street in Manhattan (NYSCEF Doc No. 2, complaint ¶¶ 55–56). Plaintiffs allege that Alaouie was negligent in driving recklessly in a crowded area, driving on the sidewalk, and operating a vehicle while intoxicated (*id.* ¶ 57). The vehicle was registered to defendant Kayla Arvivu (*id.* ¶ 56).

Plaintiffs further allege in the complaint that, on the night in question, defendants Virgin Hotels New York LLC, JLAM Management LLC, and LG Nomad LLC (together, “Virgin Hotels”) advertised, promoted, and hosted a public event titled NYE 2024 at Virgin Hotels – Midnight in Manhattan at Everdene, scheduled to occur from 10:00 p.m. to 4:00 a.m. and offering a “full-hour

premium bar” with champagne and premium spirits (*id.* ¶ 65). Plaintiffs allege, upon information and belief, that an investigation conducted by various entities within the City of New York—including, but not limited to, the New York County District Attorney’s Office—revealed that Alaouie was observed on video surveillance consuming large quantities of alcohol. He allegedly drank various beverages provided by the event’s open bar, and opened a pre-authorized bar tab through which he purchased additional alcoholic beverages beyond those available through the open bar (*id.* ¶ 66). Alaouie then purportedly closed his bar tab and left the Virgin Hotels establishment “in an intoxicated condition to the extent that he had red, watery eyes, slurred speech, [and] unsteady gait,” with a blood alcohol level subsequently measured at 0.17% (*id.*). Plaintiffs also allege, upon information and belief, that Alaouie was in possession of a controlled substance within the Virgin Hotels premises, in a quantity sufficient to indicate an intent to sell (*id.*).

Plaintiffs assert that the Virgin Hotels defendants were collectively negligent in their ownership, operation, management, and control of the NYE 2024 at Virgin Hotels – Midnight in Manhattan at Everdene event, held at Virgin Hotels New York City, located at 1227 Broadway, New York, NY 10001. Plaintiffs allege that defendants served alcohol to a visibly intoxicated individual—Alaouie—within the premises (*id.* ¶ 69). Plaintiffs further allege that the Virgin Hotels defendants violated the common law, the New York Dram Shop Act, New York General Obligations Law §§ 11-100 and 11-101, and Alcoholic Beverage Control Law § 65 (*id.* ¶ 70). They also claim that the Virgin Hotels defendants were negligent or reckless in the operation, management, maintenance, supervision, and control of the premises where alcohol was served to Alaouie; in the hiring, training, and retention of staff who failed to screen patrons for visible intoxication; and in failing to implement proper policies and procedures for employee training (*id.* ¶¶ 76, 83, 89).

Plaintiffs also assert that defendants the City of New York, the New York City Department of Transportation, and the New York City Police Department (together, the “City”) were negligent or reckless in the design, maintenance, and control of the “public sidewalk/plaza/walkway/roadway” in the Chelsea area (*id.* ¶¶ 91–107). Plaintiffs allege that the City knew or should have known that the Chelsea area—specifically, the vicinity of 7th Avenue and 33rd Street—is a high-traffic pedestrian zone in close proximity to tourist attractions such as Madison Square Garden, and that it had fostered, attracted, and encouraged high pedestrian volume. Therefore, Plaintiffs claim, the City was obligated to provide adequate protections against motor vehicle accidents and potential terrorist attacks (*id.* ¶ 108).

Plaintiffs further allege that members of the NYPD negligently approached Alaouie’s vehicle, causing him to speed off, which resulted in a foot and vehicle pursuit through a densely populated area (*id.* ¶¶ 110–112). Plaintiffs claim that officers failed to warn them of any imminent danger as the events unfolded, and instead ordered them to calm down and stop yelling, allegedly berating them without offering any orders, directions, or recommendations to protect them from the harm that ensued in this crowded area (*id.* ¶ 113).¹

¹ The complaint does not clearly state the timing of the “high-speed chase”; it appears the Plaintiffs may have been struck before this pursuit began.

Plaintiffs filed a notice of claim on or about March 7, 2024, and a 50-h hearing was held on May 30, 2024 (*id.* ¶¶ 115, 117). On August 12, 2024, Plaintiffs commenced this action by filing a summons and complaint (NYSCEF Doc Nos. 1–2). All defendants subsequently filed answers (NYSCEF Doc Nos. 20, 23, 24, 29).

ARGUMENTS

Plaintiffs now move, by order to show cause and pursuant to CPLR § 2307, for a judicial subpoena directing the NYPD Criminal Records Unit and DANY to produce, among other things, all NYPD reports including, but not limited to, UF-61 complaint reports, arrest reports, aided reports, DD5s, police memo book entries, eyewitness statements, victim statements, Alaouie’s mugshot, video, audio, or written statements, accident reports, accident reconstructive reports, 911 logs and recordings, sprint reports; along with all responding NYPD Officer shield and tax ID numbers, any video surveillance footage associated with the crimes committed by the defendant Mohamed Alaouie, including, from the Virgin Hotel surveillance video, NYPD Officer’s bodycam recordings/footage, Department of Transportation CCTV surveillance footage, commercial store front video footage, and residential video footage obtained as part of investigation of the incident that occurred on January 1, 2024 involving Alaouie under indictment # 70150-24/001 and arrest number of M24600121 (NYSCEF Doc No. 35). The motion also seeks a judicial subpoena directing DANY to produce all exhibits including photographs, maps, diagrams, collage boards, white boards, utilized in the preparation for the trial of Alaouie, along with any written plea offers, New York City Department of Probation pre-sentence investigation reports and/or any sentencing transcripts (*id.*).

In support of the motion, Plaintiffs’ counsel attests that on or about January 16, 2024, Plaintiffs submitted a Freedom of Information Law (“FOIL”) request to the NYPD for records related to Alaouie’s arrest (NYSCEF Doc No. 36, Campbell aff ¶ 6). Plaintiff asserts that, as of the date of the filing, they have only received a copy of the 911 Sprint report related to the incident (*id.* ¶ 7).

The City opposes the motion and cross-moves for a protective order pursuant to CPLR § 2304 prohibiting plaintiff from enforcing the subpoenas and precluding plaintiff from serving any additional subpoenas on the NYPD until the Note of Issue is filed in this matter, or in the alternative that plaintiff must serve a written motion requesting permission from the Court to serve any future subpoenas seeking discovery either in the forms of documents and testimony (NYSCEF Doc No. 52, notice of cross-motion). Citing to *Matter of Terry D.* (81 NY2d 1042, 1044 [1993]), the City asserts that Plaintiffs improperly seek to obtain discovery by subpoena, and that the materials must instead be sought from the City in the normal course of discovery. The City further asserts that Plaintiffs’ request for “any and all records” is vague and overbroad, and the request is improper because the criminal proceeding against Alaouie is ongoing and the file for a pending criminal action is expressly protected against disclosure by Public Officers Law § 78 (2)(e)(i).

DANY also opposes and cross-moves pursuant to CPLR § 3103(a) for a protective order prohibiting Plaintiffs from enforcing the subpoena, and precluding Plaintiffs from serving any additional subpoenas on DANY until the criminal proceeding for which Plaintiffs seek records has concluded, or in the alternative, for a protective order preventing the disclosure of records subject

to privileges and exemptions from disclosure (NYSCEF Doc No. 62, notice of cross-motion). DANY reiterates the arguments made by the City, asserts that several of the items that Plaintiffs seek do not exist, and that others are protected by statute, such as grand jury exhibits, (NSYCEF Doc No. 64, memo at 4-5). DANY argues that compliance with the subpoena would interfere with the criminal prosecution because the requested records are “replete with information about the crimes committed,” such that release would “prematurely tip[] the District Attorney’s hand” (*id.* at 7). Finally, DANY contends that the requested materials are privileged, work product, or that production of the materials is prohibited by statute or otherwise constitutes an unwarranted invasion of personal property (*id.* at 12-15).

In reply, Plaintiffs assert that *Matter of Terry D.* is not applicable to this case and that requiring Plaintiffs to obtain the relevant materials in the normal course of discovery would undue delay and prejudice Plaintiffs. Plaintiffs argue that the subpoena should not be quashed due to being vague or overbroad and suggests that the court could instead appropriately narrow and tailor the subpoena, that any violation to the grand jury secrecy rules “can be easily remedied by the requirement that plaintiffs execute a confidentiality agreement,” and that any interference with the criminal prosecution may be resolved by holding the subpoena in abeyance until the conclusion of the prosecution. Plaintiffs suggest that the prosecution will likely conclude by a plea on the next court date, July 28, 2025.

DISCUSSION

In rendering this decision, the court is mindful that New York jurisprudence has long drawn a clear boundary between the legitimate compulsion of specific, material evidence and the impermissible use of subpoenas as broad discovery tools. As the Court of Appeals held in *Matter of Terry D.*, 81 NY2d 1042, 1044 (1993), a subpoena duces tecum “may not be used for the purpose of discovery or to ascertain the existence of evidence,” but instead must be strictly limited to compelling “specific documents that are relevant and material to the facts at issue.” The same principle has been reiterated by the Appellate Division, First Department, which sustained quashing of overly expansive subpoenas employed as “fishing expeditions” for pretrial disclosure in *Tribeca Space Managers, Inc. v. Tribeca Mews Ltd.*, 200 AD3d 626, 626 (1st Dept 2021), and *Mestel & Co. v. Smythe Masterson & Judd, Inc.*, 215 AD2d 329, 330 (1st Dept 1995).

Here, Plaintiffs’ request for “any and all” NYPD and prosecutorial materials far exceeds the confined scope that *Terry D.* and its progeny permit. Rather than identifying narrowly tailored records—such as a particular arrest report or the affidavit of a specific witness—Plaintiffs seek unfettered access to the entirety of investigative files, grand-jury materials, body-cam footage, pre-sentence reports, and more. Such an omnibus demand cannot stand as a proper use of a judicial subpoena duces tecum.

Nor does the court’s denial of Plaintiffs’ motion rest on technicality alone. Civil discovery under CPLR § 3101 et seq. affords plaintiffs ample means to obtain relevant documents from the parties to this action: NYPD records through the City, surveillance footage from Virgin Hotels, and any materials turned over by the District Attorney’s Office in the criminal case from the defendant himself. To permit plaintiffs to “jump the line” via subpoena duces tecum—forcing

governmental entities to prioritize this civil case over others—would upend the orderly discovery process and unfairly compress scheduling to the detriment of all parties.

Moreover, compelling disclosure of records in the midst of an ongoing prosecution risks irreparable harm to the public interest. Statutory grand-jury secrecy, Public Officers Law § 78(2)(e)(i), and recognized prosecutorial privileges safeguard the integrity of criminal proceedings. These protections are neither overridden by a generalized confidentiality agreement nor waived merely by civil plaintiff’s desire for expedition.

Finally, the court observes that Plaintiffs have not demonstrated any unusual prejudice that would justify departing from established procedures. A preliminary conference may be convened, and civil document demands and interrogatories served, without undue delay to any litigant. Plaintiffs are entitled to no special dispensation that circumvents the uniform application of the CPLR.

Accordingly, it is hereby

ORDERED that Plaintiffs’ application for judicial subpoenas duces tecum is denied in its entirety; and it is further

ORDERED that the cross-motions by NYPD under CPLR § 2304 and by the District Attorney’s Office under CPLR § 3103(a) are granted, and the court issues protective orders precluding civil enforcement of any such subpoenas until (i) the criminal prosecution of Mohamed Alaouie has concluded, and (ii) plaintiffs have availed themselves of standard civil discovery remedies.

This constitutes the decision and order of the court.

HASA A. KINGO, J.S.C.

7/15/2025

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE