

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	CR-321-2016
	:	CR-322-2016
v.	:	
	:	
ARLENE POUST	:	
TIFFANY POUST,	:	DISCRIMINATORY PROSECUTION
Defendants	:	

OPINION AND ORDER

On April 5, 2016, Arlene Poust (Defendant A) filed an Omnibus Pretrial Motion, which included a Motion to Dismiss based upon Discriminatory Prosecution. Defense Counsel filed a supplement to the motion on January 23, 2017.

On August 24, 2016, Tiffany Poust (Defendant B) filed a supplemental pretrial motion, which included a Motion to Dismiss based upon Discriminatory Prosecution.

After a series of continuance requests by Defense Counsel, both Motions to Dismiss based on Discriminatory Prosecution were heard on February 21, 2017.

Background

Defendant A and Defendant B are charged with Failure to Report or Refer¹. Defendant A is a Registered Nurse and Defendant B is a Certified Nursing Assistant; both are designated mandated reporters. See Court's Opinion and Order, 9/26/2016, at 5-6, Opinion and Order, 1/26/17, at 5. The charges arise out of an incident that occurred on November 4, 2015, at the Poust residence in Williamsport, Pennsylvania.

Defense Counsel submitted three exhibits: Defense # 1: a copy of the Emergency Medical Services (EMS) notes; Defense # 2: , Emergency Room Nurses' notes; Defense # 3: copy of D.W.'s medical charts from Dr. Demay's office.

¹ 23 Pa. C.S § 6319(a)(1).

The Commonwealth objected to the submission of Defense exhibits on the grounds of hearsay and authentication. The Court sustained the Commonwealth's objections and did not consider the Defense exhibits in issuing this opinion.

Testimony of Officer Frederick Miller IV

Miller testified that at the time of filing charges (January 7, 2016) against Defendant A and Defendant B, he was not aware of information provided to the other mandated reporters involved in the case: specifically, the ambulance personnel and the pediatrician, Dr. Demay. Miller confirmed that no charges were filed against these aforementioned mandated reporters. He testified that he did not know of Dr. Demay's involvement in the case or where his office was located. Miller testified that he did not receive the EMS report until after charges were filed and before the February 21, 2017, hearing.

Testimony of Tiffany Poust

Defendant B testified that she provided the following information to the EMS personnel who arrived at her house after the physical altercation on November 4, 2015: her brother and his girlfriend were alleging that her son violated their daughter. Defendant B testified that she called Dr. Demay's office and spoke to an office Assistant and Dr. Demay about the allegations. Dr. Demay's office staff directed Defendant B to go to Children and Youth and file a report. Defendant B testified that she did not go to Children and Youth but that Defendant A and sister drove to the Children and Youth Office to make a report.

Discussion

Defense Counsel argues that Defendants are not the only mandated reporters who failed to report alleged child abuse. The other mandated reporters are not facing criminal charges and therefore, Defense Counsel alleges that the current prosecution of their clients constitutes discriminatory prosecution.

In order to establish discriminatory prosecution there must be a showing of clear and intentional discrimination, Snowden v. Hughes, 321 U.S. 1, 64 S. Ct. 397, (U.S. 1944). In Commonwealth v. Lewis², the defendant challenged the validity of his conviction arguing that he was denied equal protection because a co-felon received a lesser conviction and sentence. The Court rejected the argument that the defendant was denied equal protection because the mere fact that an equally culpable party received a lesser sentence did not alone establish intentional and purposeful discrimination.

Miller stated in his testimony he was not aware of the status of the other individuals, specifically the EMS transporters, emergency room staff, or pediatrician and office staff. Even if the other mandated reporters involved in the underlying facts of this case are not being criminally charged for an alleged failure to report, the testimony established that Miller filed charges on the facts he knew at the time, not intentionally singling Defendant A or Defendant B out. There is no evidence showing Officer Miller purposefully discriminated against Defendants in filing charges against them and not the other individuals involved in the incident.

² 443 Pa. 305 (Pa. 1971).

ORDER

AND NOW, this 12th day of May, 2017, based upon the foregoing Opinion, the Motion to Dismiss based upon Discriminatory Prosecution is DENIED.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Ronald Travis, Esq.
John Gummo, Esq.
Melissa Kalas, Esq.
Gary Weber Esq. Lycoming Law Reporter