IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA.

STATE OF FLORIDA,

CRIMINAL DIVISION: W
CASE NO. 50-2006-CF-009454AXXX

v.

JEFFREY EPSTEIN,

Defendant.
_____/

ORDER DENYING THE STATE'S MOTION FOR AN ORDER UNSEALING GRAND JURY TESTIMONY WITHOUT PREJUDICE

THIS CAUSE came before the Court on the State Attorney's December 16, 2019 Motion for an Order Unsealing Grand Jury Testimony. After careful consideration, the Court denies the State's Motion for the following reasons.

Factual Background

In 2006, the Grand Jury for the State of Florida indicted Jeffrey Epstein for one count of Felony Solicitation of Prostitution. Thereafter, Mr. Epstein and the State entered into a negotiated settlement wherein Mr. Epstein pleaded guilty in exchange for a twelve-month sentence in county jail. The circumstances of Mr. Epstein's plea and sentence later became an issue of national interest and, in response, Governor Ron DeSantis issued an Executive Order directing the Florida Department of Law Enforcement ("FDLE") to "initiate a preliminary inquiry beyond the work release of Jeffrey Epstein and into other irregularities surrounding the prior state investigation and the ultimate plea agreement." In this same Order, the Governor assigned Bruce Colton, State Attorney for the Nineteenth Judicial Circuit of Florida, to "discharge the duties of the Honorable, David Aaronberg, State Attorney for the Fifteenth Judicial Circuit of Florida, as they relate to the investigation, prosecution, and all matters related to allegations related to Jeffrey Epstein and his assigned work release program and other irregularities." Mr. Colton has now filed the instant

Motion on behalf of the State for the purpose of providing the grand jury records to FDLE. In the Motion, the State represents that "[a] review of the grand jury testimony is necessary to fulfill Governor DeSantis' assignment and required (sic) in the furtherance of justice."

The Court heard the State's Motion on January 7, 2020. At that hearing, the State introduced testimony from Troy Cope, the FDLE Case Agent assigned to investigate the Epstein case pursuant to the Governor's Order. Inspector Cope testified that he currently has access to police reports, victim statements, emails, sworn testimony, and other law enforcement statements obtained by law enforcement and the State in their investigation of Mr. Epstein. Inspector Cope explained that he wished to have access to the grand jury testimony so that he could compare the evidence presented to the grand jury with the documents obtained during his investigation. He further testified that he hoped to learn why the jury decided to indict Mr. Epstein for one count of Felony Solicitation of Prostitution, an offense which is chargeable after "a third or subsequent violation" of the solicitation statute, given Mr. Epstein's lack of a criminal record at the time. § 796.07(f)(c), Fla. Stat. (2006). Through Inspector Cope, the State also submitted the Governor's Order and the Grand Jury's indictment to the Court.

Based on the foregoing evidence, the State argued that FDLE needed the grand jury testimony to "further its investigation." When pressed by the Court as to the particular need for the testimony, the State conceded that it did not know what it would find and, therefore, could not predict what specific actions would be taken as a result. The State speculated that if it appeared any alleged victims were purposely not called or refused to appear, it might lead to a witness tampering investigation, however, the State also admitted that it had not made any effort to adduce this information from other means, such as direct contact with the victims. The State also speculated that the grand jury may have been misadvised about the nature of a Felony Solicitation

of Prostitution[1] charge, but again, could not articulate a particular need for this information other than to further FDLE's investigation in a general sense.

Analysis

The grand jury system, which is written into the United States Constitution, dates back centuries into the common law. Throughout its long history, secrecy has been an integral component of grand jury proceedings. *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 425 (1983). Grand jury secrecy serves several compelling purposes, including: (1) protecting the grand jurors, (2) protecting the witnesses, (3) preventing the escape of a person indicted before his arrest, (4) preventing subornation of perjury or tampering with witnesses who testified before the grand jury and then testify as a trial witnesses, (5) shielding the reputation of a person against whom no indictment is filed, and (6) encouraging the unhampered disclosure by persons who have information. *Grand Jury Fall Term, A.D. v. City of St. Petersburg, Fla*. 624 So. 2d 291 (Fla. 2d DCA 1993) (citing *Minton v. State*, 113 So. 2d 361 (Fla. 1959)). This secrecy also serves the interests of prospective investigations. *Minton*, 113 So. 2d at 365 ("While, in a given case, the reasons for secrecy may no longer obtain, the effect on subsequent grand jury proceedings – on jurors, on witnesses, on the privacy of the system itself – of indiscriminate disclosure has been said to be 'of greater moment.'" (quoting *United States v. General Motors*, 15 F.R.D. 486, 488 (D. Del. 1954)) (emphasis added)).

Although secrecy is an integral component of the grand jury, it is not absolute. The common law always recognized a "compelling" necessity exception to grand jury secrecy. *Goldstein v. Superior Court*, 195 P.3d 588, 602 (Cal. Ct. App. 2008). This exception carried over

[1] The State also conceded that there is no decisional authority clarifying what qualifies as a prior "violation" of the solicitation statute for purposes of Felony Solicitation of Prostitution and, therefore, was very measured in its misadvice hypothetical.

into our modern system of justice and is recognized in some form by nearly every jurisdiction in this country. *See* Fed. R. Crim. P. 6(e)(3)(E); *State ex rel. Ronan v. Superior Court In and For Maricopa County* 390 P.2d 109, 119 (Ariz. 1964); *In re Jessup's Petition*, 136 A.2d 207, 218 (Del. 1957); *Diamen v. U.S.* 725 A.2d 501, 532 (D.C. 1999); *Hinojosa v. State* 781 N.E.2d 677, 681 (Ind. 2003); *In re Grand Jury of Douglas County*, 644 N.W.2d 858, 863 (Neb. 2002); *People v. Di Napoli* 265 N.E.2d 449 (N.Y. 1970); *State v. Greer*, 420 N.E.2d 982, 989 (Ohio 1981). In Florida, this exception is codified in section 905.27(1)(c), Florida Statutes, which provides that grand jury testimony may be disclosed "when required by a court . . . for the purpose of . . . furthering justice." § 905.27(1), Fla. Stat.

Although the term "furthering justice" seems quite broad, the history of the exception in both common law and modern case law establishes that the exception is actually quite narrow—it does not encompass *any* reason that could "further justice," but rather requires the showing of a particularized and compelling need which outweighs any interest in maintaining secrecy and cannot be satisfied in another manner. *Brookings v. State*, 495 So. 2d 135, 137-38 (Fla. 1986) (holding that "a party seeking disclosure [of grand jury proceedings] must make a strong showing of a particularized need in order to outweigh the public interest in secrecy" (citing *United States v. Sells Eng'g, Inc.*, 463 U.S. 418, 443 (1983) (emphasis added))). Such a showing must be comprised of "more than a mere surmise or speculation." *Minton*, 113 So. 2d at 365. If a party makes this a showing, then the trial court may examine the grand jury testimony in camera and make a determination of its materiality. *Id*. Disclosure should then be permitted only if "essential to the attainment of justice." *Brookings*, 495 So. 2d at 138; *Minton*, 113 So. 2d at 365. There are few Florida cases discussing the furthering justice exception to grand jury secrecy, but all confirm its narrowness.

The question then becomes under what circumstances can a person, specifically an investigating body, citing the "furthering justice" exception establish a particularized and compelling need for grand jury records which outweighs any interest in maintaining secrecy? Although this is a highly fact specific inquiry, several decisions issued by various New York courts are instructive.

As written by one New York Court, "[t]he mere fact that the disclosure is sought by a government agency (even a prosecutorial agency that was itself involved in the grand jury presentation) will not necessarily warrant the breach of grand jury secrecy, nor will the mere general assertion that disclosure will be in the public interest." *In re Carey*, 4988 N.Y.S.2d 852 (N.Y. Sup. Ct. 2014) (citations omitted). Indeed, "if the supposed societal benefit of maximizing the public's awareness could by itself trump all other considerations," there would not exist a "legal presumption against disclosure of grand jury evidence, let alone a rule providing that such presumption may be overcome only by a showing of a particularized and compelling need for disclosure" *Id.* at 213. Instead, "[t]he party must, by a factual presentation, demonstrate why, and to what extent, the party requires the minutes of a particular grand jury proceeding to advance the actions or measures taken, or proposed (e.g. legal action, administrative inquiry or legislative investigation), to insure that the public interest has been, or will be, served." *Matter of James v. Donovan*, 14 N.Y.S.3d 435, 442 (N.Y. App. Div. 2015). (internal quotation and citation omitted).

The history of the furthering justice exception to grand jury secrecy and ensuing case law from Florida and around the country reflects that the exception is narrowly construed and requires the movant to establish a particularized and compelling need for the records. When the movant is an investigatory body, its need cannot simply public awareness, but must be the furtherance of a specified course of action. Further, the need must be of such a nature that it outweighs the public

interest in maintaining grand jury secrecy. Finally, the information contained in the records must actually serve the specified need and cannot be obtained from any other source.

Conclusion

In this case, the State has alleged the records are necessary to "fulfill Governor DeSantis' assignment" and has thrown out a few speculative possibilities for how it could use the testimony, depending on what it contains, of course. Alternatively, as the State acknowledged, the testimony could serve no value other than satisfying curious minds. It also has acknowledged that it has not exhausted all other avenues in attempting to obtain the information it seeks. Thus, the Court finds that State has failed to make a strong showing of a particularized and compelling need for the grand jury testimony. *Minton*, 113 So. 2d at 365.

In arriving at this conclusion, the Court is mindful that the State is simply trying its best to effectuate the Governor's Order and is in no way discounting the worthiness of that task. The Court is also not foreclosing the possibility that the State may, in the future, be able establish that the release of the grand jury records in this case are actually necessary to further justice. However, as it stands, the State has failed to make a predicate showing for the release of the grand jury testimony. Accordingly, it is hereby

ORDERED that the State's December 16, 2019 Motion for an Order Unsealing Grand Jury Testimony is **DENIED** without prejudice.

DONE AND ORDERED, in Chambers at West Palm Beach, Palm Beach County, Florida this _14th__ day of January 2020.

KRISTA MARX
CIRCUIT JUDGE

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