

FILED
FIFTH DISTRICT COURT
2011 JAN 11 AM 11:43
WASHINGTON COUNTY

IN THE FIFTH DISTRICT COURT FOR
WASHINGTON COUNTY, STATE OF UTAH



STATE OF UTAH,

Plaintiff,

vs.

ALLEN GLADE STEED,

Defendant.

RULING ON MOTION TO DISMISS

Criminal No. 071501596
Judge G. Rand Beacham

Defendant filed this "Motion to Dismiss" with a supporting memorandum on November 14, 2007. Plaintiff's opposing memorandum was filed December 3, 2007. Defendant filed his reply memorandum on March 5, 2008.

This motion and another were originally scheduled for hearing on December 20, 2007, but that hearing was continued at Defendant's request. The motions were again set for hearing on March 13, 2008, but that hearing was continued on the stipulation of the parties. The motions were set for hearing the third time on May 15, 2008, but that hearing was continued again on the stipulation of the parties. The Court then set the case for review on August 22, 2008 and for preliminary hearing on October 22, 2008. Those dates were continued while a discovery motion was heard and ruled upon, and this Motion to Dismiss was ignored by the parties while they pursued other motions and possible resolution of the case for nearly three years. Finally, Defendant submitted this Motion to Dismiss for decision on October 4, 2010, within one month before the undersigned's surgery for total knee replacement and resulting absence from court.. Consequently, while this ruling may be technically tardy, I think is it far too late for anyone to be in a hurry about this Motion.

Having studied the parties' memoranda, the Court hereby denies Defendant's Motion to Dismiss. Considering the extent to which the parties have presented their arguments in memoranda, I see no value in a truly comprehensive analysis by the Court, but the following comments will serve to explain the Court's ruling.

The general basis for Defendant's motion is the assertion that "the State engaged in unconstitutional preaccusation delay which has prejudiced the defendant." *Motion to Dismiss*, p. 1. Defendant argues that his "federal preaccusation delay analysis" requires him to demonstrate that (1) delay in his prosecution caused "substantial prejudice" to his right to a fair trial and (2) the delay was "an intentional device" employed by Plaintiff "to gain a tactical advantage" over him. *Memorandum in Support*, p. 6. Defendant also argues a variation on these elements, stating that he is required "to show (1) actual prejudice and (2) delay for the purpose of gaining a tactical advantage or for another bad faith motive." *Id.*, pp. 6-7.¹

1. Actual and Substantial Prejudice to Defendant

Defendant argues that "the jury pool has been irreparably altered" by Plaintiff's previous prosecution of Warren Jeffs, so that Defendant is prejudiced by being unable to have a fair trial and to receive due process of law. Defendant fails, however, to provide any evidence whatsoever that

¹I am disappointed to note that Defendant's memoranda occasionally express an unfortunate tone of unprofessional mockery which taints Defendant's arguments. This Court is never impressed or persuaded by unsupported allegations of improper motive and intent against an opposing party or by immoderate or insulting rhetoric such as "the State . . . is either disingenuous or overly naive." Defendant's *Reply Memorandum*, p. 9.

publicity over the Jeffs case makes a fair trial impossible for Defendant. His argument is based upon pure speculation. While I would agree with Defendant that the media coverage of the Jeffs case was unusually extensive, and was what I would term ridiculously over-blown, I cannot accept, without evidence, his conclusion that this produced substantial prejudice to him. With due respect to Mr. Justice Frankfurter, legal researchers and others who do not actually participate in the trial courts, I think they are not properly respectful of the abilities and commitment of the citizens who serve on our juries. I have also observed, based on interviews with jurors and prospective jurors over the past 15 years, that people involved in highly-publicized cases routinely overestimate the general public's actual interest in and knowledge about them and their cases. In my judgment, Defendant's summary equation of publicity with prejudice is simply not supported by evidence. While it is possible that voir dire in this case would reveal such evidence, this Court will not indulge in cynical speculation about every member of any group of prospective jurors which might be called in to try Defendant's case and, on the basis of that speculation, dismiss criminal charges.

Defendant wrongly argues that he had a right to be charged jointly with Warren Jeffs. Utah law does not provide such a right. Plaintiff's attorneys generally have discretion as to such charging decisions. While I have previously thought it to be somewhat unique for Warren Jeffs to have been convicted of rape as an accomplice when no one had been convicted of the rape, I think Mr. Jeffs would have had a stronger argument to insist on being tried second than Defendant has in this case to complain about being tried second. Furthermore, the Jeffs conviction has been reversed by the Utah Supreme Court, so both Defendant and Mr. Jeffs are presumed innocent at this time. None of this entitles or entitles Defendant to be charged or tried jointly with Mr. Jeffs.

Defendant argues that critical evidence was lost or compromised during the alleged delay before he was charged in this case. Specifically, Defendant alleges that he is unable to investigate conversations between and among Defendant, the alleged victim and three “leaders of their religion.” *Memorandum in Support*, p. 11. Defendant asserts that such conversations “are at the heart of the issues in this case,” but fails to explain why this is so. *Id.* In particular, Defendant bemoans the death and resulting unavailability of Mr. Fred Jessop. Plaintiff explains, however, that Mr. Jessop died over a year before Warren Jeffs was charged, and this death could hardly be related to Plaintiff’s decisions about when to charge Mr. Jeffs and Defendant. Most tellingly, Defendant fails to identify any particular relevant evidence which is now unavailable as a result of Plaintiff’s charging decisions, so he cannot show substantial prejudice on this point.

2. Delay For Purpose of Tactical Advantage

In a “Confidentiality and Cooperation Agreement” signed in January 2006 (reciting that the agreement was made on November 16, 2005) Defendant’s alleged victim and the Washington County Attorney agreed *inter alia* that the names of the alleged victim and Defendant, “and all other information which could reasonably lead to the disclosure of their identities,” would not be disclosed by the Washington County Attorney’s office before the happening of certain specified events. In his supporting memorandum, Defendant rather quickly characterizes this agreement as evidence of “bad faith and tactical delay” by Plaintiff. With no more than one page of explanation, Defendant concludes that “it seems apparent that the delay in charging [Defendant] was completely avoidable and done in [an] attempt to orchestrate a civil judgment and gain a tactical advantage” over Defendant. No such thing seems apparent to the Court.

Plaintiff explains that the Confidentiality and Cooperation Agreement was what it appears on its face to be: An effort to conceal, during investigation, the identities of persons involved in a “spiritual marriage” which might form the basis for criminal charges against Warren Jeffs. The Court could virtually take judicial notice of the fact that, for decades, investigations into suspected criminal activities among members of the community led by Warren Jeffs and his predecessors have been nearly impossible to conduct because of the reluctance and/or refusal of material witnesses to testify. As used by the Washington County Attorney’s office, the Confidentiality and Cooperation Agreement appears to have been a necessary element of its investigation and assessment of the evidence which eventually led to criminal charges against Warren Jeffs and Defendant. Apparently satisfied by Plaintiff’s explanation, Defendant dropped this argument from his reply memorandum.

Defendant does attempt to identify another “bad faith motive” on Plaintiff’s part, but in more than five pages of argument, Defendant offers little more than rhetoric and conclusions, none of which are persuasive. The ultimate difficulty with Defendant’s arguments about Plaintiff’s intent or motives is that, as noted above, Defendant cannot demonstrate any actual prejudice to him from what he repeatedly characterizes as “delay” in filing charges against him. The absence of evidence of actual prejudice makes assertions of bad faith or improper motive both irrelevant and speculative.

Defendant complains that, in January 2005, Plaintiff learned that Defendant may have committed the crime charged against him, but that “[f]or almost three years they took no action relative to that accusation.” *Reply Memorandum*, p. 2. The uncontroverted facts, however, provided by Plaintiff show that (a) to avoid disclosing the identities of Defendant and his alleged victim and to complete the investigation of Warren Jeffs, police and prosecution investigators had to avoid

contact with Defendant until charges were filed against Mr. Jeffs, (b) following the August 2006 arrest of Mr. Jeffs (who had been in hiding for months) and the disclosure of the name of the alleged victim, investigators immediately began trying to contact Defendant, (c) in November 2006, Defendant's attorney refused to produce him for interview without a grant of immunity from prosecution, (d) investigators attempted to interview Defendant's parents, who refused to speak to them, and (e) in August 2007, one month before the Jeffs trial, Defendant's attorney again refused to allow Defendant to be interviewed without immunity, even though Defendant intended to testify on behalf of Mr. Jeffs. This could hardly be considered "no action" for three years beyond January 2005.

Defendant asserts a certain truism, that "[o]ne of the most fundamental notions of fairness is to listen to both sides of a story *before* reaching a conclusion about where the truth lies." *Reply Memorandum*, p. 5. Defendant fails to acknowledge, however, that his attorney twice refused to allow Plaintiff to hear Defendant's "side of the story" without a grant of immunity, and he fails to explain how his "side of the story" could have been heard in his silence.

Perhaps the most illogical argument made by Defendant is that "Allen Steed was vaulted from the status of uncharged witness to rapist because the Jeffs case concluded and the State no longer needed to keep Mr[.] Steed on the back burner." *Reply Memorandum*, p. 3. Defendant could hardly hope to convince the Court that he had no idea that Plaintiff considered him to be the "rapist" with whom Warren Jeffs was alleged to have been an accomplice. Defendant offers no evidence to contradict Plaintiff's explanation that the content of Defendant's testimony removed the alleged victim's former reluctance to testify against him, but he maintains that Plaintiff used the "threat of

prosecution' in the middle of Mr. Steed's trial testimony" as "[a]n improper attempt to keep him from testifying." *Reply Memorandum*, p. 4. The logic of this argument escapes this Court.

The remainder of Defendant's argument regarding a tactical advantage obtained by Plaintiff is so superficial as to require no discussion.

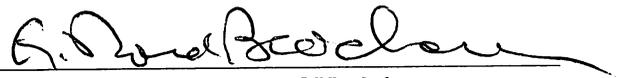
3. Independent State Constitutional Analysis

Defendant also invites this Court to follow certain courts of Ohio, Massachusetts, South Carolina, and New York with analyses of alleged preaccusation delay which are independent of those of the federal courts previously followed by the Utah appellate courts. This Court finds its duty in the application of Utah precedents and will decline to assume the position of originator of new legal doctrines or analyses.

Conclusion

Defendant has failed to demonstrate any actual prejudice to him from the timing of Plaintiff's filing of charges against him. Defendant has also failed to identify and establish any tactical advantage obtained by Plaintiff as a result of such timing or any bad faith on Plaintiff's part. Accordingly, Defendant's Motion to Dismiss is denied.

DATED this 1st day of January, 2011.


JUDGE G. RAND BEACHAM

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that on this 12 day of Jan, 2011, I provided a true and correct copy of the foregoing RULING to each of the parties/attorneys named below by placing a copy in such attorney's file in the Clerk's Office at the Fifth District Courthouse in St. George, Utah and/or by placing a copy in the United States Mail, first-class postage prepaid, and addressed as follows:

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