

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-11-573
VM-KEN-4/10/2012

STATE OF MAINE

v.

AMANDA SALISBURY,

Defendant

ORDER ON DEFENDANT'S
MOTION TO DISMISS
INDICTMENT

The defendant moves to dismiss the indictment. The defendant argues that because a grand jury subpoena issued for her confidential banking records from the Savings Bank of Maine without her knowledge and without compliance with M.R. Crim. P. 17(c), the indictment must be dismissed. For the following reasons, the motion is denied.

Pursuant to section 163, it is clear that in criminal proceedings the customer need not be notified when bank records are subpoenaed:

The court for good cause shown may delay or dispense with service of the subpoena, summons, warrant or court order upon the customer. The court shall delay or dispense with service of the subpoena, summons, warrant or court order upon the customer upon notice by the Attorney General, the Attorney General's designee or the District Attorney that service upon the customer would not be in the public interest. A subpoena, summons or warrant issued in connection with a criminal proceeding or state or federal grand jury proceeding . . . need not be served on the customer.

9-B M.R.S. § 163 (2011). Additionally, the Law Court has noted that violation of section 163 does not lead to an exclusion of evidence: "Even if we assume that the State did not comply with § 163, we would be disinclined at this time to apply an exclusionary rule. Section 163 does not mandate such a rule, and there is not the slightest suggestion on

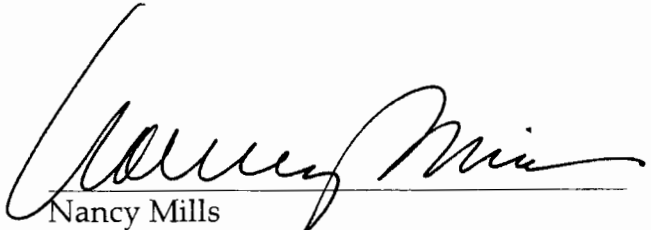
the facts here that such a rule is necessary to deter unlawful governmental conduct." State v. Fredette, 411 A.2d 65, 67 n.4 (Me. 1979); see also Porter v. Norway Sav. Bank, 2011 Me. Super. LEXIS 15, *4 (Feb. 23, 2011) (subpoena requesting certain financial records that was issued in connection with a grand jury proceeding was found to be lawful on its face; the subpoena did not have to be served on the customer before the Bank acted and did not have to certify that it had been served).

The subpoenaed records are not protected from disclosure by a "privilege, confidentiality protection or privacy protection." M.R. Crim. P. 17(d). Accordingly, the Rule 17(d) procedure was not required.

The entry is

The Motion to Dismiss Indictment is DENIED.

Date: April 10, 2012



Nancy Mills
Justice, Superior Court

STATE OF MAINE
vs
AMANDA J SALISBURY
539 ROME ROAD
ROME ME 04963

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2011-00573

DOCKET RECORD

DOB: 02/25/1980
Attorney: WALTER MCKEE
MCKEE LAW PA
133 STATE STREET
PO BOX 258
AUGUSTA ME 04332-0258
RETAINED 09/01/2011

State's Attorney: EVERT FOWLE

Filing Document: INDICTMENT
Filing Date: 07/28/2011

Major Case Type: FELONY (CLASS A,B,C)

Charge(s)

1 THEFT BY UNAUTHORIZED TAKING OR TRANSFER 08/01/2006 OAKLAND
Seq 8424 17-A 353(1)(B)(1) Class B

Docket Events:

07/29/2011 FILING DOCUMENT - INDICTMENT FILED ON 07/28/2011
TRANSFER - BAIL AND PLEADING GRANTED ON 07/28/2011
TRANSFER - BAIL AND PLEADING REQUESTED ON 07/28/2011
07/29/2011 BAIL BOND - \$1,000.00 CASH BAIL BOND SET BY COURT ON 07/28/2011
JOHN NIVISON , JUSTICE
07/29/2011 Charge(s): 1
WARRANT - ON COMP/INDICTMENT ORDERED ON 07/28/2011
JOHN NIVISON , JUSTICE
07/29/2011 Charge(s): 1
WARRANT - ON COMP/INDICTMENT ISSUED ON 07/08/2011
CERTIFIED COPY TO WARRANT REPOSITORY
08/05/2011 Charge(s): 1
WARRANT - ON COMP/INDICTMENT RETURNED ON 08/05/2011
08/08/2011 BAIL BOND - \$1,000.00 CASH BAIL BOND FILED ON 08/03/2011
Bail Receipt Type: CR
Bail Amt: \$1,000
Date Bailed: 08/03/2011
Receipt Type: CK
Prvdr Name: AMANDA SALISBURY
Rtrn Name: AMANDA SALISBURY
08/08/2011 Charge(s): 1
HEARING - ARRAIGNMENT SCHEDULED FOR 11/15/2011 at 08:30 a.m.
09/01/2011 Party(s): AMANDA J SALISBURY
CR_200

ATTORNEY - RETAINED ENTERED ON 09/01/2011

Attorney: WALTER MCKEE

10/07/2011 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 10/07/2011

DA: WALTER MCKEE

10/07/2011 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 10/07/2011

Attorney: WALTER MCKEE

10/13/2011 MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 10/07/2011

10/18/2011 OTHER FILING - OTHER DOCUMENT FILED ON 10/13/2011

DA: ALAN KELLEY

STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

11/15/2011 Charge(s): 1

HEARING - ARRAIGNMENT HELD ON 11/15/2011

M MICHAELA MURPHY , JUSTICE

Reporter: JANETTE COOK

Defendant Present in Court

READING WAIVED. DEFENDANT INFORMED OF CHARGES. COPY OF INDICTMENT/INFORMATION GIVEN TO DEFENDANT. 21 DAYS TO FILE MOTIONS

11/15/2011 Charge(s): 1

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 11/15/2011

11/15/2011 Charge(s): 1

TRIAL - DOCKET CALL SCHEDULED FOR 01/03/2012 at 08:30 a.m.

11/15/2011 HEARING - MOTION TO DISMISS SCHEDULED FOR 01/03/2012 at 08:30 a.m.

NOTICE TO PARTIES/COUNSEL

11/15/2011 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 01/03/2012 at 08:30 a.m.

NOTICE TO PARTIES/COUNSEL

11/15/2011 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 01/03/2012 at 08:30 a.m.

NOTICE TO PARTIES/COUNSEL

01/03/2012 HEARING - MOTION FOR DISCOVERY NOT HELD ON 01/03/2012

01/03/2012 HEARING - MOTION TO SUPPRESS NOT HELD ON 01/03/2012

01/03/2012 HEARING - MOTION TO DISMISS NOT HELD ON 01/03/2012

01/03/2012 Charge(s): 1

TRIAL - DOCKET CALL HELD ON 01/03/2012

M MICHAELA MURPHY , JUSTICE

Defendant Present in Court

01/03/2012 MOTION - MOTION TO SUPPRESS WITHDRAWN ON 01/03/2012

01/03/2012 MOTION - MOTION FOR DISCOVERY GRANTED ON 01/03/2012

M MICHAELA MURPHY , JUSTICE

Defendant Present in Court

COPY TO PARTIES/COUNSEL

01/03/2012 HEARING - MOTION TO DISMISS SCHEDULED FOR 01/04/2012 at 08:30 a.m.

NOTICE TO PARTIES/COUNSEL

01/04/2012 HEARING - MOTION TO DISMISS HELD ON 01/04/2012

M MICHAELA MURPHY , JUSTICE

Defendant Present in Court

01/04/2012 MOTION - MOTION TO DISMISS UNDER ADVISEMENT ON 01/04/2012

M MICHAELA MURPHY , JUSTICE

AFTER HEARING JUSTICE MURPHY RECUSED FROM THIS CASE

01/25/2012 OTHER FILING - OTHER DOCUMENT FILED ON 01/25/2012

Attorney: WALTER MCKEE

COPY OF ORDER IN STATE VS KAILE WARREN REGARDING THE MOTION TO DISMISS FILED IN THIS MATTER.

02/08/2012 NOTE - OTHER CASE NOTE ENTERED ON 02/03/2012

M MICHAELA MURPHY , JUSTICE

RECUSED HERSELF

02/08/2012 HEARING - MOTION TO DISMISS SCHEDULED FOR 03/07/2012 at 10:00 a.m.

NOTICE TO PARTIES/COUNSEL

02/08/2012 HEARING - MOTION TO DISMISS NOTICE SENT ON 02/08/2012

03/07/2012 HEARING - MOTION TO DISMISS HELD ON 03/07/2012

NANCY MILLS , JUSTICE

Attorney: WALTER MCKEE

DA: PAUL RUCHA

Defendant Present in Court

TAPE#1506, INDEX#2050

03/07/2012 Charge(s): 1

MOTION - MOTION TO DISMISS UNDER ADVISEMENT ON 03/07/2012

NANCY MILLS , JUSTICE

04/11/2012 Charge(s): 1

MOTION - MOTION TO DISMISS DENIED ON 04/10/2012

NANCY MILLS , JUSTICE

COPY TO PARTIES/COUNSEL

04/11/2012 MOTION - MOTION TO DISMISS DENIED ON 04/10/2012

NANCY MILLS , JUSTICE

COPY TO PARTIES/COUNSEL

04/20/2012 Charge(s): 1

TRIAL - DOCKET CALL SCHEDULED FOR 06/05/2012 at 08:30 a.m.

A TRUE COPY

ATTEST: _____

Clerk