Ransom v Knable
2015 NY Slip Op 31643(U)
August 28, 2015
Supreme Court, New York County
Docket Number: 153849/2012
Judge: Kelly A. O'Neill Levy

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 19

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JULIA RANSOM,

Plaintiff,

-against-

GABRIELLE KNABLE,

Defendant

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Index No. 153849/2012
Motion Seq. 001

DECISION & ORDER

KELLY O'NEILL LEVY, J.:

Plaintiff Julia Ransom moves pursuant to CPLR 2304[1], 3103(a)[2], and 3101(b)[3] to quash the judicial subpoena *duces tecum* ("Subpoena") served by defendant Gabrielle Knable upon the New York City Police Department on or about February 25, 2015. Plaintiff argues that the Subpoena, which seeks Plaintiff's fingerprint and arrest records, should be quashed because it will not lead to the production of admissible evidence. Defendant opposes and asks the court to conduct an *in camera* review of such records to determine their relevance to this matter.

Plaintiff commenced this action on June 15, 2012, alleging, *inter alia*, that on or about September 30, 2011, Defendant intentionally threw a glass at Plaintiff causing her physical injuries. Defendant counter-claimed for assault and battery, alleging that Plaintiff was the

[1] CPLR § 2304: "A motion to quash, fix conditions or modify a subpoena shall be made promptly in the court in which the subpoena is returnable. If the subpoena is not returnable in a court, a request to withdraw or modify the subpoena shall first be made to the person who issued it and a motion to quash, fix conditions or modify may thereafter be made in the supreme court...Reasonable conditions may be imposed upon the granting or denial of a motion to quash or modify."

[2] CPLR §3103(a): "Prevention of abuse. The court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts."

[3] CPLR 3101(b): "Upon objection by a person entitled to assert the privilege, privileged matter shall not be obtainable."

aggressor. Defendant claims she was acting in self-defense. On or about February 25, 2015, Defendant served the New York City Police Department with the subject Subpoena based on her belief that Plaintiff had a history of domestic violence. Counsel for Defendant asserts that the detective assigned to the criminal case advised both himself and his client that the plaintiff had a criminal record for domestic violence.

A motion to quash a subpoena "should be granted '[o]nly where the futility of the process to uncover anything legitimate is inevitable or obvious'...or where the information sought is 'utterly irrelevant to any proper inquiry.'" *Kapon v Koch*, 23 NY3d 32, 35 (2014) (quoting *Anheuser-Busch, Inc. v Abrams*, 71 NY2d 327, 331-32 [1988]). Under this standard, the court must determine "whether the materials sought are in fact relevant to a legitimate subject of inquiry." *Reuters Ltd. v Dow Jones Telerate, Inc.*, 231 AD2d 337, 342 (1st Dept 1997). Documents are relevant if they "may lead to the disclosure of admissible proof." *Polygram Holding, Inc. v Cafaro*, 42 AD3d 339, 341 (1st Dept 2007).

Defendant argues that the subpoena will yield evidence that can be used to impeach the Plaintiff during cross-examination. *See* CPLR 4513 (prior criminal conviction may be used to attack the credibility of a witness); *see also Dance v Town of Southampton*, 95 AD2d 442, 453 (2d Dept 1983) (finding that "conviction of a crime and the underlying facts of the criminal acts may be used to impeach the credibility of a witness at a civil trial."). However, the Court of Appeals of New York has "repeatedly held that the fact of an arrest...is 'not a permitted area for impeachment.'" *People v Miller*, 91 NY2d 372, 380 (1998) (quoting *People v Rodriguez*, 38 NY2d 95, 101 [1975]). Similarly, an arrest or indictment "is a mere accusation and raises no presumption of guilt," *People v Morrison*, 195 NY 116, 117 (1909), and is therefore generally

"not a permitted area for impeachment," *People v Randolph*, 996 NY2d 278, 278 (1st Dept 2014).

While the fact of an arrest itself cannot be raised during cross-examination, the cross-examiner may raise the "acts underlying" an arrest to impeach the witness. *People v Greer*, 42 NY2d 170, 176 (1977). But, keeping in line with *Miller* and *Morrison*, the cross-examiner may not introduce "extrinsic evidence," such as arrest records, "to refute [the witness's] denial" of these facts (*Badr v Hogan*, 75 NY2d 629, 635 [1990]), and "is bound by the [witness's] answers," *People v McCormick*, 278 AD 410, 412 (1st Dept 1951).

The use of prior bad acts to impeach a witness is further curtailed because such an inquiry is limited to evidence tending to show the witness is not credible. Prior bad acts cannot be used as evidence of habit, "the law being inflexibly set against questioning as to such acts when the obvious intent is to show from character or experience a propensity to commit the crime for which defendant is on trial." *Greer*, 42 NY2d at 176; *see also McQuage v City of New York*, 285 AD 249, 253 (1st Dept 1954) (cross-examiner's questions regarding prior arrests for public intoxication are prejudicial because "[t]he obvious purpose... [was] to show that he had been intoxicated on other occasions and thus permit the jury to draw the inference that he was intoxicated at the time of the...accident.").

Here, Defendant concedes that Plaintiff's arrest records are not admissible, but contends that they will provide information concerning Plaintiff's violent history that can then be raised during cross-examination for impeachment purposes. (See Affirmation of Kenneth J. Aronson, dated April 20, 2015, ¶11) ("[Plaintiff] has a history of losing her temper and engaging in assaultive behavior, which is exactly what happened on September 30, 2011."). Defendant would face substantial hurdles in using any evidence at trial of arrests of Plaintiff. However, at

this time the court does not know what records exist nor what relevance any records may or may not have at trial.

In these circumstances, the motion to quash is denied, with arrest records and Domestic Incident Reports to be submitted for in camera review.

Accordingly, it is hereby

ORDERED that Plaintiff's motion to quash the Subpoena at issue is denied with arrest records and Domestic Incident Reports, if any, to be submitted to my court for in camera review.

Defendant is directed to serve a copy of this decision and order with notice of entry upon the New York City Police Department within 30 days of today's date.

This constitutes the decision and order of the court.

DATED: August 28, 2015
New York, New York

Kelly O'Neill Levy

Kelly O'Neill Levy, A.J.S.C.

HON. KELLY O'NEILL LEVY