

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

DECISION and ORDER

People's Motion for
Contempt

SMZ 71911-24

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

BACKGROUND

Defendant is charged with 34 counts of Falsifying Business Records in the First Degree in violation of Penal Law § 175.10. The charges arise from allegations that Defendant attempted to conceal an illegal scheme to influence the 2016 presidential election. Specifically, the People claim that Defendant directed an attorney who worked for his company to pay \$130,000 to an adult film actress shortly before the election to prevent her from publicizing an alleged sexual encounter with Defendant. It is further alleged that Defendant thereafter reimbursed the attorney for the payments through a series of checks and caused business records associated with the repayments to be falsified to conceal his criminal conduct. Trial on this matter commenced on April 15, 2024.

On February 22, 2024, the People filed a motion for an order restricting extrajudicial statements by Defendant. On March 26, 2024, this Court granted the People's motion and issued an Order (hereinafter the "Order"). On March 28, 2024, the People filed a pre-motion letter seeking clarification or confirmation of the March 26 Order as to whether it proscribes extrajudicial speech against family members of the Court, the District Attorney, and of all other individuals mentioned in the Order. On April 1, 2024, this Court issued an Order expanding the restrictions contained in the March 26, 2024, Order (hereinafter the "Expanded Order"). Defendant sought an emergency stay of the Expanded Order from the Appellate Division, First Department, which was denied on April 9, 2024.

On April 15, 2024, the People moved by order to show cause, for this Court to find Defendant in criminal contempt for allegedly willfully violating the Expanded Order on three separate occasions. On April 18, 2024, the People again moved by order to show cause for this

Court to find Defendant in criminal contempt for allegedly willfully violating the Expanded Order on seven additional occasions. A hearing was conducted on April 23, 2024. By Decision and Order dated April 30, 2024, this Court found Defendant in criminal contempt for willfully violating the Expanded Order on nine separate occasions. He was ordered to pay a fine of \$1,000 for each of the nine violations. He was also directed to take down the social media posts which violated the Expanded Order. In the meantime, on April 25, 2024, before this Court issued its Order of April 30, the People moved a third time, by order to show cause, for this Court to find Defendant in criminal contempt for additional alleged violations of the Expanded Order. The People seek a \$1,000 fine for each of the four alleged violations, pursuant to Judiciary Law § 751. Defendant was properly served and answering papers were filed on April 29, 2024. A plenary hearing as required by law was conducted on May 2, 2024. The Court reserved decision.

FINDINGS OF FACT

This Court has considered the respective arguments of both parties, the exhibits introduced into evidence at the hearing and all submissions filed in support of and in opposition to the motion for contempt.

As more fully explained in ADA Conroy's Affirmation of April 25, 2024, the People allege Defendant violated the Expanded Order on four separate occasions as follows:

1. By virtue of a statement Defendant made to the media in the hallway of 100 Centre Street, outside the door to Supreme Court of the State of New York, County of New York Part 59, on April 22, 2024, at approximately 12:40 P.M. after court adjourned for the day. Among other things, Defendant stated "And when are they going to look at all the lies that Cohen did in the last trial? He got caught lying in the last trial. So he got caught lying, pure lying. And when are they going to look at that?" Conroy Affirmation Ex. E.
2. By virtue of an interview defendant gave on April 22, 2024, at approximately 6:00 P.M. to a program called Just the News No Noise, which is broadcast on a network called Real America's Voice. Among other things, Defendant stated "You know [the judge is] rushing the trial like crazy. Nobody's ever seen a thing go like this. That jury was picked so fast – 95% democrats. The area's mostly all democrat. You think of it as a – just a purely democrat area. It's a very unfair situation that I can tell you." Conroy Affirmation Ex. F.
3. By virtue of an interview Defendant gave to a program called "Action News" which is an ABC news affiliate in Pennsylvania, on April 23, 2024, which aired at approximately 5:56

P.M. Among other things, Defendant stated “Well, Michael Cohen is a convicted liar and he’s got no credibility whatsoever . . . Michael Cohen was a convicted liar . . . but what he did is he did some pretty bad things[.]” Conroy Affirmation Ex. G.

4. By virtue of a press event Defendant held at 49th Street and Park Avenue in Manhattan on April 25, 2024, at approximately 6:35 A.M. in response to a question about David Pecker’s ongoing testimony in this trial: “He’s been very nice, I mean he’s been – David’s been very nice. A nice guy.” Conroy Affirmation Ex. H.

Defendant does not dispute that he made the statements. Rather, he advances several defenses to support his claim that his actions do not constitute a willful violation of the Expanded Order and that he should therefore not be found to be in criminal contempt. He argues, for example, that he did not willfully violate the Expanded Order because the posts constitute protected political speech made in response to attacks by Michael Cohen (Exhibits E and G) and that his comments about the jury do not violate the Order because he did not specifically reference any “prospective juror or any juror in this criminal proceeding.” Transcript of May 2, 2024, pg. 31. Finally, he claims that his comments about David Pecker do not constitute a violation at all. Conroy Affirmation Ex H.

CONCLUSIONS OF LAW

The Judiciary Law authorizes a court to hold a party in criminal contempt for “willful disobedience of a court’s lawful mandate.” People’s Memorandum of Law of April 15, 2024, pg. 4 quoting *Town of Riverhead v. T.S. Haulets, Inc.* 68 AD3d 1103 [2d Dept 2009]. This is “to protect the dignity of the judicial system and to compel respect for its mandates,” *Matter of McCormick*, 59 NY2d 574 [1983] and “to punish the contemnor for disobeying a court order.” *Rush v. Save My Home Corp.*, 145 AD3d 930 [2d Dept 2016]. Criminal contempt requires a showing of willfulness on the part of the contemnor, *Matter of McCormick*, 59 NY2d at 574, which must be proven beyond a reasonable doubt. *Rush* 145 AD3d at 114. Thus, for a court to make a finding of criminal contempt, the moving party must establish: (1) the existence of a lawful order expressing an unequivocal mandate, and (2) a violation of the order (3) that is made with knowledge and is willful. “[A] party may not challenge a [court’s] order by violating it.” People’s Memorandum of Law of April 15, pg. 6 quoting *United States v. Cutler*, 58 F3d 825, 832 [2d Cir 1995]. Indeed, a party may be held in contempt for violating an order later found to be unlawful. See *Schmude v. Sheaban*, 420 F3d 645 [7th Cir 2005]. An adjudication of the contempt occurs at “a plenary hearing with due process of law including notice,

written charges, assistance of counsel, compulsory process for production of evidence and an opportunity of the accused to confront witnesses against him.” 22 NYCRR 604.2(b). A plenary hearing as required by law was conducted on May 2, 2024.

DECISION

This Court cannot find beyond a reasonable doubt that Defendant’s statements referenced in Exhibits E and G were not protected political speech made in response to political attacks by Michael Cohen. Likewise, this Court cannot find beyond a reasonable doubt that Defendant’s statement referenced in Exhibit H constitutes a violation of the Expanded Order. To be sure, this Court understands the People’s argument as it pertains to this Exhibit and agrees that often seemingly innocuous or even complimentary words and phrases can in truth conceal a more nefarious purpose, such as to threaten, harass or intimidate. However, context, facial expressions, emphasis and even cadence are critical in reaching such a determination. Under the circumstances here, this Court cannot find beyond a reasonable doubt that the statement in question constituted a veiled threat to Mr. Pecker or to other witnesses.

Turning to the statement referenced in People’s Exhibit F, this Court finds that the People have established the elements of criminal contempt beyond a reasonable doubt. This Court’s Expanded Order is lawful and unambiguous. Defendant violated the Order by making public statements about the jury and how it was selected. In doing so, Defendant not only called into question the integrity, and therefore the legitimacy of these proceedings, but again raised the specter of fear for the safety of the jurors and of their loved ones. Such concerns undoubtedly threaten to “interfere with the fair administration of justice and constitutes a direct attack on the Rule of Law.” Expanded Order pg. 3. It remains this Court’s fundamental responsibility to protect the decency of the criminal process and to control disruptive influences in the courtroom. Expanded Order pg. 3. See *Sheppard v. Maxwell*, 384 U.S. 333 [1966].

The Court finds Defendant in criminal contempt for willfully disobeying a lawful mandate of this Court in violation of Judiciary Law Section 750(3).

PUNISHMENT AND ORDER

As stated in its Decision and Order of April 30, 2024, criminal contempt is punishable by a fine not exceeding \$1,000, by jail not exceeding 30 days or by both in the discretion of the court. Judiciary Law § 751(1). The Judiciary Law permits this punishment “to protect the dignity of the judicial system and to compel respect for its mandates,” *Matter of McCormick*, 59 NY2d 574 [1983] and “to punish the contemnor for disobeying a court order.” *Rush v. Save My Home Corp.*, 145 AD3d 930 [2d Dept 2016]. Because the offensive statement was made prior to this Court’s Decision of April 30 and because the People are seeking only a monetary fine, the Court will, once again, fine Defendant \$1,000. However, because this is now the tenth time that this Court has found Defendant in criminal contempt, spanning three separate motions, it is apparent that monetary fines have not, and will not, suffice to deter Defendant from violating this Court’s lawful orders.

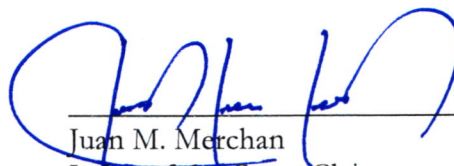
THEREFORE, Defendant is hereby put on notice that if appropriate and warranted, future violations of its lawful orders will be punishable by incarceration; and it is hereby

ORDERED, that Defendant pay a \$1,000 fine for his violation of this Court’s lawful order by the close of business on Friday, May 10, 2024; and it is further

ORDERED that if the offending statement has been posted to Defendant’s Truth Social account or his official campaign website, it is to be removed by 2:15pm Monday, May 6, 2024.

The foregoing constitutes the Decision and Order of the Court.

Dated: May 6, 2024
New York, New York



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

MAY 06 2024

NON. J. MERCHAN