IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

APPEAL OF DENIAL OF PRIVATE CRIMINAL COMPLAINT OF:	:	NO. MD 193 - 2014
BETHANNE EARLY-McCLURE	:	

OPINION AND ORDER

Before the Court is Complainant's appeal from the District Attorney's denial of her request for the filing of a private criminal complaint. The request is based upon her assertion that she was the victim of a sexual assault. The District Attorney's office has denied the request to prosecute the matter, citing both legal and policy reasons, specifically, that "we do not believe we can convince a jury beyond a reasonable doubt of the guilt of the defendant. Our office will not commit prosecution resources to a case when we do not believe we can convince a jury beyond a reasonable doubt of guilt or where there is a reasonable question as to the defendant's innocence." [1]

Where the District Attorney's disapproval of a private criminal complaint is based on legal and policy considerations, this court's standard of review is abuse of discretion. In re Wilson, 879 A.2d 199 (Pa. Super. 2005). This court must defer to the District Attorney's decision in the absence of bad faith, fraud or unconstitutionality. Id.; In re: Private Complaint of Adams, 764 A.2d 577 (Pa. Super. 2000). 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". In re Wilson, *supra* at 215. Failing such a showing, "the trial court cannot presume to supervise the district attorney's exercise of prosecutorial discretion, and should leave the district attorney's decision undisturbed." Id.

Guidelines as to what constitutes "abuse of prosecutorial discretion" have been set forth to some extent in the Wilson matter, *supra*. There, the Superior Court advised that

[1] The reasons are provided in the First Assistant District Attorney's letter to Complainant, dated July 10, 2014.

> Everything will depend on the particular facts of the case and the district attorney's articulated reasons for acting, or failing to act, in the particular circumstances. For example, a court [might] find [an abuse] of discretion in a district attorney's pattern of discriminatory prosecution, or in retaliatory prosecutions based on personal or other impermissible motives. Similarly, a district attorney [might] be found to have abused his discretion for his blanket refusal to prosecute for violations of a particular statute or for refusing to prosecute solely because the accused is a public official.
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> …
> Other examples of an abuse of discretion in these kinds of cases include circumstances involving the deliberate use of race, religion, gender, or other suspect classifications, or biased generalized personal beliefs, such as a belief that a man could never be the victim of domestic violence. Additionally, an abuse of discretion might be found where the complainant can demonstrate a district attorney's pattern or practice of refusing to prosecute certain individuals or groups because of favoritism or cronyism. This list is not meant to be exhaustive, but only to give some indication of what might constitute an abuse of discretion in policy-declination cases.

In re Wilson, *supra* at 212, quoting Commonwealth v. Muroski, 506 A.2d 1312, 1322-23 (Pa. Super. 1986).

In the instant case, Complainant asks the court to compare the evidence produced by the investigation here[2] with the evidence introduced at trial in another (sexual assault) matter on January 27, 2014. Complainant argues that the evidence introduced at that trial was "less than" the evidence in the instant case, and the fact that the defendant in that case was black and the alleged perpetrator in the instant case is white, shows a discriminatory intent on the part of the District Attorney. The court can infer no such intent from one case and will not engage in a comparison of the evidence. Complainant must demonstrate a "pattern of discriminatory prosecution", and one case will not show such a pattern.

At the hearing, Complainant introduced into evidence portions of the State Police investigative file and argued that the evidence is such that the court must find the decision not to prosecute arbitrary. In response, the District Attorney outlined the reasons, based on the evidence discovered during both the police investigation as well as his investigation, behind his

[2] The matter was investigated by the State Police as well as by the District Attorney.

decision not to prosecute. Without going into the details of the investigations,[3] suffice it to say that the court believes that, as in Braman v. Corbett, 19 A.3d 1151, 1160 (Pa. Super. 2011), the District Attorney's rationale "was an ordinary exercise of prosecutorial discretion involving an evaluation of the evidence". Complainant's assertion that the District Attorney's decision was arbitrary is not supported by the record.

Accordingly, the court enters the following:

ORDER

AND NOW, this 13th day of August 2014, for the foregoing reasons, the appeal of Bethanne Early-McClure is hereby DENIED.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Robert Hoffa, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson

[3] The details may be gleaned by any reviewing court from the record in this matter.