

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

APPEAL OF DENIAL OF PRIVATE : NO. MD 436 - 2014
CRIMINAL COMPLAINT OF: :
 :
WILLIAM H. HELLENTHAL :
 :
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OPINION AND ORDER

Before the Court is Complainant’s appeal from the District Attorney’s denial of his request for the filing of a private criminal complaint. The request is based upon his assertion that he was the victim of an assault. The District Attorney’s office has denied the request to prosecute the matter, citing both legal and policy reasons, specifically, that “the Commonwealth does not believe we will be able to establish beyond a reasonable doubt that the person you wish to file against was not acting in self-defense or an attempt to restrain you following the commencement of a burglary and an assault by physically attacking your wife and firing a shot gun at another person. Our office will not prosecute a case where we do not believe we can convince a jury beyond a reasonable doubt.”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.

¹ The reasons are provided in the First Assistant District Attorney’s letter to Complainant, dated September 2, 2014.

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

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.

...

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 himself was prosecuted for burglary and assault in connection with an incident wherein he entered a home and physically attacked his estranged wife and threatened one David Barto with a shotgun.² The complained-of assault against Complainant stems from Mr. Barto's response: in the process of avoiding being shot by Complainant, Mr. Barto wrestled Complainant to the floor and hit him on the head with a piece of firewood. Complainant asserts that Mr. Barto went beyond the force required to defend himself and actually committed an aggravated assault.

At the hearing, Complainant introduced into evidence the transcript of the preliminary hearing held in connection with the charges against him. He contends that Mrs. Hellenthal and Mr. Barto admitted to assaulting him during their testimony at that hearing. A review of that

² Complainant pled guilty to burglary and aggravated assault and is currently serving a term of incarceration as a result.

transcript does not support Complainant's contention, however. While they did admit to Mr. Barto's having hit Complainant on the head, they also testified that Mr. Barto had wrestled Complainant to the floor after Complainant had entered the home without permission and by surprise, pointed a shotgun at Mr. Barto and threatened to kill him, attacked Mrs. Hellenthal (breaking her nose and some ribs and causing her to momentarily pass out), chased Mr. Barto into another room, firing the gun twice in the process, and resisted attempts to subdue him. Mr. Barto testified that he had taken the gun from Complainant and thrown it away from him and then wrestled Complainant to the floor, but that Complainant would not stay still, instead continuing to attempt to get up. Mr. Barto testified that he hit Complainant with the piece of firewood each time he attempted to get up. Both he and Mrs. Hellenthal testified that during the ordeal they were fearful for their lives. While at the hearing before this court Complainant testified that he was hit for no reason and that Mr. Barto repeatedly told him he was going to kill him, there is nothing in the record to indicate any abuse of discretion on the part of the district attorney's office. The court believes that, as in Braman v. Corbett, 19 A.3d 1151, 1160 (Pa. Super. 2011), the District Attorney's rationale in refusing to prosecute "was an ordinary exercise of prosecutorial discretion involving an evaluation of the evidence". Complainant's assertion that the District Attorney's decision was in bad faith is not supported by the record.

Accordingly, the court enters the following:

ORDER

AND NOW, this day of March 2015, for the foregoing reasons, the appeal of William H. Hellenthal is hereby DENIED.

By the Court,

cc: DA
 Peter Campana, Esq.
 Gary Weber, Esq.
 Hon. Dudley N. Anderson

Dudley N. Anderson, Judge