

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-890-2013
 :
 vs. :
 :
 JAMES McCLOY, :
 Defendant : **Motion for Change of Venue/Venire**

OPINION AND ORDER

Before the Court is Defendant’s Motion for Change of Venue. The motion was filed on January 10, 2014, and a hearing was held before this Court on March 18, 2014.

At the hearing, Defendant introduced in evidence Defendant’s Exhibit 1, which consisted of a May 4, 2013 article from lockhaven.com entitled “JS man arrested for stealing \$530,000.00,” a Penn Live article entitled “Nonprofit founder charged with misappropriating \$500K and spending some of it on gambling, strip clubs” and a yorkdispatch.com article entitled “Pa nonprofit founder charged with Stealing \$530K.”

All of the articles relate to the charges that were filed against Defendant. The articles explain how Defendant is charged with stealing hundreds of thousands of dollars from Susquehanna House, Inc. (hereinafter “Susquehanna House”). They described Susquehanna House as a nonprofit corporation, which provided residential services, foster care, transitional living and day treatment for youths at facilities located in Jersey Shore, Linden, Montoursville, Williamsport and Atlantic City, NJ.

Defendant argued that the citizens of Lycoming County are the “de facto” victims. Defendant asserted that because taxpayer monies were used to fund Susquehanna House, Inc. and said monies were allegedly misappropriated by Defendant, he could not get a

fair trial from a Lycoming County jury.

The Commonwealth counters that the relationship between the proposed jury members and the criminal offenses is far too attenuated and that there is no basis whatsoever to grant Defendant's motion.

The determination of whether to grant a change of venue rests within the discretion of the Trial Court and will not be disturbed on appeal absent an abuse of that discretion. The mere existence of pretrial publicity does not warrant a change of venue. Ordinarily a Defendant is not entitled to a change of venue unless he can demonstrate that the pretrial publicity resulted in actual prejudice that prevented the paneling of an impartial jury. Prejudice will be presumed, however, if the Defendant is able to show that his pretrial publicity: (1) was sensational inflammatory and slanted toward conviction rather than factual and objective; (2) revealed the Defendant's prior criminal record, if any, or referred to confessions, admissions or reenactments of the crime by the Defendant; or (3) derived from official police or prosecutorial reports. Even if the Defendant proves the existence of one or more of these circumstances, a change of venue is not warranted unless the Defendant also demonstrates the pretrial publicity was so extensive, sustained and pervasive that the community must be deemed to have been saturated with it, and that there was insufficient time between the publicity and the trial for any prejudice to have dissipated.

Commonwealth v. Tharp, 574 Pa. 202, 218-219, 830 A.2d 519, 528-529 (2003)(citations omitted).

But for the aforesaid articles found on websites, counsel did not create any record to show the extent of any publicity, let alone that it was of such a nature that a fair and impartial jury could not be selected in Lycoming County. Furthermore, it appears that the articles are nearly a year old, indicating that there likely has been a sufficient cooling period for any prejudice to have dissipated. Since Defendant has not demonstrated actual prejudice or the

nature and extent of any pretrial publicity, it would be improper for the Court to grant a change in venue. Of course, this is without prejudice to Defendant raising the issue at jury selection if there is additional publicity at that time or if it becomes apparent during jury selection that Defendant has been prejudiced.

The Court also rejects Defendant's argument that the citizens of Lycoming County are "de facto" victims in this case. Lycoming County did not "fund" Susquehanna House; it is not a county agency. Instead, Lycoming County, as well as other nearby counties, entered into contracts with Susquehanna House to provide services for area youths and paid Susquehanna House for the services it rendered. Susquehanna House is like any other vendor, except it is a nonprofit corporation, rather than a for-profit corporation. One can readily see that Defendant's argument lacks merit if one considers other vendors. Certainly the citizens of Lycoming County would not be "de facto" victims if an employee embezzled money from Staples, merely because the County entered into contracts with Staples for its office supplies and paid Staples in accordance with those contracts.

For the same reasons as set forth above and in that the considerations with respect to change of venire are the same as those with respect to a change of venue, the Court also will deny Defendant's Motion for Change of Venire. See Commonwealth v. Robinson, 581 Pa. 154, 864 A.2d 460, 484 (2004); Commonwealth v. Bomar, 573 Pa. 426, 826 A.2d 831, 858-59 (Pa. 2003).

ORDER

AND NOW, this ____ day of April 2014, following a hearing and argument on Defendant's Motion for Change of Venue/Venire, said Motion is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (MW)
PD (JF)
Gary Weber, Esquire (Lycoming Reporter)
Work file