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	Indictment No. 71543-23 Decision and Order

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

Background and Procedural History

Defendant Donald J. Trump ("Defendant"), by and through his attorneys, moves this Court for an Order granting "re-argument" of the Defendant's prior motion to quash the subpoena issued to Michael Cohen ("Cohen") on October 17, 2023. On November 14, 2023, the People filed a motion to quash the subpoena and on November 21, 2023, Cohen joined the People's application and filed his own motion to quash. (hereinafter "Motions to Quash"). On November 30, 2023, Defendant filed his opposition to the Motions to Quash. On December 18, 2023, this Court issued its Decision, granting the Motions as to Request 1 (in part)[1], Request 2, Request 4, Request 6, Request 7, Request 8, and Request 9. The Court denied the Motions as to Request 1 (in part), Request 3 and Request 5. The Defendant filed the instant motion to reargue (hereinafter "Defendant's Memo") the Court's decision on January 17, 2024. The People and Cohen filed their oppositions on January 24, 2024 and January 29, 2024 respectively (hereinafter "People's Opposition" and "Cohen's Opposition"). Upon review of the submissions of all the parties, the Court decides as follows:

Discussion

The Criminal Procedure Law ("CPL") does not contain any provisions for leave to reargue or renew and, as such, the trial court in a criminal case has the inherent power to grant leave to

[1] The Motions to Quash pertaining to Detective Jeremy Rosenberg within Request 1 was denied.

reargue. *People v. DeFreitas*, 48 Misc 3d 569 [Sup Ct, NY County 2015], *People v. Bauza*, 78 Misc 3d 1222(A) [Sup Ct, Kings County 2023] ["there is a body of case law which holds that where there are no applicable provisions in the CPL concerning an issue at hand, those provisions of the CPLR that address the issue may be applied in a criminal action."]. CPLR § 2221(d) and (e) address motions to reargue and renew.

A motion to reargue is "appropriate only where there are no new facts offered." *People v. Adams*, 219 AD3d 1178 [1st Dept 2023]. When making a motion to reargue, the moving party must show that the deciding court overlooked or misapprehended the facts or the law. CPLR §2221(d); *Kats v.* Agosto, 203 A.D.3d 661 [1st Dept 2022]. A "motion to renew or reargue does not afford an unsuccessful party with an opportunity to advance arguments different from those proffered in the original application." *People v. Cordes*, 270 AD2d 430, 430 [2d Dept 2000]. "It is without question that "'reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided . . . or to present arguments different from those originally asserted" *William P. Pahl Equip. Corp. v. Kassis*, 182 AD2d 22, 27, 588 NYS2d 8 [1st Dept 1992], *lv. dismissed in part and denied in part*, 80 NY2d 1005, 592 NYS 2d 665, 607 NE2d 812 [1992]; *Setters v AI Properties and Developments (USA) Corp.*, 139 AD3d 492, 492 [1st Dept 2016].

A motion to renew must be based upon new facts not offered on the prior motion … or shall demonstrate that there has been a change in the law that would change the prior determination. Siegel, N.Y. Prac § 254, at 383 (4th Edition); CPLR §2221(e)(2), (3).

From the outset, this Court interprets Defendant's motion to reargue as one for leave to renew as well. *See* Defendant's Memo at Footnote 1. Aside from the footnote, Defendant has failed to mention, let alone argue for leave to renew. He has merely presented a pared down version of his original requests. This is insufficient. Siegel, N.Y. Prac § 254, at 383 (4th Edition). Defendant has not made any representation that there exists new evidence for this Court to consider. Nor has the Defendant argued that there has been a "change in the law" since the time the Decision was issued on December 18, 2023. As such, Defendant's motion for leave to renew is denied and the Court will only address the motion to reargue.

Motion to Reargue Request 1

The Defendant's original request read as follows:

> Request 1. For the period January 1, 2017, to the present, all communications, or documents memorializing or otherwise referencing such communications, including any transcripts, notes, emails, texts, or tapes, between you and current or former prosecutors or other staff of: Manhattan District Attorney's Office, including former ADA Mark Pomerantz and Detective Jeremy Rosenberg; the US Attorney's Office for the Southern District of New York; the Federal Bureau of Investigation; and the New York Attorney General's Office; regarding or relating to Donald J. Trump, Melania Trump, the Trump Organization, Stephanie Clifford, or alleged "catch-and-kill" or hush money payment schemes[2].

In its December 18, 2023, Decision and Order on Motion to Quash Defendant's Subpoena and for a Protective Order ("Decision"), this Court held that Defendant's Request 1 was overbroad and unduly burdensome. Decision at pg. 7-8. This was because the request covered seven years of records as well as "all communications" with various current and former employees from several governmental agencies. This Court also held that the request "...circumvents the limits on criminal discovery because it is not limited to the subject matter of the case, exceeds the scope of the People's discovery obligations under CPL § 245.20 and the scope of any materials Defendant could obtain from either the People or Mr. Cohen, by motion to this Court." Decision at pg. 7.

The Defendant has altered the request in the instant motion so that it now seeks information covering an eleven-month period. The request seeks communications between Cohen and federal prosecutors, as well as law enforcement officials that were involved in the matter of *United States v. Cohen*, 18-cr-602 (S.D.N.Y). Request 1 now reads as follows:

> Request 1. For the period April 1, 2018, to March 2019, all communications, or records memorializing or otherwise referencing such communications, between you (or attorneys acting on your behalf) and prosecutors or other staff of the U.S. Attorney's Office for the Southern District of New York or the Federal Bureau of Investigation regarding or relating to Donald J. Trump or alleged "catch and kill" or hush money payment schemes involving Donald J. Trump.

[2] The Court notes that the Defendant, in his Memo of Law, omits the language "including any transcripts, notes, emails, texts, or tapes" from his reference to the original language of Request 1.

In support of his motion to reargue, Defendant merely reiterates his original argument but applies it to the pared down request. Though Defendant has altered Request 1 by limiting the date range, he has failed to demonstrate what matters of fact or law were overlooked or misapprehended by this Court. While it is true that this Court denied Request 1 in part, because it was "overbroad and unduly burdensome," it also held that the request "circumvents limits on criminal discovery because it is not limited to the subject matter of this case..." Decision at pg. 7. Defendant's Request 1, in its edited form, still seeks information that is not limited to the subject matter of this case. The Defendant has failed to show that this Court overlooked or misapprehended any facts or relevant law in its Decision. *Kais v. Agosto*, 2020 WL 7421728 [Sup Ct, NY County 2020]. As such, the Defendant's motion to reargue is denied.

Motion to Reargue Request 4

The Defendant's original Request 4 read as follows:

> Request 4. For the period January 1, 2015, to the present, documents sufficient to identify all clients that have retained you (i.e. in your individual capacity or as a member of any firm), or Michael D. Cohen and Associates, PC or Essential Consultants LLC, including payments you received, and documents sufficient to demonstrate whether you entered into retainer agreements with each client, including copies of all retainer agreements between you and any client.

In quashing Request 4 in its entirety, this Court found that it was overbroad and unduly burdensome, that it sought information that has no bearing on the truth or falsity of the allegations contained in the Indictment and that the information sought is not relevant or material. The Court also found that the request was inappropriate because it called "for the production of material that *may* very well be protected by the attorney-client privilege." (emphasis added). Defendant has now adjusted this request by narrowing the date range to the period of January 1, 2017 to December 31, 2018.

Defendant's argument is that this Court "misapprehends the law" as it relates to the attorney-client privilege. Defendant's Memo at pg. 6. Now, for the first time, Defendant argues that since the People sought Defendant's agreements with external law firms through grand jury subpoenas to prove Defendant's guilt, "... then President Trump should be permitted to seek comparable evidence that is relevant to prove his innocence." Defendant's Memo pg. 7. The People counter that this particular aspect of Defendant's motion fails for three reasons: (1) Defendant

failed to raise this argument in his initial opposition to the Motions to Quash; (2) assuming *arguendo* that this Court does consider this newly raised argument, it does nothing to undermine the Court's prior decision; and (3) in attempting to analogize the People's grand jury subpoenas with Defendant's trial subpoena the Defendant fails to acknowledge that the "authority to issue a trial subpoena is far narrower than the authority to issue an investigative grand jury subpoena." People's Opposition at pgs. 5-6. Therefore, the People argue, there is no basis that the service of a grand jury subpoena by the People has "anything to do with whether the Court misapprehended the law on whether a trial subpoena is 'reasonably likely to be relevant and material to the proceedings.'" *Id.*

Defendant's motion to reargue Request 4 is denied. In this request, Defendant seeks retainer agreements between Cohen and any client between January 1, 2017 and December 31, 2018. As previously noted, "a motion to reargue does not afford an unsuccessful party an opportunity to advance arguments different from those proffered in the original application." *Cordes*, 270 AD2d at 430. In the instant matter, the Defendant does exactly that, by arguing that because the People subpoenaed retainer agreements between the Trump Organization and various law firms, so too should Defendant be permitted to seek "comparable evidence that is relevant to prove his innocence." Defendant's Memo at pg. 7. For that reason alone, the Defendant's motion to reargue Request 4 is denied.

Assuming *arguendo* that this Court were to consider this newly raised argument, the Court has already held that the information sought by Defendant has no bearing on the truth or falsity of the allegations in the Indictment nor are the documents relevant or material. Decision at pg. 9.

Defendant also argues that the Court's ruling misapprehended the law with respect to attorney-client privilege vis a vis retainer agreements, citing *Regan v. Hecht and Steckman, P.C.*, 2002 NY Misc. LEXIS 2053 [Sup. Ct. Suffolk Cnty. Feb. 22, 2022]; *Oppenheimer v. Oscar Shoes, Inc.*, 111 AD2d 28, 29 [1st Dept 1985]; *People v. Belge*, 59 AD2d 307 [4th Dept 1977]; *Gottwald v. Sebert*, 2017 NY Misc LEXIS 13942 [Sup. Ct. NY County, 2017]; and *Hayden v. Intl Bus Machines Corp*, US Dist Ct, SD NY, 21 Civ 2485 McCarthy, J., 2023. Defendant's argument overstates and oversimplifies this Court's ruling. This Court did not make a finding that the materials Defendant seeks are in fact, privileged. Decision at pg. 9 ("Lastly, this request is also inappropriate because it calls for the production of material that *may* very well be protected by the attorney-client privilege.") (emphasis added). Additionally, and most importantly, that aspect of the Court's ruling was not the primary basis for its Decision to quash Request 4.

Motion to Reargue Request 6

The Defendant's original Request 6 read as follows:

> Request 6. For tax years 2016, 2017 and 2018, all documents and communications relating to any tax liabilities – state or federal – owed by you or by any entity in which you hold or held, directly or indirectly, an ownership interest, including all federal and state tax returns you filed (including amended tax returns), all draft tax returns, all documents related to income tax calculations or deductions from income, all communications with accountants, and all accountant work papers.

In its Decision, this Court held that Request 6, as worded, was overbroad and did not specify or identify the documents sought. Notably, this Court ruled that even if Defendant were to "narrow the scope of the request, it would still seek information and documents which are neither relevant nor material to the issue of guilt or innocence." Decision at pg. 10. This is because how Cohen treated the $420,000 payment for tax purposes is immaterial to the question of Defendant's intent to defraud. *Id.*

The Defendant has modified the request as follows:

> Request 6. Documents sufficient to show how the entire $420,000 payment was treated – whether as taxable income or as non-taxable reimbursement-by you on your personal tax returns.

Defendant argues that the request as revised is now relevant to the jury's determination of the Defendant's intent. Defendant's Memo at pg. 11. The People counter that this argument should not be considered by the Court because Defendant failed to raise it in his original motion. The People further argue that even if this Court were to consider the new argument, it would fail because "the law is clear that defendant's intent to commit or conceal another crime is distinct from whether that other crime occurred." People's Opposition at pg. 7.

As indicated above, this Court already ruled in its original Decision that the information sought in this request is immaterial to the question of Defendant's intent to defraud. Defendant's revision to the request does not change that. Again, a motion to reargue is not a vehicle for an unsuccessful party to reargue questions previously decided by the Court. *People v. Merly*, 51 Misc 3d 858 [Sup Ct, Bronx County 2016]. Defendant's argument with respect to Request 6 attempts to do just that and is therefore Denied.

WHEREFORE, it is hereby

ORDERED that Defendant's motion to renew and reargue this Court's Decision on the Motions to Quash subpoenas to Michael Cohen is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: February 23, 2024
New York, New York

FEB 23 2024

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

HON. J. MERCHAN