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STATE OF NEW JERSEY : SUPERIOR COURT OF NEW JERSEY
Plaintiff :
v. : LAW DIVISION - CRIMINAL
Augello Et. Al. : ATLANTIC COUNTY
: CRIMINAL ACTION
: INDICTMENT #s 18-04-0517
: Defendant(s) :
: CERTIFICATION

STATE OF NEW JERSEY
SS
COUNTY OF ATLANTIC

I, Seth Levy, of full age, being duly sworn, according to law, upon my oath certifies and says:

- (1) I am a Chief Assistant Atlantic County Prosecutor and familiar with the facts surrounding the murder of April Kauffman and the surrounding criminal racketeering enterprise.
- (2) On July 5th, 2018, detectives were contacted by a victim in the above captioned matter.

The victim was concerned for his/her safety and privacy, and consequently informed the Prosecutor's Office that defendant Augello was posting statements on his Face Book page pertaining to this case and those individuals, both directly and indirectly, involved. Among other matters, defendant referenced with specificity the confidential Grand Jury

presentation, going so far as to cite particular line and page numbers in his posts. Defendant also spoke in detail of statements made by cooperating witnesses, including prior criminal histories and potentially bad acts. Defendant promised to release additional information in future posts, including the recorded statement of a cooperating witness.

(3) Certainly, there are circumstances by which a trial court may impose a prior restraint, or gag order, on the parties involved in litigation. Sheppard v. Maxwell, 384 U.S. 333, 361 (1966) (noting that a gag order imposed on the trial participants “might well have prevented the divulgence of inaccurate information...”). Such restraint may include a judicial order limiting pretrial public comment by both parties involved, as well as their attorneys. State v. Carter, 143 N.J. Super. 405, 407 (App. Div. 1976). In upholding the gag order, the Appellate Division emphasized that a “fair trial” applies to the State as well as the defense. Ibid. citing US v. Tijerina, 412 F.2d 661, 666 (10th Cir. 1969)). Comments which have the “capacity to influence potential or actual jurors to the possible prejudice of the accused or the State are impermissible.” Id. at 408.

Indeed, the Supreme Court of the United States has held that a fair trial by an impartial jury means a jury that is “free from outside influences.” Sheppard, supra, 384 U.S. at 362. A jury’s verdict must be “based on evidence received in open court, not from outside sources.” Id. at 351. In fact, the Marshall Court set aside a conviction where the jurors had been exposed to information via the news that ultimately was not admitted at trial. Marshall v. U.S., 360 U.S. 310, 313 (1959). Similarly, the Supreme Court set aside a defendant’s conviction based upon a finding that the “build-up of prejudice” was clear and convincing, despite each member of the jury swearing that they would render an impartial verdict. Irvin V. Dowd, 366 U.S. 717, 724-25 (1961).

(4) Defendant's publications go well beyond editorial comment. He cited specific page numbers, quoted grand jury testimony, disclosed the content of discovery material, and often referenced certain facts, which may end up being inadmissible at trial. In today's criminal justice system, law enforcement is met with increasing resistance to cooperation. The most consistent reason cited by potential witnesses for their lack of cooperation is fear that the information will appear on social media, alongside their name. It is axiomatic that discovery will contain a plethora of information which would never be exposed to public review. For example, there are often statements from witnesses that are never called at trial or private information pertaining to a witness or victim's habits or personal affairs, which are clearly inadmissible. The unchecked disclosure of witness statements and cooperation will have a deleterious effect on the willingness of witnesses to come forward for either investigation or trial. Even today, with new technological advancements on an almost daily basis, the single most effective means by which to solve a crime is through witness cooperation. More poignantly, the State plans on using a number of these cooperating witnesses in this very trial. Many of these witnesses made statements of a derogatory nature toward or against the interests of, such violent organizations as La Cosa Nostra and The Pagan Outlaw Motorcycle Gang, both of which are known to take violent retaliation against perceived "rats." The continued disclosure of witness information will not only have a detrimental effect on the efficiency of the trial in the above captioned matter, but also for the future cooperation of witnesses.

(5) The dissemination of discoverable material could negatively impact the rights of co-defendants. In a case with multiple co-defendants, the actions of one defendant affect

them all. In this case in particular, the information being released pertains to a number of defendant Augello's co-defendants. Releasing personal information, criminal records or other potentially bad acts, certainly could create difficulties in granting those defendants a fair and impartial trial. Defendant Augello would no doubt claim his rights had been violated if he were to learn that co-defendants were sharing content from his recorded conversations or, even worse, speaking of his many additional bad acts, which are not presently the subject of litigation. Already defendant has posted negative personal information, criminal records and other information designed to discredit his co-defendants to the public. Not only could such public disclosure predispose a juror against a co-defendant, but the continued release of information could stymie additional plea bargaining.

- (6) The public disclosure of discovery material threatens the impartiality of the jury. As Your Honor is aware, this case has already garnered national media attention. There have been local, regional and national news releases. Social media, by its very nature, is not contained by town or region, and has the potential to expose a vast population of potential jurors to prejudicial and inadmissible materials. Even defendant Augello is entitled to a fair trial by an impartial jury, as are his co-defendants, and yet the continued dissemination of discovery material has the potential to poison that impartiality. As cited above, the only evidence that a juror may consider is evidence presented in court at the time of trial. With each release of content, with each additional piece of information and every line of discovery revealed, defendant Augello has the potential to taint, prejudice and disqualify an innumerable number of jurors. The only hope for a fair trial in this case is to stem the current flow of discovery to the public.

I certify the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Seth Levy

Dated: