

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

PART 48

Indictment# 880N-2010

Present: HON. NORMAN ST. GEORGE, A.S.C.J.

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PEOPLE OF THE STATE OF NEW YORK,

- against -

**DECISION AND ORDER**

SUSAN WILLIAMS,

Defendant.

\_\_\_\_\_  
X

The defendant, in the above-entitled action, is charged with one count of violating Penal Law § 105.15, Conspiracy in the Second Degree as a class B felony; one count of violating Penal Law § 100.10, Solicitation in the Second Degree as a class D felony; one count of violating Penal Law § 170.25, Forgery in the Second Degree as a class D felony; and one count of violating Penal Law § 100.05(1), Solicitation in the Fourth Degree as a class A misdemeanor. The Conspiracy and Solicitation charges against the defendant involve allegations that she hired a “hit-man” (who was in fact an undercover police officer) to seriously injure or kill her husband. The Forgery charge against the defendant involves an allegation that she changed the ownership of a life insurance policy from her husband to herself.

This Court began the trial of the above-entitled matter on November 1, 2010. As part of the People’s case in chief, they offered into evidence two (2) videotapes (including the audio portions) allegedly depicting the defendant engaged in conversations with the undercover police officer. One videotape was recorded on February 28, 2010, and the second videotape was recorded on March 3, 2010. Both videotapes were admitted into evidence without objection from the defense. The People then requested that both videotapes be published to the jury by playing them on a flat screen television in open Court. No objection to the application was made by the defense. The People’s application was granted and both videotapes were played for the jury in open Court. The jury was also provided with transcripts of the alleged conversations to aid them while viewing the videotapes. The transcripts were marked for identification purposes only and not admitted into evidence. Members of the public and the media were present in the Courtroom during the playing of the videotapes.

On November 10, 2010, the day after the videotapes were played in Court, representatives from Newsday Media Group (the corporate owner of Newsday, hereinafter referred to as “Newsday”) and News America Incorporated (the corporate owner of the New York Post, hereinafter referred to as “the Post”), each separately sent letters to the Court, requesting, in sum and substance, that they be provided with copies of the videotapes which were admitted into evidence and played in Court. Newsday also requested copies of the transcripts accompanying same. The Post additionally requested all “other exhibits tendered in open court.” As November 11, 2010, was a Court holiday,

all parties, including representatives from Newsday and the Post, were directed to appear in Court on November 12, 2010, to be heard regarding the applications of Newsday and the Post. On November 12, 2010, this Court heard oral arguments from the attorneys representing Newsday and the Post. The Court also heard arguments from the Assistant District Attorney and the defendant's attorney.

The People oppose the application of Newsday and the Post to release copies of the videotapes and the accompanying transcripts. The People argue that disclosure of the videotapes and the transcripts in the middle of the trial would be disruptive and may cause a delay of the trial. The People note that they previously received a Freedom of Information (F.O.I.L.) request from the press for copies of the videotapes, but declined to provide same based on Public Officer Law §972(E)(i).

Defense counsel also opposes the application of Newsday and the Post to release copies of the videotapes and the accompanying transcripts. Defense counsel argues that although there is a presumption supporting the release of the requested material, that presumption is rebuttable where unfair publicity and the use of the evidence by the media would have a high probability of impairing the fairness of a trial. Defense counsel contends that the release of the videotapes and transcripts to the press would prevent the defendant from having a fair trial.

The decision regarding access by the public and the press to Court records is one to be made by the Trial Court in light of all of the relevant facts and circumstances of the particular case. Every Court has supervisory powers over its own records, and access to Court records has been denied where access to Court files becomes a vehicle for improper purposes, or where access would negatively impact the trial. (See *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 [1978]; and *WNYT v. Moynahan*, 97 A.D.2d 555, 467 N.Y.S.2d 734 [3<sup>rd</sup> Dept. 1983]).

It is well established that the public and the press have both a Constitutional and a common law right of access to the Courtroom. (See *Application of National Broadcasting Co., Inc.*, (*United States v. Myers*), 635 F.2d 945 [2d Cir. (N.Y.) 1980]; *United States v. Beckham*, 789 F.2d 401 [6<sup>th</sup> Cir. (Mich.) 1986]; *Matter of Newsday, Inc. v. Sise*, 71 N.Y.2d 146, 524 N.Y.S.2d 35 [1987], *cert. denied* 486 U.S. 1056, 108 S.Ct. 2823 [1988]). The Constitutional right to access is grounded in the First and Fourteenth Amendments. The common law right to inspect and copy judicial records, including physical evidence, requires contemporaneous public access to it unless there is a significant risk of impairing the integrity of the evidence, interference with the orderly conduct of the trial, or some other compelling circumstance. (See *Myers* at 952; *People v. McCray*, 147 Misc.2d 1103, 559 N.Y.S.2d 619, [N.Y.Sup. 1990]). There is a longstanding presumption in favor of public inspection and copying of any item entered into evidence at a public session of a trial. The Court in *Myers* established that "once the evidence has become known to members of the public, including representatives of the press, through their attendance at a public session of Court, only the most extraordinary circumstances justify restrictions on the opportunity of those not physically in attendance at the Courtroom to see and hear the evidence." (See *Myers* at 952).

In a criminal action, whenever there is a substantial probability that the defendant's right to a fair trial will be prejudiced, the Court will not permit access to the evidence. However, in order

to prevent access, the party seeking to restrict access must establish a substantial probability of prejudice which is specific in nature. Conclusory assertions will not suffice to prevent public and press access to evidence. (See *People v. Burton*, 189 A.D.2d 532, 597 N.Y.S. 2d 488 [App.Div. 3<sup>rd</sup> 1993]).

In this case, the defendant asserts that the release of the videotapes and the transcripts and the corresponding media coverage may prejudice the defendant's right to a fair trial. Defense counsel offers no further detail as to how the release of the videotapes and the transcripts in this case would prevent the defendant from receiving a fair trial. It has been held that neither the hypothetical risk of prejudice to a defendant nor intense public scrutiny afforded a case is sufficient to deny public access to records of a criminal proceeding. (See *Daily News L.P. v. Teresi*, 265 A.D.2d 129, 706 N.Y.S.2d 527 [3<sup>rd</sup> Dept. 2000], *appeal dismissed* 95 N.Y.2d 902, 716 N.Y.S.2d 641 [2000]). Although the instant case has been covered by the press, this Court finds the defendant's argument regarding the media impairing the fairness of the trial, too speculative to justify denial of the right of the press and the public to inspect and copy the evidence presented in open Court. The possibility that the jurors might see the tapes or excerpts of said tapes on television does not pose a significant risk to a fair trial. Furthermore, this Court emphatically admonishes the Jurors not to read or watch any news reports regarding this case. (See *Myers* at 953; *People v. Santiago*, 2007 N.Y. Misc. Lexis 4364, 237 N.Y.L.J. 114). In addition, since the jury has already been selected in this case, and the trial is nearly concluded, there can be no argument that the jury pool will be tainted. Defense counsel's blanket statement that the release of the videotapes may prejudice the defendant's right to a fair trial lacks the requisite specificity and detail required to prevent access.

Moreover, the videotapes in question have already been admitted into evidence. As indicated above, based on the application of the People, the videotapes were published to the jury in open Court using a television. Members of the press and the public who attended the proceedings were all able to hear and view the videotapes while they were being played in Court. There was no objection by the defendant to the admission of the videotapes, and there was no objection by the defendant to the playing of the videotapes in open Court. Similarly, there has been no application by either the People or the defendant for a sealing order regarding any of the evidence. Consequently, defendant's argument that the release of the videotapes and transcripts may prejudice the defendant is untenable. (See *People v. Glogowski*, 135 Misc.2d 950, 517 N.Y.S.2d 403 [N.Y.Co.Ct. 1987] *affirmed* 168 A.d.2d 1009, 565 N.Y.S.2d 357 [4<sup>th</sup> Dept. 1990]; *United States v. Graham*, 257 F.3d 143 [2d Cir. (N.Y.) 2001]).

Additionally, this Court finds that the videotapes in question are readily capable of copying. Therefore, any inspection and copying will not impair the integrity of the evidence or interfere with the orderly conduct of the trial. Hence, the People's argument that disclosure of the videotapes and the transcripts would be disruptive and may delay the trial is similarly unpersuasive.

This Court finds that no valid reason has been established which would justify the denial of access to the requested information for copying by the press. There has been no application for a protective order or sealing order with respect to the requested information. The materials requested have already been exhibited in open Court with the public and the media present. The fact that as a result of the press disseminating the videotapes and transcripts to the public, more people may

presumably see and hear the videotapes and transcripts, is not a sufficient basis to deny access. Accordingly, Newsday's application for copies of the videotapes and the transcripts is granted. The Post's application for access to all exhibits and for copies of the videotapes is granted. The People are directed to furnish Newsday and the Post with copies of the exhibits set forth herein by the end of business today.

This constitutes the opinion, Decision and Order of the Court.

Dated: November 15, 2010  
Mineola, New York

**ENTER:**

A handwritten signature in black ink, appearing to read 'N. St. George', written over a horizontal line.

Hon. Norman St. George  
Acting Supreme Court Justice