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SJC-12837

RINALDO DEL GALLO, THIRD vs. DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT & others.¹

October 7, 2021.

District Attorney. Practice, Criminal, District attorney, Nolle prosequi. Words, "Victim."

The plaintiff, Rinaldo Del Gallo, commenced this action in the county court by filing a prolix document entitled "emergency averred complaint," in which he alleged, among other things, that the district attorney for the Suffolk district failed to comply with the requirements of G. L. c. 258B, § 3, the so-called victims' bill of rights, when she nol prossed certain criminal complaints. Del Gallo sought a broad range of declaratory and injunctive relief, relief in the nature of mandamus, and the exercise of this court's extraordinary power of general superintendence pursuant to G. L. c. 211, § 3. A single justice denied all forms of relief without a hearing, and Del Gallo appeals. We affirm.

Background. The complaint stems from the district attorney's decision to nol pros several cases against individuals who were arrested at a "Straight Pride Parade" in Boston on August 31, 2019, and at a rally that followed the parade. Those who were arrested apparently were at the parade and rally to object to those events. They were charged with an assortment of crimes, mostly disorderly conduct and assault and battery on police officers. Del Gallo alleges that, as a marcher in the parade and a speaker at the rally, he was a

¹ The Boston Municipal Court Department and one of its judges.

victim of the disorderly conduct² because the conduct interfered with his right under the First Amendment to the United States Constitution to participate in the events, although it is difficult to find any specific allegation in his lengthy complaint suggesting that any of the charged individuals or their conduct actually prevented him from marching or speaking or even interfered in any way with his doing so.³

Discussion. We begin with the elemental proposition that "it is the Commonwealth, and the Commonwealth alone, that has the prerogative and the responsibility to prosecute defendants for criminal offenses." Matter of Chapman, 482 Mass. 1012, 1014 (2019). Private individuals, including crime victims, "have no standing in our system of justice to prosecute cases and no authority to compel district attorneys or the Attorney General to do so." Id., and cases cited. The prosecutor, whether it is the Attorney General or a district attorney in a given case, has "wide discretion in determining whether to prosecute an individual, just as he [or she] has wide discretion in determining whether to discontinue a prosecution once commenced." Manning v. Municipal Court of the Roxbury Dist., 372 Mass. 315, 318 (1977), and cases cited.⁴

² He does not claim to have been the victim of any act of violence committed by any of the individuals charged with crimes against the person.

³ Del Gallo does not identify a specific criminal defendant whose alleged conduct he claims directly affected him (if indeed he was affected at all). Nor does he identify which specific acts of alleged disorderly conduct he was even aware of, or in the vicinity of, at the time they occurred. Instead, as best we can tell, he appears to take the sweeping position that all of the disorderly charges against all of the defendants at the parade and rally that day must be vacated because of an alleged violation of his rights as a victim of one or more of them, although he cannot say which ones.

⁴ Conceivably, there may be some extremely rare circumstance in which a prosecutor's authority to decide to discontinue a prosecution is not unfettered. See Commonwealth v. Dascalakis, 246 Mass. 12, 18 (1923) (describing prosecutor's authority as "extensive" and "absolute," "except possibly in instances of scandalous abuse of the authority"). The district attorney in this case made a garden-variety decision not to prosecute. This is far from any kind of "scandalous" situation where we might

Del Gallo accepts these well-settled principles and purports to disclaim any interest in controlling the district attorney's decision to nol pros the disorderly conduct charges in this case. He contends, however, that the district attorney could not validly exercise her prerogative to nol pros until she first met her statutory obligations under G. L. c. 258, § 3, which, he alleges, included an obligation to confer with him before she made her decision. Del Gallo's argument rests on the premise that he was a victim of the nol pros charges for purposes of the statute. As explained infra, however, his premise is mistaken.

a. Purpose and effect of the statute. General Laws c. 258B, which was enacted in 1983, gave crime victims "the right to be kept informed about and to participate in a limited way in" criminal cases. Matter of Chapman, 482 Mass. at 1015. The statute "was intended to change the 'traditional view' of victims as virtually silent observers to active participants in the criminal justice process." Hagen v. Commonwealth, 437 Mass. 374, 380-381 (2002). But while the statute confers important rights on victims vis-à-vis criminal prosecutions, "it does not confer on them the status of a party or grant them the rights that belong to parties." Matter of Chapman, supra, and cases cited. Put another way, the victim of a crime has no "judicially cognizable interest" in the prosecution of the offender, and the statute does not change that. Id.

The district attorneys of the Commonwealth and the Attorney General, as criminal prosecutors, are chiefly responsible for ensuring that the rights that the statute confers on victims are met. Hagen, 437 Mass. at 377-378, citing Commonwealth v. Bing Sial Liang, 434 Mass. 131, 134-135 (2001). They are charged with doing so "to the greatest extent possible and subject to appropriation and available resources, with priority for services to be provided to victims of crimes against the person and crimes where physical injury to a person results." G. L. c. 258B, § 3. Judges, as well, have a role to play in assuring that victims are afforded their rights under the statute. See G. L. c. 258B, § 12. The Hagen case is a good example of how this court, in particular, has attempted to strike an appropriate balance between protecting the statutory rights of victims and respecting the Commonwealth's exclusive prerogative to control prosecutions. See Hagen, supra at 380-381 (holding

question, let alone consider the possibility of restricting in some way, the decision to nol pros.

that crime victim has no standing to file motions in criminal case, but should be permitted opportunity to address trial court directly when fundamental right under G. L. c. 258B is jeopardized; otherwise, "the right afforded by the statute is essentially meaningless").

b. Application of statute to Del Gallo. The statute defines "victim" as "any natural person who suffers direct or threatened physical, emotional, or financial harm as the result of the commission or attempted commission of a crime." G. L. c. 258B, § 1. Del Gallo fails to state a claim in this case because he was not a victim of the alleged disorderly conduct crimes that were not proscribed.

First, disorderly conduct is not a crime against a person or against a specific person's property. It is a crime against the public peace; its essence is a criminal public nuisance. See G. L. c. 272, § 53 (b). See also Commonwealth v. Accime, 476 Mass. 469 (2017); Commonwealth v. Sholley, 432 Mass. 721 (2000), cert. denied, 532 U.S. 980 (2001).

Second, we reject Del Gallo's claim that he was a victim within the meaning of the statute because he suffered "threatened . . . emotional . . . harm" as a result of the alleged disorderly conduct. That language might include, for example, someone who is victimized by criminally assaultive behavior directed at him or her that does not result in physical contact. We cannot imagine, however, that the Legislature intended it as broadly as Del Gallo's argument suggests, to apply to every person who is upset by an act of disorderly conduct. There could be tens, hundreds, or even thousands of people who witness a given incident, or who claim to have been emotionally affected by it even though they did not witness it firsthand, who may be known or unknown to the prosecutor. It is inconceivable that the Legislature meant for the prosecutor to provide all of them with the rights afforded to crime victims under G. L. c. 258B. See Commonwealth v. Peterson, 476 Mass. 163, 168 (2017), citing Commonwealth v. Perella, 464 Mass. 274, 276 (2013) (rejecting interpretation of statute that would "yield an absurd or unworkable result").

Third, assuming (without deciding) that an interference with one's First Amendment rights by an incident of disorderly conduct could render one a "victim" for purposes of G. L. c. 258B, there does not, as we have stated above, appear to be any allegation that Del Gallo was in fact prevented from

marching or speaking, or that he personally was interfered with in any specific way.

Finally, as stated in note 3, supra, Del Gallo does not point to a specific act of disorderly conduct, or to a specific individual so charged whose complaint was not processed, that allegedly victimized him. Rather, he appears to be claiming an interest as a victim in all of the disorderly conduct cases, regardless of whether he witnessed the particular act charged, was affected by it, was aware of it at the time it occurred, or was even in the vicinity. Again, we cannot imagine that the Legislature intended to confer "victim" status on someone in Del Gallo's position simply because he or she was involved in an event's planning⁵ and was disappointed that the event ultimately was met with protest and allegedly was marred by disorderly conduct.⁶

Conclusion. The single justice properly denied all relief on the complaint that was before her.

Judgment affirmed.

The case was submitted on briefs.
Rinaldo Del Gallo, III, pro se.

⁵ Del Gallo characterizes himself in his brief on appeal as the "First Amendment counsel" for the event organizers. In his complaint, however, Del Gallo brings his claims only on behalf of himself and not on behalf of the organizers or anyone else.

⁶ The argument section of Del Gallo's brief on appeal is slightly less than three pages. He purports to "incorporate[] by reference" his very lengthy complaint in the county court; states that "the arguments and law there should be carefully reviewed"; tells us that the argument in his brief "is merely . . . supplemental to the material advanced in" his complaint; and then proceeds to "highlight[]" a few points without any real legal analysis or citation to authority. This does not comply with the rules of appellate procedure. We have addressed his main contentions but decline to consider the myriad other statements in his complaint in lieu of a proper brief.