

IN THE COMMON PLEAS COURT OF OTTAWA COUNTY, OHIO
GENERAL DIVISION

STATE OF OHIO)
) Case No. 12 CR 203
Plaintiff,)
) Judge Bruce Winters
v.) DECISION AND
) JUDGMENT ENTRY
CAMERON W. PARRIS)
)
Defendant.)

CAROL A. HENNING
CLERK OF COURTS
OTTAWA COUNTY, OHIO

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FILED
COMMON PLEAS COURT

This cause comes before this Court upon a Motion to Dismiss for Breach of Contract/Motion for Specific Performance, a Motion for Release of Grand Jury Transcripts, and a Motion to Dismiss for Pre-Indictment delay filed by the Defendant in the above captioned case.

PROCEDURAL HISTORY

The original Motion to Dismiss for Breach of Contract in this matter was filed on January 3, 2013 by the Defense. A hearing was held on said motion on February 28, 2013. At said hearing the Court denied the Defendant's Motion to Dismiss holding that the burden of proving compliance with the agreement was on the Defendant. Subsequent to said hearing, counsel for Defendant filed a Motion to Reconsider on April 23, 2013. On May 15, 2013 the Defendant filed the additional motions requesting a release of grand jury transcripts and for dismissal based upon pre-indictment delay.

A further hearing was held on all pending motions on July 18, 2013. As a result of said hearing, the Court issued an order allowing for the reconsideration of the Motion to Dismiss for Breach of Contract/Specific Performance as it applies to Counts #1 through #7 of the indictment. The Court found the Defendant's argument for dismissal for breach of contract not well taken as it related to Count #8 of the indictment, as Count #8 of the indictment alleged conduct which took place subsequent to the execution of the non-prosecution agreement. The Court then set a further evidentiary hearing on the Motion to Dismiss for Breach of Contract/Specific Performance, Motion for Grand Jury Transcripts, and Motion to Dismiss for Pre-Indictment Delay.

The evidentiary hearing occurred on September 3, 2013. The parties then submitted briefs in lieu of closing arguments.

FACTS

On September 13, 2011, the Defendant, by and through counsel, entered into a written agreement with the State of Ohio, by and through Prosecuting Attorney Mark Mulligan. Said agreement, titled "Proffer Letter," provided that the State of Ohio would provide full immunity to the Defendant in exchange for the Defendant (1) providing a full, honest disclosure during a taped interview and (2) for testimony before the grand jury. The State of Ohio was seeking information relative to the murder of Phil Masterson.

On September 14, 2011, the Defendant provided a recorded interview with Detective Olen Martin and Agent Carl Rider of the Ottawa County Sheriff's

Department. During the taped interview, the Defendant provided the following: (1) various details about a meeting between Sarah Partlo and Zachary Brody; (2) discussed the events that led to the death of Phil Masterson; (3) discussed his involvement in cleaning blood; (4) discussed Zachary Brody's participation and commission of various crimes, (5) discussed the participation of Sarah Partlo after the death of Phil Masterson; (6) discussed the disposal of Mr. Masterson's wallet; (7) divulged various statements made by Zachary Brody; (8) discussed the Defendant's own role in discovering and cleaning blood; (9) discussed other individuals present on the evening of Mr. Masterson's death; (10) discussed the timeline of events on the evening of Mr. Masterson's death; and (11) discussed the plans of Zachary Brody to cover up the crime. During the taped interview, the Defendant failed to disclose that he had disposed of a shirt.

Ottawa County Prosecuting Attorney Mark Mulligan testified at the initial hearing which occurred on February 28, 2013. During this hearing Mr. Mulligan was unable to provide any particular information on how the Defendant breached the agreement. Prosecutor Mulligan testified that he was told by Captain Martin and Agent Carl Rider that the Defendant was being untruthful. Prosecutor Mulligan did not know specifics of the Defendant's untruthfulness, but stated he relied on the opinion of Captain Martin and Agent Carl Rider.

Detective Olen Martin, formerly a Captain with the Ottawa County Sheriff's Department, testified at the hearing on September 3, 2013. Detective Martin testified that he believed the Defendant had been untruthful in that he failed to disclose that he had given a shirt to Cliff Knoth to dispose of. Detective Martin

was unable to say whether or not this missing information impacted the prosecution's case against Zachary Brody in any way.

Zachary Brody was indicted by the Ottawa County Grand Jury in Case 11 CR 114 and charged with several offenses including Murder in violation of Ohio Revised Code 2903.02(B); Voluntary Manslaughter in violation of 2903.03(A); Felonious Assault in violation of Ohio Revised Code Section 2903.11(A)(1); two (2) counts of Intimidation of a Witness in violation of Ohio Revised Code Section 2921.04(B); and six (6) counts of Tampering with Evidence in violation of Ohio Revised Code Section 2921.12(A). Zachary Brody ultimately pled guilty to one count of Involuntary Manslaughter in violation of Ohio Revised Code Section 2903.04(A); and two counts of Tampering with Evidence in violation of Ohio Revised Code Section 2921.12(A)(1). The Defendant was found guilty and sentenced to 16 years of incarceration in the Ohio Department of Rehabilitation and Corrections.

162 days after the sentencing of Zachary Brody, the Defendant was indicted by the Ottawa County Grand Jury in the instant case.

ANALYSIS: MOTION TO DISMISS FOR BREACH OF CONTRACT

General principles of contract law are used to define the nature of obligations in interpreting agreements between the State of Ohio and Defendants

in criminal cases. When dealing with the specific issue of a non-prosecution agreements, the burden of proof is initially on the Defendant to prove the existence of a non-prosecution agreement. *State v. Stanley*, 2002-Ohio 4372, citing *U.S. v. Castaneda*, 162 F. 3d 832, (5th Cir. 1998).

Once the existence of a non-prosecution agreement has been established, the burden shifts to the State to prove, by a preponderance of the evidence that (1) the Defendant breached the agreement, and (2) that the breach was sufficiently material to warrant rescission.

In further explaining this rule, the *Castaneda* Court held that a Defendant's performance need not be perfect, the State must show that the Defendant made intentional omissions. *Id.* at 839. In defining what constitutes "materiality," *Castaneda* states that a breach is not "material" unless the non-breaching party is deprived of the benefit of the bargain. *Id.* at 837. The Court in *Castaneda* further states , in pertinent part:

It ill behooves the Government agents and prosecutors to enter into agreements of transactional immunity with mid-level co-conspirators, milk them of substantial leads and information that makes the government's case against the big fish while coincidentally giving the government a lay-down winning hand against the cooperating defendant; then at the last moment, rely on a technical or relatively minor deficiency in performance to pull the rug out from under the cooperating informant by claiming a breach and then proceed to prosecute them in a slam dunk case based upon his own admissions....due process cannot abide by such behavior.

Although the principles of law espoused in *Castaneda* are not controlling in this jurisdiction, this Court nonetheless finds it persuasive.

In the case at hand, the parties have stipulated that a valid non-prosecution agreement was entered into between the State of Ohio and the Defendant. The non-prosecution agreement required the Defendant to provide a full and honest disclosure about the death of Phil Masterson in exchange for immunity.

As there is a valid non-prosecution agreement, the burden is then placed on the State of Ohio to prove that the Defendant breached the agreement and that the breach of said agreement was material.

Here, the Defendant provided the following information: information on meetings between Sarah Partlo and Zachary Brody; information on various events that led to the death of Phil Masterson; information relating to the Defendant's involvement in cleaning blood; information regarding Zachary Brody's participation/commission of various crimes, information regarding the participation of Sarah Partlo after the death of Phil Masterson; information on the disposal of Phil Masterson's wallet; information relating to statements made by Zachary Brody; information regarding the Defendant's own role in discovering and cleaning blood; information regarding other individuals present on the evening of Mr. Masterson's death; the timeline of events on the evening of Mr. Masterson's death; and the plans of Zachary Brody to cover up the crime.

The State of Ohio has only been able to point to one specific omission that the Defendant made. The Defendant failed to disclose that he had disposed of a shirt. Detective Martin testified that he did not specifically ask the Defendant about the shirt. Detective Martin additionally admitted that the Defendant did

"pick things up" and put them in the garbage. The State has alluded to other untruths, omissions and half-truths, but has not provided any specifics.

As discussed in *Castaneda*, the only specific evidence provided by the State was an omission made by the Defendant regarding the disposal of a shirt. The State has failed to provide any evidence that the omission was made intentionally or in bad faith by the Defendant. The State of Ohio has failed to meet its burden to establish, by a preponderance of the evidence that the Defendant breached the agreement.

In regards to the final prong of the test laid out by the Court in *Castaneda*, the State of Ohio has further failed to provide any evidence as to the materiality of the alleged breach by the Defendant. Zachary Brody was ultimately convicted by way of plea bargain and sentenced to 16 years in prison. The State has argued that they were forced to offer Zachary Brody a more lenient plea offer as a result of the Defendant's actions, but have failed to provide any facts or evidence to support these allusions. Detective Martin testified that he was unable to say whether or not the Defendant's omissions impacted the prosecution of Zachary Brody in any way. As a result, the State of Ohio has failed to prove, by a preponderance of the evidence that the alleged breach by the Defendant was material.

There is no evidence that the State of Ohio has been deprived of the benefit of their bargain in this case. The statements made by the Defendant were utilized in the prosecution of Zachary Brody and there is no proof that the outcome of the Brody case was in any way altered by the actions of the

Defendant. It is not within the purview of the Court to determine whether the parties should have made this agreement, rather the Court can only review whether an agreement was in fact made, and if so, did both parties abide by the agreement.

The Court finds that the State has failed to meet their burden to show that (1) the Defendant breached the agreement and (2) that the alleged breach was material. As a result, Counts #1 through #7, inclusive must be dismissed.

As discussed in the previous order issued by this Court on July 3, 2013, a determination of breach of contract would be tantamount to a trial of the general issues as to Count #8. Pursuant to Ohio Crim R. 12(C), motions which entail a trial of the general issues are prohibited. *Id.* As a result, the Defendant's Motion to Dismiss for Breach of Contract as it relates to Count #8 must be denied.

ANALYSIS: MOTION TO DISMISS FOR PRE-INDICTMENT DELAY

The Supreme Court of the United States has issued a bright-line test in determining whether dismissal for pre-indictment delay should be granted. The burden of proof is on the Defendant to show that he/she suffered actual prejudice. If the Defendant can show actual prejudice, the Court must then weigh the reason for the State's delay against the prejudice to the Defendant. *United States v. Marion*, 404 U.S. 307 (1971).

The Ohio Supreme Court has expanded upon this rule in *State v. Luck*, holding that "a delay in the commencement of prosecution can be found to be unjustifiable when the state's reason for the delay is to intentionally gain a tactical

advantage over the Defendant or when the State, through negligence or error in judgment, effectively ceases the active investigation of a case, but later decides to commence prosecution upon the same evidence that was available to it at the time its active investigation was ceased. 15 Ohio St.3d at 158.

In the case at hand, the Defense failed to provide any evidence that the Defendant suffered actual prejudice. The Defendant asserts that the delay by the State provided an unfair advantage, but does not provide evidence of an actual prejudice. At the hearing, the Defendant did not offer any additional evidence relating to the alleged prejudice suffered by the Defendant. As a result of the foregoing, the Defendant's Motion to dismiss for pre-indictment delay must be dismissed.

ANALYSIS: MOTION FOR RELEASE OF GRAND JURY TRANSCRIPTS

Ohio Courts have historically protected the secrecy of grand jury proceedings. In order for the Defendant to be entitled to inspect the grand jury testimony, the Defense must show a particularized need that outweighs the policy of secrecy. *State v. Patterson*, 28 Ohio St. 2d 181 at 185.

In this case, the Defendant argues that disclosure of the grand jury transcripts is necessary to determine whether the State of Ohio, through the Ottawa County Prosecutor's Office, violated its agreement with the Defendant. The Defense further argues that it is necessary to disclose the grand jury transcripts to determine whether the Prosecutor presented evidence to the grand jury that was the subject of the proffer agreement.


The Defense has failed to provide any evidence to support their assertion of a particularized need for the grand jury transcripts. The State has not denied its breach of the Proffer agreement. In fact the State has openly admitted its non-compliance with the Proffer Agreement, as they had determined that the Defendant had breached the agreement. As the State has admitted it has not fulfilled its obligations under the agreement, the Defendant has failed to show a specific, particularized need. The Defendant's Motion for a Transcript of Grand Jury Proceedings must be denied.

As a result, the Defendant's Motion to Dismiss for Breach of Contract is found well taken and is hereby granted in part, and denied in part. **IT IS HEREBY ORDERED** that Counts #1, #2, #3, #4, #5, #6, and #7 are hereby dismissed. As to Count #8, the Defendant's Motion to Dismiss for Breach of Contract is denied pursuant to Crim. R. 12(C).

Further, Defendant's Motion for Grand Jury Transcripts and Motion to Dismiss for Pre-Indictment Delay are hereby denied.

IT IS FURTHER ORDERED, that this matter shall be set for Final Pre-Trial and Jury Trial as to Count #8 of the Indictment.

The Clerk of Courts shall send copies of this Decision to all parties of record or their counsel by regular U.S. Mail.


Judge Bruce Winters