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In re 38 Studios Grand Jury, 225 A.3d 224 (R.I. 2020)

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Criminal Procedure. *In re 38 Studios Grand Jury*, 225 A.3d 224 (R.I. 2020). The Superior Court does not have inherent authority to disclose grand jury materials beyond the scope of rule 6(e) of the Superior Court Rules of Criminal Procedure. The Superior Court is statutory in origin, and, as such, the lower court may not act outside of the confines of any statute or rule.

FACTS AND TRAVEL

In 2010, a quasi-public corporation issued $75 million in bonds to guarantee loans to 38 Studios, a video game company.[1] Two years later, 38 Studios failed to honor its obligation to repay the bonds and left Rhode Island taxpayers on the hook for $88 million.[2] In 2012, a statewide grand jury investigated potential criminality in connection with the 38 Studios deal.[3] The grand jury sat for eighteen months and completed its work in 2015.[4] The investigation into potential criminality began before the grand jury convened, and approximately 150 individuals were interviewed or called to testify before the grand jury.[5] At the conclusion of the grand jury's investigation, the Attorney General declared that there were not any "provable criminal violations of the Rhode Island General [L]aws in connection with" the 38 Studios deal.[6]

Independent of the grand jury investigation, the State commenced civil litigation against persons and entities connected to the 38 Studios deal.[7] The State recovered more than $61 million, and hundreds of thousands of documents were made public.[8] At the close of litigation, the Governor filed a petition in the Superior

1. *In re* 38 Studios Grand Jury, 225 A.3d 224, 226 (R.I. 2020).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*

Court seeking "the release of all 38 Studios Grand Jury Records."[9] The Governor argued that: (1) the Superior Court had the discretion to release grand jury materials in exceptional circumstances; (2) that exceptional circumstances did in fact exist; and (3) that those exceptional circumstances outweighed the need for grand jury secrecy.[10] The Attorney General opposed the Governor's petition, and the Superior Court heard the petition in April 2017.[11]

The presiding justice of the Superior Court determined that she did not have the authority to grant the Governor's petition.[12] That determination was based on the fact that the Governor was not seeking disclosure pursuant to rule 6(e) of the Superior Court Rules of Criminal Procedure, which governs grand jury secrecy.[13] The presiding justice also ruled that, even if the Superior Court had the authority to disclose the requested grand jury materials, the grand jury materials should not be disclosed because the Governor failed to demonstrate a particularized need for the information.[14] As such, the Superior Court denied the Governor's petition, and the Governor timely appealed.[15]

At the Rhode Island Supreme Court, the Governor asserted that the Superior Court presiding justice erred in reading rule 6(e) as the only way to disclose grand jury materials.[16] The Governor contended that the Superior Court had "inherent authority" outside the scope of rule 6(e) to disclose the requested materials.[17] Additionally, the Governor argued that the presiding justice should not have applied the "particularized need" test because the test only applies when evaluating a request pursuant to Rule 6(e).[18] Furthermore, the Governor contended that the presiding justice

9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.* at 226–27.
15. *Id.* at 227.
16. *Id.*
17. *Id.*
18. *Id.*

abused her discretion in determining that the Governor "failed to meet factors in favor of the release of grand jury materials."[19]

ANALYSIS AND HOLDING

In determining whether the Superior Court had inherent authority to disclose grand jury materials outside the scope of rule 6(e) of the Superior Court Rules of Criminal Procedure, the Supreme Court was tasked with answering a question of first impression. Before addressing the case on its merits, the Court first conducted a standing analysis. Although the Court concluded that the Governor did not meet the traditional elements for standing, the Court decided to overlook that fact because the case concerned a "substantial public interest."[20] As such, the Court moved onto the question regarding the Superior Court's authority to release grand jury materials beyond the scope of rule 6(e).

Rule 6(e) of the Superior Court Rules of Criminal Procedure "codifies the traditional rule of grand jury secrecy."[21] Rule 6(e)(2) provides that "any person to whom disclosure is made under subdivision (e)(3)(A)(ii) shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules."[22] The next provision of rule 6(e) permits disclosures, in limited circumstances, which are "otherwise prohibited by this rule."[23] The Governor argued that the permitted disclosures in rule 6(e) are "permissive and nonexclusive."[24] More specifically, the Governor asserted that the Superior Court has inherent authority to disclose grand jury materials when "special or exceptional circumstances" exist.[25] In contrast, the Attorney General argued that permitted disclosures within the rule are "all-inclusive."[26] Moreover, the

19. *Id.*

20. *See id.* at 234. Relying on *Watson v. Fox*, the Court recognized that "on rare occasions this Court has overlooked the standing requirement to determine the merits of a case of substantial public interest." *Id.* (quoting Watson v. Fox, 44 A.3d 130, 138 (R.I. 2012)).

21. *In re 38 Studios Grand Jury*, 225 A.3d at 236 (citing *In re* Doe, 717 A.2d 1129, 2 (R.I. 1998)).

22. *Id.* at 235 (quoting R.I. SUPER. R. CRIM. P. 6(e)(2)).

23. *See id.*

24. *Id.*

25. *Id.*

26. *Id.*

Attorney General contended that the Governor's request must fail because the Governor did not seek disclosure pursuant to rule 6(e).[27] The Court recognized that the Superior Court "derives its powers from statutes duly enacted by the Legislature."[28] Furthermore, the Court concluded that the Superior Court is "not permitted to act outside of the mandates of a statute or . . . [a] court rule."[29] As such, the Court held that the Superior Court does not have inherent authority to disclose grand jury materials "beyond that which is permitted by the Superior Court Rules of Criminal Procedure."[30] Accordingly, the Court affirmed the judgment of the Superior Court.

Due to the "heightened public nature of the issues implicated by th[e] case," the Court determined that although it need not address the Governor's argument alleging an error on the part of the Superior Court in its alternative analyses, it would do so *arguendo*.[31] The Court highlighted that, even if the Superior Court did have inherent authority to disclose the requested materials, the presiding justice would have been "well within" her discretion to deny the Governor's petition.[32] The Court reasoned that those courts that allow disclosure of grand jury materials under "special or exceptional circumstances" would have denied the Governor's petition because: (1) the Governor did not seek disclosure of a "limited nature," but rather the Governor sought disclosure of virtually all grand jury materials; (2) the grand jury completed its work relatively recently; and (3) the public interest is "not yet historical in nature."[33]

COMMENTARY

The Rhode Island Supreme Court was likely presented with a great deal of public pressure to release the grand jury materials, but they stayed true to the traditional rule of grand jury secrecy. As virtually any Rhode Islander will tell you, the 38 Studios deal

27. *Id.*
28. *Id.* at 239.
29. *Id.*
30. *Id.* at 240.
31. *See id.*
32. *See id.*
33. *See id.* at 240–42.

seemed to have a serious stink to it in a way that only Rhode Island government seems to be able to replicate. Nevertheless, the Court was brave enough to withstand any presence of public pressure. Grand jury secrecy is a core feature of our justice system, and it likely prevents the destruction of evidence and witness tampering.[34] Perhaps more importantly, grand jury secrecy is necessary to protect the reputation of an innocent person whose conduct has been investigated by a grand jury.[35] As Justice Flaherty asserted, the grand jury, as an institution, was "designed as a means . . . of protecting the citizen against unfounded accusation[s]."[36] In *Douglas Oil Company v. Petrol Stops Northwest*, the Supreme Court of the United States recognized that the "proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings."[37] Moreover, Justice Powell asserted that grand jury secrecy assures that "persons who are accused but exonerated by the grand jury will not be held up to public ridicule."[38] Publicizing grand jury materials would certainly have a negative impact on the goal to protect citizens from mere accusations, and, as such, the cause of justice itself would be harmed.

As a society, we must decide whether we wish to have a justice system that seeks the truth or one that merely seeks to allocate blame and move on to the next case. If we choose the latter, then we will surely end up scapegoating innocent individuals in the name of expediency and efficiency. But such a system is not a justice system at all, rather it is a system of faux justice. We should aim to be a better society and demand a justice system which seeks truth. Ironically, secrecy—within the context of the grand jury as an institution—is crucial to facilitating a system which seeks the truth. This is true for two primary reasons. First, secrecy at grand jury proceedings provides witnesses with a level of comfort which may "encourage them to make full disclosure of their knowledge of subjects and persons under investigation, without fear of evil

34. *See id.* at 231 (citing Mark Kadish, *Behind the Locked Door of an American Grand Jury: Its History, Its Secrecy, and Its Process*, FLA. ST. U.L. REV. 1, 12–13 (1996)).

35. *See id.* (quoting *Ex parte* Bain, 121 U.S. 1, 11 (1887)).

36. *Id.* at 231 (citing *Ex parte* Bain, 121 U.S. at 11).

37. Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 218 (1979).

38. *Id.* at 219.

consequences to themselves."[39] Second, secrecy at grand jury proceedings may help to prevent creating "prejudice [in] the mind of the public, thus affecting a trial which may follow the action of the grand jury."[40] We must strive for a system which avoids prejudice, and secrecy at grand jury proceedings is a vital step to achieving that goal. With this holding, the Court defended a core tenet of our justice system even in the face of great public pressure.

CONCLUSION

The Rhode Island Supreme Court held that the Superior Court does not have inherent authority to disclose grand jury materials beyond the scope of the Superior Court Rules of Criminal Procedure. The Court reasoned that the Superior Court derives its powers from statutes, and, therefore, the lower court may not act outside the confines of a statute or rule. Furthermore, the Court determined that, even if the Superior Court had inherent authority, the presiding justice would have been within her discretion to deny the Governor's petition. Accordingly, the Court affirmed the lower court's decision.

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39. *See 38 Studios Grand Jury*, 225 A.3d at 232 (quoting United States v. Providence Tribune Co., 241 F. 524, 526 (D.R.I. 1917)).

40. *See id.* (quoting *Providence Tribune*, 241 F. at 526).