IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: Appeal of DA Denial	**:**	
of Private Criminal Complaints	**:**	**No. MD-179-2013**
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(Appeal of Leon Bodle)	**:**	

OPINION AND ORDER

This matter came before the Court on Petitioner Leon Bodle's appeal of the District Attorney's denial of the private criminal complaints that he wanted to file against A.S., E.E., and J.E. The relevant facts follow.

Petitioner was arrested and convicted of criminal solicitation to commit involuntary deviate sexual intercourse, unlawful contact with a minor, obscene materials, multiple counts of sexual abuse of children related to the possession of child pornography, several counts of criminal use of a communications facility and several counts of corruption of the morals of minors under CP-41-CR-743-2009. Some of the witnesses who testified against Petitioner at his criminal trial were his former female students at Sugar Valley Rural Charter School, including A.S., E.E., and J.E.

On or about November 29, 2012, Petitioner mailed private criminal complaints to Magisterial District Judge (MDJ) James Sortman, which sought to charge A.S., E.E. and J.E. with false reports to law enforcement authorities, false swearing, unsworn falsification to authorities and perjury. MDJ Sortman returned the complaints to Petitioner with a letter that explained he could not accept the complaints for filing without approval from the district attorney.

On or about December 31, 2012, the district attorney received Petitioner's

private criminal complaints. Kenneth Osokow, the first assistant district attorney, by writing, disapproved the complaints on January 2, 2013 with the following notation: "There is insufficient evidence to support your claim. Furthermore, you have not provided any new information to support your allegations."

On or about January 11, 2013, Petitioner mailed a letter to appeal the decision to disapprove his private criminal complaints. A hearing and argument on the appeal was held on February 1, 2013, during which Petitioner participated by video conference. Neither party presented any evidence at the hearing.

Petitioner first argued that the district attorney's office should be recused from reviewing his complaints and handling his appeal because he filed a civil rights law suit against members of that office, including Mr. Osokow, in federal court on December 4, 2012. Mr. Osokow, however, credibly represented that he did not have any knowledge of this civil suit and accordingly did not consider it in deciding to deny Petitioner's private criminal complaints. Furthermore, the Court will conduct its own independent review of Petitioner's private criminal complaints.

Petitioner also argued that the district attorney had an obligation to file the complaints and then investigate his allegations. Mr. Osokow countered that the complaints were properly disapproved because there was insufficient evidence to establish a prima facie case or to obtain a conviction.

Initially, the Court questions whether private criminal complaints are the appropriate avenue for Petitioner to pursue his claims. The individuals that Petitioner seeks

to file criminal charges against were some of his seventh and eighth grade female students at Sugar Valley Rural Charter School. They were minors when they talked to the police and when they testified at Defendant's trial. The procedure for a private individual to have allegations of delinquency filed against a child is similar to the approval process for private criminal complaints, see Pa.R.J.C.P. 233, but the goals and sanctions available through the Juvenile Court are much different than adult criminal proceedings.

Regardless of the appropriate mechanism, after review of Petitioner's proposed private criminal complaints and the record of his criminal trial, the Court finds that Petitioner's complaints were properly disapproved.

The trial court's standard of review depends on the nature of the reason given by the district attorney for denying the complaint. "Where the district attorney's denial [of a private criminal complaint] is based on a legal evaluation of the evidence, the trial court undertakes a de novo review of the matter." In re Private Criminal Complaints of Rafferty, 969 A.2d 578, 581 (Pa. Super. 2009), quoting In re Wilson, 879 A.2d 199, 212 (Pa. Super. 2005)(en banc).

> [However,] [w]hen the district attorney disapproves a private criminal complaint on wholly policy considerations, or on a hybrid of legal and policy considerations, the trial court's standard of review of the district attorney's decision is abuse of discretion. This deferential standard recognizes the limitations on judicial power to interfere with the district attorney's discretion in these kinds of decisions….Thereafter, the appellate court will review the trial court's decision for an abuse of discretion, in keeping with the settled principles of appellate review of discretionary matters….The district attorney's decision not to prosecute a criminal complaint for reasons including policy matters carries a presumption of good faith and soundness….The complainant must create a record that demonstrates the contrary. Thus, the appropriate scope of review in

> policy-declination cases is limited to whether the trial court misapprehended or misinterpreted the district attorney's decision and/or, without a legitimate basis in the record, substituted its judgment for that of the district attorney. We will not disturb the trial court's decision unless the record contains no reasonable grounds for the court's decision, or the court relied on rules of law that were palpably wrong or inapplicable. Otherwise, the trial court's decision must stand, even if the appellate court would be inclined to decide the case differently.
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> The private criminal complainant has the burden to prove the district attorney abused his discretion, and that burden is a heavy one. In the Rule 506 petition for review, the private criminal complainant must demonstrate the district attorney's decision amounted to bad faith, fraud or unconstitutionality. The complainant must do more than merely assert the district attorney's decision is flawed in these regards. The complainant must show the facts of the case lead only to the conclusion that the district attorney's decision was patently discriminatory, arbitrary or pretextual, and therefore, not in the public interest. In the absence of such evidence, the trial court cannot presume to supervise the district attorney's exercise of prosecutorial discretion, and should leave the district attorney's decision undisturbed.

Rafferty, 969 A.2d at 581-82, quoting Commonwealth v. Michaliga, 947 A.2d 786, 791-92 (Pa. Super. 2008)(quotations omitted).

The Court finds that the prosecutor's reasons were a hybrid of legal and policy considerations. Although a determination that the evidence is insufficient to establish a prima facie case presents a legal consideration, a determination by the prosecutor that he could not attain a conviction is a denial based on a policy determination. See In re Private Complaint of Wilson, 879 A.2d 199, 217 (Pa. Super. 2005); Commonwealth v. Metzker, 442 Pa. Super. 94, 658 A.2d 800, 801 (1995). Therefore, Petitioner must show an abuse of discretion by presenting facts to show that the decision to deny his private criminal

complaints amounted to bad faith, fraud or unconstitutionality. Petitioner has not alleged or proven bad faith, fraud, or unconstitutionality. Therefore, the Court will deny his appeal.

Even if the Court found that the prosecutor's reasons were based solely on legal considerations, the Court would deny Petitioner's appeal. Petitioner seeks to file four charges against each of the named former students who testified against him in his criminal trial: perjury, false swearing, unsworn falsification to authorities and false reports.

In order to prove the offense of perjury, the following elements must be established: (1) the defendant made a false statement; (2) the false statement was made under oath; (3) the false statement was made in an official proceeding; (4) defendant knew his or her statement was false at the time it was made; and (5) the false statement was material to the proceeding during which it was made. Pa.SSJI 15.4902A; Commonwealth v. Lafferty, 276 Pa. Super. 400, 419 A.2d 518, 522 (1980); Commonwealth v. Yanni, 208 Pa. Super. 191, 222 A.2d 617, 619 (1966). The false statement must be given "willfully, and corruptly with knowledge of its falsity (or recklessly) and for the purpose of having it believed." Yanni, supra. Moreover, the falsity of the statement cannot be proven by only one witness; it must either be supported by the testimony of two witnesses or by one witness plus corroborating evidence. Commonwealth v. Karafin, 224 Pa. Super. 449, 307 A.2d 327, 331 (1973). This "two witness rule" has been codified in the perjury statute. 18 Pa.C.S. §4902(f). The purpose of the "two witness rule" is to protect a defendant against good faith mistakes and against the grudge witness. Commonwealth v. Johnson, 534 Pa. 51, 626 A.2d 514, 515 (1993).

A person commits false swearing if she "makes a false statement under oath

or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when [s]he does not believe the statement to be true" and the falsification occurs in an official proceeding or is intended to mislead a public servant in performing his official function. 18 Pa.C.S. §4903(a). The perjury statute's "two witness rule" is incorporated into the offense of false swearing. 18 Pa.C.S. §4903(c).

If a person makes a written false statement which she does not believe to be true with the intent to mislead a public servant in performing his official function, she commits the crime of unsworn falsification to authorities. 18 Pa.C.S. §4904(a)(1). The perjury statute's "two witness rule" is also incorporated into the offense of unsworn falsification to authorities. 18 Pa. C.S. §4904(c).

False reports occurs when a person "reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur." 18 Pa.C.S. 4906(b)(1).

The Court finds that none of the private criminal complaints contain sufficient information to support any of the charges.

Petitioner claims that A.S. provided false reports to Old Lycoming police officers and provided false testimony at his preliminary hearing and trial when she said that he showed pornographic movies to his students during study hall by projecting the movies onto a classroom wall using the school's computer set up. Petitioner asserts that the testimony varied greatly depending upon which account is read.

The Court notes that Petitioner has not included a copy of the police reports or

a transcript of his preliminary hearing for the Court to be able to compare those documents to A.S.'s trial testimony. Discovery materials, such as police reports, are exchanged between the parties and are not filed of record. Therefore, the Court does not have copies of the police reports. Similarly, proceedings held before a Magisterial District Judge (MDJ) such as preliminary hearings, are not conducted in a court of record. Unless a party or his attorney privately retains a court reporter or electronically records the hearing, there would not be a record of the preliminary hearing. Even where such measures are taken, however, the Court is not aware of the specific testimony presented unless one of the parties provides the Court with a transcript of the proceeding. The Court also questions Petitioner's characterization of the degree of variance of the witness's statements and testimony, because the witness was not impeached during Petitioner's criminal trial with her statements to the police or her preliminary hearing testimony. Furthermore, Petitioner has not set forth any specific comparison between the criminal complaint affidavit, the witness's statements to the police, her preliminary hearing testimony and her trial testimony; he has only made a general conclusion that the testimony varied greatly depending on the "official account" being read.

Petitioner claims that A.S.'s testimony was false because: (1) she claimed that two special education students were present when the movies were projected on the wall during a study hall and these students would have been in another classroom under the supervision of Classroom Aide Sandie Edler and the viewing was at a time when these students were to be in a study skills class with Ms. Fravel; (2) the school's hard drive was seized and analyzed but no evidence from the hard drive was presented at trial to support the

witness's testimony; and (3) the witness testified that she withdrew from school and her mother visited the school because Petitioner was "creepy," but the reason for the mother's visit was behavioral in nature, i.e. to address an incident of disruption where the witness received a disciplinary write-up and school records would show that the reason she withdrew from the school was to allow her to enroll in "Cyber School" which would allow her to participate in the family horse farm and to attend horse shows.

The Court finds that Petitioner's bare allegations are insufficient to establish that A.S.'s testimony was false. He has not provided any statements from any other witness, such as Ms. Edler or Ms. Fravel, or any documents to support his allegations. Therefore, he has failed to satisfy the "two witness rule" for perjury, false swearing and unsworn falsification to authorities. The Court notes that if Ms. Edler or Ms. Fravel supported his position or there were school records or other documents in existence that would support his contentions, he could have presented such evidence either at his criminal trial or at the hearing and argument in this appeal, but he has not done so.

Petitioner also has not shown that A.S. knew or believed that her testimony was false. Assuming for the sake of argument that there were some discrepancies, the witness could have simply been mistaken. Petitioner was A.S.'s study hall, history and English teacher. Petitioner admitted in his recorded interview with the police he had regular classes that had special education students in it. A.S. could have been mistaken concerning who was present or in which class the movie was shown.

Similarly, assuming for the sake of argument that one of the school's

computers was seized and analyzed and no graphic or pornographic material was found on it, this does not necessarily mean that Petitioner did not show graphic or pornographic materials to his students. Petitioner's personal computers were seized and analyzed. Both adult and child pornography were discovered on his computers. Given modern technology, it is not difficult to connect a personal computer to a projector or to bring inappropriate content to school by using a smartphone, disk, USB drive, SD card or other device without downloading it directly onto the school's computer hard drive.

Petitioner has not presented sufficient evidence to establish the crime of unsworn falsification to authorities against A.S. (or any of the other girls), because Petitioner has not even alleged that they gave **written** statements to the police. Instead, it appears that they gave oral statements to the police and provided oral testimony at his preliminary hearing and at his trial.

The Court also questions Petitioner's ability to pursue a false reports under section 4906(b)(1) when he was convicted of the crimes and his convictions have not been overturned. In general, the Court believes Petitioner is merely trying to use the private criminal complaint process as a back-door attack on his convictions. See Commonwealth v. Heckman, 928 A.2d 1077 (Pa. Super. 2007).

Petitioner next asserts that E.E. committed the offenses of perjury, false swearing, unsworn falsification to authorities and false reports when she testified that Petitioner made contact with her on America Online (AOL) and, during a conversation conducted via instant messenger (IM), offered to allow her and her boyfriend to use the

boiler room at the Sugar Valley school to have sex and Petitioner would act as a "lookout" while they were so engaged. Petitioner alleges that interviews with the boyfriend and a friend of E.E.'s indicate that the boy told E.E. that he would like to meet her on the ramp at the back of the school and "feel her up." Petitioner also claims that an interview with a former maintenance worker confirms that Petitioner never had a key or access to the boiler room and that the access to door to the ramp was outside the school building.

Petitioner's allegations do not establish that the witness' testimony was false. E.E. did not testify about conversations she had with the boy, but rather conversations that Petitioner had with her. According to E.E.'s trial testimony, Petitioner asked her if she liked anybody at school. When she said yes, he asked her if he could do anything to help it along. Although she said no, Petitioner persisted and said he would guard a door at one of the rooms downstairs so that she and a boy she liked could have sex, but the witness did not want to do that. Trial Transcript (March 2-3, 2010) at pp. 153-154. None of Petitioner's allegations address what his interviewed potential witnesses would say about Petitioner's statements during the IM conversation. The issue at trial was not what the boy said he wanted or intended to do with the witness. Instead, the issue was what Petitioner said and did and whether such conduct corrupted or tended to corrupt the morals of E.E.

Any issue about whether the room Petitioner offered to guard was a classroom or the boiler room is a tempest in a teapot. The witness explained that the boiler room was beside one of the classrooms Petitioner taught in. At most, Petitioner may have established that the witness was mistaken when she initially said that Petitioner offered to guard a door at

one of the class rooms. Apparently, that's what the jury thought, because defense counsel brought out this alleged inconsistency during trial, as well as the fact that the witness did not know whether the boiler room was locked or whether Petitioner had keys to the boiler room, and the jury still convicted Petitioner.

Petitioner also claims that J.E. committed perjury, false swearing, unsworn falsifications and false reports when she testified that Petitioner called her four times on the telephone and asked her about her homework, asked her if she wanted to go to Dorney Park with him, asked her to hang out and engage in sexual acts with him, and asked her if she liked to party hardy. Petitioner contends that the falsity of her statements is evident from: (1) the examination of both of their phone records; (2) her inconsistent statements regarding the number of phone calls; (2) the possibility that she may have "revealed her prevarications to people in her social circle, including the popular 'Social Networking' web sites on the Internet"; and (3) evidence that she made similar accusations in a previous instance against someone else and the complaint was dismissed.

Petitioner's allegations ignore several important facts. First, Petitioner has not furnished the Court or the prosecutor with any evidence to support his assertions. He has not provided any phone records from the time frame when J.E. was his student to show that no phone calls were made or any documents to support that she revealed her prevarications on social networking sites or that she made similar false accusations in the past.

Second, the witness was cross-examined with the inconsistencies in her statements regarding the number of phone calls Petitioner made to her, and the jury still

convicted him.

Third, Petitioner made statements to the police admitting that he talked to J.E. about going to Dorney Park, but he claimed she asked him what he was doing over the summer and when he said he was going to go to Dorney Park she asked to come along because she had never been there. The transcript of his police interview indicates that these conversations took place through Petitioner's MySpace account, Petitioner told her to bring her swim suit and he asked her "do you want to party." Petitioner, however claimed that "do you want to party" just meant they were going to go out to eat afterwards. Transcript of Petitioner's audiotaped interview with the police, at pp. 99-101. Later in the interview, Petitioner indicated that when he was instant messaging kids he would not ask them to meet him anyplace or to come to his house, but maybe a couple of times he would say "I wish you were here we could party or something like that." Interview Transcript, p. 183.

Finally, any evidence that J.E. had made similar allegations in a previous instance against someone else would not be relevant or admissible. See Pa.R.E. 404(b)(1)("Evidence of other crimes, wrong, or acts is not admissible to prove the character of a person to show action in conformity therewith."); Pa.R.E. 608(b)(1)("the character of a witness for truthfulness may not be attacked … by cross-examination or extrinsic evidence concerning specific instances of the witness' conduct").

A review of Petitioner's proposed criminal complaints reveals that they are little more than bald allegations based on speculation and conjecture. Petitioner has not provided the prosecutor or the Court with any evidence to support his claims. It appears that

these complaints are just a back-door attack on Petitioner's convictions. Accordingly, the Court will deny Petitioner's appeal.

ORDER

AND NOW, this ___ day of June 2013, the Court DENIES Petitioner's appeal of the district attorney's denial of his private criminal complaints.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
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Work file