

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: Appeal of DA Denial :
Of Private Criminal Complaints : **No. MD-311-2018**
(Appeal of Martha Miller) : **Appeal of DA's Denial of Private**
 : **Criminal Complaint**

OPINION AND ORDER

This matter came before the Court on Petitioner Martha Miller's appeal of the district attorney's denial of the private criminal complaint that she filed against Steven Rall. The relevant facts follow.

On March 15, 2018, Petitioner was involved in a dispute with a neighboring resident at her apartment complex, Williamsport Elderly, located on West Edwin Street in Williamsport, Pennsylvania. At approximately 9:05 p.m., Petitioner was in her apartment and bothered by loud music coming from apartment 905, which is precisely above her apartment.

Petitioner confronted the apartment 905 tenant, Steven Rall. Petitioner asked him to turn his music down; however, an argument ensued.

According to Petitioner, this was not the first time that she has had problems with Mr. Rall. In a letter presented to the Court, Petitioner alleges that on multiple occasions Mr. Rall would overflow his sink causing the excess water to seep through the ceiling into her apartment. Additionally, she explained a past experience in which Mr. Rall was playing loud music, "singing at the top of his lungs," and yelling, disturbing the peace in the apartment complex.

During the argument between Petitioner and Mr. Rall on March 15, 2018, Petitioner alleges that Mr. Rall grabbed her cane and raised his fist, stating, "I will fucking hit you,"

while blocking her from getting onto the elevator to return to her apartment. Petitioner denied any injuries.

Officer Minier of the Williamsport Bureau of Police summarized the incident involving Petitioner and Mr. Rall in a report dated March 19, 2018.

When Petitioner knocked, Mr. Rall answered the door. As Mr. Rall began to open the front door, Petitioner pushed the door open with her cane and began to yell at him about the music. Mr. Rall stated that he grabbed the cane as she was continually jabbing it into his stomach.

Mr. Rall did admit to Officer Minier that he did threaten to hit her, but this was only during the time Petitioner was aggressively poking him with her cane. Mr. Rall also admitted to drinking alcohol, but Officer Minier believed that Mr. Rall was still able to control his actions.

Mr. Rall shared with Officer Minier that this was not the first time an instance such as this happened between him and Petitioner.

Furthermore, Mr. Rall stated that neither of his neighbors to the side of his apartment ever complained about the volume of his music, but Petitioner always did, even though she was below his apartment, residing in apartment 805.

Following the conversations with both Petitioner and Mr. Rall, Officer Minier directed the parties to speak with the building manager along with Magistrate Frey regarding a private filing.

On March 23, 2018, a Notice to Quit was served on Petitioner. In the Notice to Quit, it states that the reason for her lease termination was in regard to the “physical assault” against

Mr. Rall at his entry way door to his apartment. There were other matters also listed, unrelated to the event of March 15, 2018.

On April 5, 2018, Petitioner filed a private complaint with the Lycoming County District Attorney's Office regarding the events of March 15, 2018. Filed with her private complaint form, Petitioner included a handwritten letter, which alleged as follows:

Apartment officials at Williamsport Elderly housing on West Edwin Street accused Petitioner of opening Mr. Rall's door and attacking him with her cane on March 15, 2018. Petitioner makes accusations against the apartment complex staff, specifically a Ms. Miles, stating "everything they're writing about me is untrue." Petitioner claimed that her lease was terminated upon improper reason and maliciousness of the apartment officials. She believed that the events on March 15, 2018, were the breaking point in enabling apartment officials to end her tenancy at Williamsport Elderly.

On May 14, 2018 the Lycoming County Office of District Attorney issued a letter to Petitioner. First Assistant District Attorney, Martin L. Wade, disapproved the private criminal complaint filed by Petitioner. Mr. Wade wrote, "Prosecution of the matter is highly unlikely to succeed. Our office is not convinced that you were not the initial aggressor of the incident. Our office will defer to the charging decision already made by the Williamsport Bureau Police Department."

On June 11, 2018, Petitioner filed an appeal of the district attorney's denial of her request to approve her private criminal complaint. The hearing and argument on the appeal were held on July 8, 2018, during which Petitioner and the District Attorney appeared.

Petitioner argued that the district attorney had an obligation to file the complaint and then investigate her allegations. Petitioner also argued that she wanted to file charges against

Mr. Rall, including simple assault. She claimed that Mr. Rall lied when he was interviewed by Williamsport Bureau of Police Officer Minier. Finally, Petitioner stated that Ms. Miles of the Williamsport Elderly apartment complex was trying to find a way to evict her and that this event formed the reason to do so.

Mr. Wade countered that the complaint was properly disapproved because there was insufficient evidence to establish a prima facie case or to obtain a conviction. Mr. Wade also stated that the property owner of the Williamsport Elderly apartment complex shared that she interviewed other residents regarding the alleged incident and they all confirmed that Petitioner was the individual assaulting Mr. Rall, contradicting what Petitioner alleged.

After review of Petitioner's proposed private criminal complaint and the arguments in the matter, the Court finds that Petitioner's complaint was 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... 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.

* * *

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 581-582, quoting *Commonwealth v. Michaliga*, 947 A.2d 786, 791-92 (Pa. Super. 2008) (quotations omitted).

This 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 obtain 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).

Petitioner must show an abuse of discretion by presenting facts to establish that the decision to deny her private criminal complaint amounted to bad faith, fraud or unconstitutionality. Petitioner has not alleged or proven bad faith, fraud or unconstitutionality. Therefore, the Court denies the appeal.

ORDER

AND NOW, this ___ day of September 2018, the Court **DENIES** Petitioner's appeal of the district attorney's denial of her private criminal complaint.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire, ADA

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