

DOCKET NO: L18W - CR12 - 139085S : SUPERIOR COURT
STATE OF CONNECTICUT : G.A. #18
V. : AT BANTAM
HECTOR MEDINA : MARCH 6, 2012

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SUPERIOR COURT
GA-18
BANTAM

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MEMORANDUM OF DECISION
RE: MOTION TO EXTEND SEALING OF ARREST WARRANT AFFIDAVIT
HEARING ON FEBRUARY 28, 2012

I

BACKGROUND

Pursuant to Practice Book §§ 36-2 and 42-49A, the State filed a timely motion to extend the order sealing the arrest warrant affidavit. The State seeks the extension for the following reasons. The defendant, Hector Medina, was arrested on two separate warrants. The warrant in the present case charges the defendant with False Statement in the Second Degree (the "false statement warrant"). The other warrant charges the defendant with computer crimes (the "computer crimes warrant") and has been filed as a separate and distinct case, *State v. Medina*, Superior Court, judicial district of Litchfield, Docket No. CR12-139084-S. The arrest warrant affidavit ("affidavit") associated with the false statement warrant contains information that is protected under the principles of *Garrity v. New Jersey*, 385 U.S. 493, 87 S. Ct. 616, 17 L. Ed. 2d 562 (1967)¹ ("Garrity information"). The Garrity information goes to the heart of the false

¹ In *Garrity v. New Jersey*, supra, 385 U.S. 493, police officers were questioned during the course of a state investigation concerning alleged traffic ticket fixing. Each officer was warned that any statements made could be used against him in a state criminal proceeding, that he could refuse to answer, but if he refused to answer, he would be subject to removal from office. *Id.* The issue on appeal was "whether a State, contrary to the requirement of the Fourteenth Amendment, can use the threat of discharge to secure incriminatory evidence against an employee." *Id.* The United States Supreme Court held that "protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal

statement charge and, therefore, is prevalent throughout the affidavit such that disclosure of any portion of the affidavit may compromise the defendant's rights. In order to ensure that the defendant's rights are protected, the State tasked a prosecutor with ensuring that no Garrity information appeared in the computer crimes warrant, and the State assigned a separate prosecutor with no knowledge of, or access to, the Garrity information to handle the computer crimes prosecution. In this way, only the prosecutor assigned to the false statement charge has had access to the Garrity information. The State contends that in order to ensure that potential judges, jurors and witnesses in the computer crimes matter are not exposed to the Garrity information, it is necessary for the affidavit to remain sealed until such time as the matter involving the computer crimes has been resolved.

The defendant did not file an objection or responsive pleading to the State's motion. A hearing was held before this court on February 28, 2012, during which the State, the defendant and the public were afforded an opportunity to be heard on the motion, pursuant to Practice Book § 42-49A (e).

At the hearing, the State requested that the order sealing the affidavit remain in effect until the computer crimes case is resolved. The State asserts that to protect the defendant's right to a fair trial, the affidavit must remain sealed because the Garrity information contained in the affidavit, which is admissible in the present case, is inadmissible in the computer crimes case. The State contends that there is no reasonable alternative to sealing the affidavit, such as redaction, because the Garrity information cannot be effectively parsed out. The State argues that

proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic." *Id.*

the defendant's Fifth and Sixth Amendment rights outweigh the public's access to the affidavit.

The defendant concurred with the State's position, stating that releasing any portion of the affidavit would compromise his right to a fair trial in the computer crimes case, and that there is no other reasonable alternative to sealing the affidavit until the computer crimes case is completed.

Mr. Kevin Litten, a reporter for the Republican-American newspaper, was also heard on the motion. Mr. Litten requested that the court deny the motion to extend based on the importance of the public's right of access to the information. Mr. Litten noted that, since charges had been filed, the case has moved into a different sphere of public interest from the time when the original sealing order was granted. In response, the State asserted that the protection of the Garrity information does not end at arrest or filing of the charges, but rather the principles of *Garrity* are designed to protect the defendant's right to a fair trial. The defendant concurred with the State's position, stating that the interest in protecting the Garrity information is even more important now that the defendant has been arrested.

II

ANALYSIS

"Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public." Practice Book § 42-49A (a). In *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 47-48, 970 A.2d 656 (2009), our Supreme Court held that the common law right of public access is limited to "judicial documents" and "judicial documents are those filed with a court upon which the court reasonably could rely in the performance of its adjudicatory function" "An affidavit in support of an

arrest warrant is necessary and relevant to the performance of the judicial function and, accordingly, is a judicial record." *State v. Davis*, 48 Conn. Sup. 147, 152, 834 A.2d 805 (2003).

The court may seal a judicial document only if (1) it concludes that a sealing order is necessary to preserve an interest which is determined to override the public's interest in viewing the document; (2) the court first considers reasonable alternatives to any such order; (3) the order is no broader than necessary to protect the overriding interest; and (4) the court articulates the overriding interest being protected and specifies the findings underlying the sealing order. Practice Book § 42-49A (c), (d).²

"In order to seal or limit disclosure of [an] arrest warrant affidavit, the party seeking to prevent public inspection must advance an overriding protected interest that is likely to be prejudiced." *State v. Davis*, supra, 48 Conn. Sup. 152; see Practice Book § 42-49A (c).

"Conclusory statements that the defendant's right to an impartial jury will be prejudiced are not sufficient to overcome the right of public access." *State v. Davis*, supra; see *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 15, 106 S. Ct. 2735, 92 L. Ed. 2d. 1 (1986). "There must be some

² "Upon written motion of the prosecuting authority or of the defendant, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order." Practice Book § 42-49A (c). "In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order." Practice Book § 42-49A (d).

compelling demonstration that irreparable damage to a fair trial will likely result from a public disclosure of the information. Such a determination requires specific findings by the court." *State v. Davis*, supra, 152-53.

In the present case, the parties assert that the defendant's right to a fair trial overrides the strong presumption in favor of public disclosure of the arrest warrant affidavit, and request that the order remain in effect until the computer crimes case is resolved. In *Garrity v. New Jersey*, supra, 385 U.S. 493, the United States Supreme Court held that "the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic." In the present case, the State asserts that the principles of *Garrity* prohibit, in the computer crimes case, the use of any incriminating statements made by the defendant, which are contained in the affidavit supporting the arrest warrant in the present case. The parties contend that if those statements are made public, the defendant will be unable to receive a fair trial in the computer crimes case.

Certainly, "no right ranks higher than the right of the accused to a fair trial." *United States v. Giordano*, 158 F. Sup. 2d 242, 244 (D. Conn. 2001). The mere articulation of a compelling interest justifying the sealing of court documents, however, is not enough for a court to enter a sealing order. The proponent must specify precisely how disclosure will injure the interest which overrides the public's right to know. See *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1182 (9th Cir. 2006); *In re Cendant Corp.*, 260 F.3d 183, 194 (3rd Cir. 2001); *State v. Davis*, supra, 48 Conn. Sup. 153.

The preferred way of insuring the right to a fair trial is not by preventing public access but

through voir dire. *United States v. Martin*, 746 F.2d 964, 973-74 (3rd Cir. 1984); *In re Application of National Broadcasting Co.*, 653 F.2d 609, 617 (D.C. Cir. 1981); *United States v. Criden*, 648 F.2d 814, 827 (3rd Cir. 1981). In *Boston Herald, Inc. v. Sharpe*, 432 Mass. 593, 610-11, 737 N.E.2d 859 (2000), the Massachusetts Supreme Court affirmed the unsealing of divorce records of the defendant and victim in a murder case because the proponents of sealing failed to show that reasonable alternatives to sealing, such as individual voir dire, change of venue and appropriate jury instructions would be ineffective or inadequate. Likewise, in *In re Application & Affidavit for a Search Warrant*, 923 F.2d 324 (4th Cir. 1991), the court affirmed the unsealing of an affidavit filed in support of a search warrant notwithstanding the claim by the defendant that the affidavit was so prejudicial that its disclosure would prevent him from obtaining a fair trial. The court stated that fair trials can coexist with media coverage because there are ways to minimize prejudice to defendants without withholding information from public view, principally through the use of voir dire to identify those jurors whose prior knowledge of the case would disable them from rendering an impartial verdict. *Id.*, 329. The court explained that its belief that voir dire will protect the defendant's right to an impartial jury rested on two grounds: (1) its observation that "there is somewhat of a tendency to frequently overestimate the extent of the public's awareness of news," and (2) the recognition that even potential jurors aware of potentially prejudicial information are not disqualified from sitting so long as they can set aside their impressions and judge the case on the basis of the evidence presented at trial. (Internal quotation marks omitted.) *Id.*

In *State v. Davis*, *supra*, 48 Conn. Sup. 147, the court granted the motion of the defendant to seal the arrest warrant affidavit where the defendant, a state legislator, was accused of sexually

assaulting a minor in his care. The court found that the defendant's right to a fair trial overrode the right of public access, and that sealing was necessary to protect that right in light of the tremendous press coverage of the proceedings as well as the graphic and inflammatory nature of the statements contained in the affidavit. *Id.*, 154-55. The court also found that there were no reasonable alternatives to sealing the affidavit. *Id.*, 156. "The voir dire process would not be sufficient to undo the harm done by the disclosure of the full affidavit, which, as indicated contains very explicit statements, some of which would not likely be presented at trial but which would be exploited by very prejudicial pretrial publicity." *Id.* Redaction was also not a reasonable alternative because "[a] properly redacted affidavit would fully eviscerate the thrust of the allegations leaving only a skeleton of the present allegations." *Id.*

In *State v. Clark III*, Superior Court, judicial district of New Haven, Docket No. CR 09 97102 (November 6, 2009, *Fasano, J.*) (48 Conn. L. Rptr. 795), the defendant moved to extend the sealing orders in connection with nine search warrants and the arrest warrant, arguing that "the enormous media coverage of the case, including local, national, and even international coverage . . . would deprive [the] defendant of his constitutional rights to an impartial jury and a fair trial." In support of his motion to extend, the defendant presented the court with two binders full of media articles. *Id.* The court noted that "in most cases, Connecticut courts do not seal or limit disclosure of arrest and search affidavits beyond the investigative stages." *Id.*, 796. Although the defendant relied on *State v. Davis*, *supra*, 48 Conn. Sup. 147, the court found that "[t]he content of the affidavits in this case differ dramatically from *Davis*. A review of the material reveals, for the most part, the unembellished investigative steps of the various police agencies that, ultimately, culminated in the arrest of the accused. Much of the material, as the

intervenors note, is already in the public domain and much of the material is consistent with the purported purpose of fostering the public's confidence in and understanding of the criminal process. Clearly a blanket sealing of the affidavits, under the circumstances here, would not be appropriate." *State v. Clark III*, supra. Nonetheless, the court held that "consistent with the *Davis* analysis, there are limited portions of the arrest and search warrant affidavits that support a finding of an overriding interest in nondisclosure for reasons that will be specified under seal. These materials can be removed without eviscerating the substance of the affidavits. The overriding interest with respect to each nondisclosure, in most instances, is the defendant's right to an impartial jury and a fair trial.

"Redaction of the specific, offending material is appropriate in the interest of securing no broader a limitation of disclosure than is necessary and there is no other reasonable alternative. The redactions affect material that is inflammatory; material of significant import that is unfairly prejudicial to the defendant; and material that constitutes an invasion of privacy unnecessary to the public's understanding of the criminal process.

"Material in the affidavits that may or may not be construed by the public as strong evidence against the accused has not been redacted unless it is unfairly prejudicial; nor is it redacted because it may or may not be challenged at trial. If the standard for redaction/sealing were, simply, material suggesting the guilt of the accused or that could or would be challenged at trial, then all arrest warrants and search warrants would be sealed since their very purpose is to establish probable cause for the arrest or the search and most evidence offered against an accused is challenged at trial. Furthermore, it would make no sense to release dramatically altered affidavits that promote a public misconception that the arrest and/or search warrants were issued

under the flimsiest of circumstances.” *Id.*, 796-97.

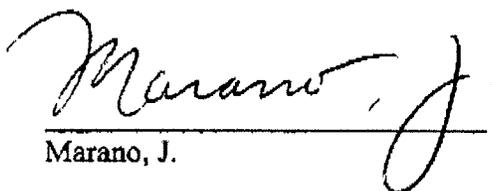
In the present case, the parties have failed to specify precisely how disclosure of the defendant's statements, protected under *Garrity*, will injure the defendant's right to a fair trial in the computer crimes case. Rather, the parties have made only conclusory statements that the defendant's right to a fair trial and an impartial jury will be prejudiced. The parties have failed to demonstrate that reasonable alternatives to sealing, such as individual voir dire, change of venue and appropriate jury instructions would be ineffective or inadequate. The parties have not produced any case law, from Connecticut or any other jurisdiction, nor has this court found any, where a court has extended the sealing of an arrest warrant affidavit merely because the affidavit contained protected statements, under the principles of *Garrity* or otherwise, that would not be admissible at trial. Rather, as the court in *Clark III* noted, “[i]f the standard for redaction/sealing were, simply, material suggesting the guilt of the accused or that could or would be challenged at trial, then all arrest warrants and search warrants would be sealed since their very purpose is to establish probable cause for the arrest or the search and most evidence offered against an accused is challenged at trial.” *State v. Clark III*, *supra*, 48 Conn. L. Rptr. 796.

A review of the affidavit reveals the investigative steps taken by the Torrington Police Department (the “Department”) that culminated in the arrest of the defendant. The affidavit includes a generalized review of the technology and procedures used by the Department to verify daily shift movements or activities, as reported by an officer with the Department. The affidavit provides a background of the events that occurred prior to the start of the internal investigation of the defendant by the Department, and explains why the Department began the internal investigation. The affidavit reveals two specific motor vehicle stops to have been the focus of the

internal investigation. The affidavit then provides a review of the steps taken by the detective assigned to conduct the internal investigation, and the results of that internal investigation. The affidavit includes statements made by the defendant during a preliminary interview with a lieutenant from the Department, as well as statements given by the owners of those motor vehicles. The affidavit indicates that the defendant's statements given during the preliminary interview were inconsistent with information obtained through the Department's auditing systems and the statements of the motor vehicle owners and other witnesses.

The affidavit serves its purpose by providing the information necessary to establish probable cause for the defendant's arrest. The affidavit, however, does not contain information that is of a graphic or inflammatory nature, nor is the material unfairly prejudicial to the defendant. The court is mindful that, because the defendant is a police officer, the public may have an increased interest in the case. Nonetheless, reasonable alternatives to sealing, including individual voir dire, change of venue and appropriate jury instructions would be effective and adequate to ensure the defendant's right to a fair trial. The motion to extend the sealing order is denied.

BY ORDER OF THE COURT,


Marano, J.