

Child sex charges dropped against father

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WEST CHESTER >> A protracted and at times contentious criminal court case came to an end last month, as Chester County authorities quietly withdrew all charges of rape and incest against an East Brandywine man whose daughter had accused him of sexually assaulting her over a 12-year time span, beginning when she was 4-1/2 years old.

On Friday, Dec. 18, Assistant District Attorney Emily Provencher, a prosecutor assigned to the District Attorney's Child Abuse Unit, submitted a formal "Nolle Prosequi" application to Common Pleas Judge Ann Marie Wheatcraft, asking her to approve the decision by District Attorney Thomas Hogan to drop the charges that had been filed against the man in February 2012, almost four years ago.

Wheatcraft had been scheduled to begin jury selection in the case on Monday and to preside over a trial that would have lasted at least one week in her courtroom. She approved the motion and signed an order that ended the case against the man, a 56-year-old building contractor from East Brandywine.

The "Nolle Prosequi" application stated that the decision to withdraw the charges had been made because there was "not enough evidence to prove elements (of the charges) beyond a reasonable doubt." The defendant had been charged with rape, involuntary deviate sexual intercourse, aggravated indecent assault, sexual assault, endangering the welfare of a child, indecent assault, corruption of minors, and incest.

If convicted, he would have faced the possibility of consecutive mandatory sentences that could have seen him sentenced to what would have effectively amounted to a life term behind bars in a state prison.

The man was not present at the proceeding before Wheatcraft, nor was his attorney, Robert J. Donatoni of West Chester. The move was not publicly announced by the DA's Office.

Donatoni said in an interview on Wednesday that he had anticipated the move by the prosecution, after having had discussions about the case with Provencher and others in the previous weeks.

“My reaction is one of total relief,” the defense attorney said. “Also one of professional pride that the District Attorney’s Office would work with us and review what amounted to a significant case that had been in the system for four years.

“It was an extraordinary use of prosecutorial discretion,” Donatoni said, adding that Provencher had not discussed with him the specific reasons why her office was dropping the case, beyond the language that was included in the order. “I am relieved, as is my client. We are not claiming victory, or anything like that. We are just totally relieved and satisfied.”

The man had been free on \$100,000 bail since his arrest in 2012. He had long denied the accusations against him – including tape-recorded telephone calls with his daughter and his ex-wife – and had blamed the accusations on faulty psychological therapy his daughter had undergone that had caused her to “recover” memories about the alleged assaults.

The name of the defendant is being withheld by the Daily Local News in order to protect the identity of the woman. The newspaper does not identify the victims of alleged sexual crimes, unless given permission by the accuser.

First Assistant District Attorney Michael Noone, asked about the matter, gave no reason for the decision, but indicated that it had been made with the alleged victim’s knowledge.

“In every case, we coordinate closely with the victim and constantly review all aspects of the case,” he said in a statement. “Out of respect for the privacy of all parties involved, we have no further comment.”

In addition, an attorney who had been granted special dispensation to join the case as a representative of the alleged victim, also declined to discuss the matter. Joseph W. Carroll III of East Bradford, the former county District Attorney, said Friday that he had not been given permission by the woman, now 24, to comment on the decision to drop the case.

The case had been at the Common Pleas Court level for the past 42-months. Over that time, it had been handled by two different judges, and three prosecutors – four if an appellate prosecutor in the DA’s office is counted. The man had been represented by three different defense attorneys, including Donatoni; Christopher Casey of Philadelphia – the son of the late Gov. Robert Casey and the brother of current U.S. Sen Bob Casey, D-Pa.; and West Chester attorney Daniel Bush of the law firm, Lamb McErlane.

The case centered on the woman’s allegation that her father had forced her to have sex with him on multiple occasions, including once on Christmas Day, from the time she was 4-years-old until she was a teenager. But it also hinged on the woman’s medical records and why she had never reported any of the alleged assaults by her father, even though she had been to see a variety of therapists and medical professional over the years.

Those records would have been a key part of the defense in the case. In May, a state Superior Court judge said that the woman had waived her right to keep the mental health reports confidential, and ordered the records be turned over to Wheatcraft to determine which are central to the defense's case, and which are privileged communications between her doctors and herself.

The allegations the woman made against her father are disturbing, and the manner in which they came to light intriguing.

According to court records, in 2011 the woman was 19 years old and attending Arcadia University in Montgomery County. At that time, she began receiving amorous e-mails from one of her college professors, who apparently was trying to pursue her romantically, telling her she was beautiful and that she made his wife jealous," Platt wrote.

Those e-mails from a man her father's age, who had also told her she was beautiful and treated her "in a sexual nature," according to the case records, apparently triggered memories by which she gradually recalled her father's sexual assaults.

In September 2011, the woman contacted state police and was interviewed by state Trooper Brittany Brenner. She told the trooper that her father made her perform oral sex on him, had molested her, and had sexual intercourse with her, from when she was 4 until she was 17.

During a preliminary hearing in June 2012 before then-District Magisterial Judge Stanley Scott of Uwchlan, the woman said she had always remembered the first assault, when her father made her perform oral sex when he was taking a shower. But she blocked out the other assaults until the incident at Arcadia.

According to the arrest affidavit, the woman told Brenner that she remembered incidents at her father's house in East Brandywine in 2000, 2005, 2008, and others at her home in West Bradford in 2007 and 2009. She was able to recall some specific details about some of the alleged incidents, such as the time on a clock, what her father was wearing, and the smell of pine cones, as well as the location of the events, but other allegations are more general in nature.

In his defense, the father argued that these "recovered memories" are false, and that the process of recovering repressed memories of childhood sexual abuse through psychological therapy is unproven and unreliable. His attorneys had tried, unsuccessfully, to offer a proposed expert of the practice to show its dubiousness.

Donatoni said that the decision to withdraw charges against his client had been a relief not only because his client would no longer have the threat of a possible guilty verdict against him and a long prison term in his future, but also because the trial would have forced him to challenge the woman's credibility on the witness stand.

“This would not have been pleasant for anybody,” he said.

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