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 DEFENDANT'S MOTION FOR FURTHER ADJOURNMENT BASED ON PRE-TRIAL PUBLICITY Ind. No. 71543/2023

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

On April 4, 2023, 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 10, 2024, the Defendant filed a pre-motion letter seeking leave to file a motion to adjourn based on alleged prejudicial pre-trial publicity. On March 18, 2024, the Defendant filed the instant motion, seeking to supplement the March 10, 2024, motion. On April 1, 2024, the People filed their opposition to Defendant's motion.

CONTENTIONS OF THE PARTIES

Defendant seeks a further adjournment of trial "in light of exceptionally prejudicial pretrial publicity, which is substantial, ongoing, and likely to increase." Defendant's Memo at pg. 1. Defendant, after seemingly waiting until the eve of trial to commission two studies, based this motion in part on a public opinion survey (hereinafter "Survey") and review of news coverage (hereinafter "Media Study") (each attached to the Affirmation of Todd Blanche in Support of President Donald J. Trump's Motion for a Further Adjournment Based on Prejudicial Pretrial Publicity as Exhibits 1 and 2 respectively). The main thrust of Defendant's argument is that "prejudicial media coverage has saturated the venire" and "New York County is overwhelmingly biased" against him. Defendant's Memo at pgs. 14, 26.

The People argue that Defendant's motion should be denied for three reasons. First, "the publicity is unlikely to recede and an indefinite adjournment is inappropriate," second, "thorough *voir dire* will allow the parties to select an impartial jury, as defendant's commissioned poll shows," and third, "defendant's own incessant rhetoric is generating significant publicity, and it would be perverse

to reward defendant with an adjournment based on media attention he is actively seeking." People's Opposition at pgs. 1-2.

DISCUSSION

For the following reasons, Defendant's motion is **DENIED**.

The United States Supreme Court has "long recognized that adverse publicity can endanger the ability of a defendant to receive a fair trial." *Gannett Co. v. DePasquale*, 443 US 368, 378 [1979]; Defendant's Memo at pg. 12. "However, pretrial publicity, even if pervasive and concentrated, does not necessarily lead to an unfair trial." *People v. Harris*, 84 AD2d 63, 100 [2nd Dept 1981]; People's Opposition at pg. 4. "Media coverage of criminal cases, however, is not a novel issue and over the course of time, countless courts have addressed the issue of juror exposure to pretrial publicity." *People v. Govan*, 64 Misc3d 389 [Sup Ct, Kings County 2019], citing *Mu'Min v. Virginia*, 500 US 415 [1991], *Dobbert v. Florida*, 432 US 282 [1977], *Murphy v. Florida*, 421 US 794 [1975], *People v. Harris*, 19 NY3d 679 [2012], *People v. Quartararo*, 200 AD2d 160 [2d Dept 1994], *People v. Solomon*, 172 AD2d 781 [2d Dept 1991], *People v. Knapp*, 113 AD2d 154 [3d Dept 1985]. There are numerous measures available to courts to minimize the potential prejudicial impact that pre-trial publicity can have on a defendant's right to a fair trial. *Govan*, 64 Misc3d at 391. These measures include, but are not limited to, instituting so called "gag orders", extensive examination during *voir dire* and appropriate jury instructions. *Id* at 392.

The remedy that Defendant seeks is an indefinite adjournment. This is not tenable. As the People correctly point out, the Court of Appeals has recognized that adjournment is simply not an adequate remedy when there is a chance the postponement may become indefinite. *People v. Moore*, 42 NY2d 421, 434 [1977]. Defendant appears to take the position that his situation and this case are unique and that the pre-trial publicity will never subside. However, this view does not align with reality. In just the past 12 months, Defendant has very publicly been involved in a multitude of criminal and civil cases across several states in both federal and state jurisdictions. In this County alone, Defendant has had two civil trials, one in State Court and the other in Federal Court. In those two matters, he was personally responsible for generating much, if not most, of the surrounding publicity with his public statements, which were often made just a few steps outside the courtroom where the proceedings were being conducted, and with his unrelenting media posts attacking those he perceived to be responsible for his plight. The situation Defendant finds himself in now is not new to him and at least in part, of his own doing. As the People aptly note, "Courts have repeatedly rejected any relief

when, as here, the 'defendant willingly and voluntarily participated in the pretrial publicity by giving a statement to the media concerning the incident which formed the basis for the charge." People's Opposition at pg. 12, citing to *People v. Ruger*, 288 AD2d 686 [3rd Dept 2001].

This Court agrees with the People that the proper remedy to assuage Defendant's concerns of alleged prejudicial pre-trial publicity is by conducting a thorough, thoughtful and effective *voir dire*. People's Opposition at pg. 6, citing to *Skilling v. United States*, 561 US 358, 389 [2010]; *People v. Govan*, 64 Misc3d 389, 395 [Sup Ct Kings Cnty 2019]. Indeed, this remedy is supported by the results of Defendant's own Survey which indicates that 70% of New Yorkers could "definitely or probably" be fair and impartial. This Court shares the concerns expressed by the People in footnote 4 of their Opposition where they note that "the survey does not adequately explain its methodology for collecting responses" and that the survey "provides no information about how it obtained the contact information of respondents or how it ensured its samples were actually random or representative of the residents of each of the counties in question." People's Opposition at fn 4. The Court is thus skeptical of the reliability and interpretation of Defendant's commissioned Survey and Media Study. Nonetheless, even if the Court were to credit the results in full, it would still find that that the best way to address Defendant's concern is through effective *voir dire*.

Finally, the Court addresses the People's contentions in Section D of their Opposition. Specifically, the People take issue with the liberties defense counsel has apparently taken in alleging that the People recently "coerced" Allen Weisselberg into pleading guilty and that the date of Weisselberg's sentencing was chosen to maximize prejudice to the Defendant. People's Opposition at pgs. 14-15. The People's justifiable concern, compels this Court – again, to express its continuing and growing alarm over counsel's practice of making serious allegations and representations that have no apparent basis in fact – or at least are unsupported by a legitimate basis of knowledge. Specifically, the Defendant alleges in his Memo that "[o]n March 4, 2024, prosecutors from DANY *pressured* Weisselberg to plead guilty to a two-count information, charging him with Perjury in the First Degree, a class D felony, in violation of Penal Law § 210.15, with an agreed-upon term of imprisonment of five months." Defendant's Memo at pg. 9. The allegation does not attribute a source nor is it accompanied by any corroboration.

The People, in their Opposition, provide excerpts from Weisselberg's court appearance where, under oath and subject to the penalties of perjury, he answered "no" when asked if anyone had forced him to plead guilty to SCI-70913-24. People's Opposition at pg. 14. The People specifically cite to page nine of the transcript of the guilty plea:

THE COURT: Are you pleading guilty because you are guilty?

THE DEFENDANT: Yes.

THE COURT: Has anyone forced you to take a plea?

THE DEFENDANT: No.

People's Opposition at pg. 14.

The People have provided the transcript of Weisselberg's guilty plea, where he answered under oath, in open court, under the penalties of perjury, that no one had forced him to plead guilty. This contrasts with Defendant's accusations which are entirely unsupported. In fact, defense counsel clearly ignores the words contained in the official transcript. The People here strive to "make sure the record is clear as to defense counsel's continued pattern of presenting inflammatory, baseless, or downright false claims in sworn filings to this Court." People's Opposition at pg. 13. Because the People seek no further relief at this time, the Court, for the time being, will merely make its observation for the record.

The foregoing constitutes the Decision and Order of this Court.

April 12, 2024
New York, New York

APR 12 2024

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

HON. J. MERCHAN