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Denver DA (<https://www.denverda.org/>)
Beth McCann, District Attorney

Setting the Record Straight

In September 2018, Fox 31 News aired a story alleging that, over one-and-a-half years previously and within a week of being sworn in as Denver’s new district attorney in January 2017, District Attorney Beth McCann for politically motivated reasons “secretly acquitted” a person found guilty by a Denver jury in 2015 of a ‘peeping tom’ misdemeanor violation (“District attorney acquits school sex offender after jury votes guilty,” Fox 31 News, September 27, 2018).

To set the record straight: (1) District Attorney McCann did not then, and still does not know, the defendant in this case; (2) she did not know about the case before becoming district attorney; (3) she did not know about the case when the decision was made to vacate the defendant’s conviction; (4) she was not involved in any decisions concerning disposition of the case after she became district attorney; and (5) neither she or her staff had participated in any “secret” court proceeding. After learning of the case through the Fox 31 News inquiry and story, DA McCann consulted with the lawyers in the District Attorney’s Office Appellate Division to learn why the defendant’s charges were dismissed after trial. She was informed the charges were dismissed because the defendant’s conduct did not constitute a violation of the statute under which he was convicted. She agrees that the post-trial dismissal was both legally correct and ethically required—the presiding judge reached substantially the same conclusion.

When Fox31 News contacted the Denver District Attorney’s Office in the summer or fall of 2018 to inquire about this case, pursuant to state law neither the district attorney nor anyone in the office could provide any information or comment about the case, or indeed even acknowledge its existence. This was so because the person charged had exercised his right under the law to obtain a court order sealing his record following the reversal of his conviction. Fully knowing this legal prohibition and the inability of the office to address any questions he might have, the Fox reporter chose to publish the September story suggesting impropriety in the handling of the case.

Following the airing of the story, the District Attorney's Office immediately requested that Fox31 News at least provide a clarification to explain why the office could not legally comment on the case pursuant to state law, but that request was not honored.

The story contained such inaccuracies and insinuations that the District Attorney's Office and defense counsel for the person originally charged took the extraordinary step of filing a motion to unseal the court record for the purpose of allowing the office to seek to correct the news story. Upon obtaining the court order the District Attorney's Office contacted Fox 31 News requesting a meeting with the reporter. That request for a meeting was refused.

The attached motion to unseal the court record provides the information addressing the contents of the September 2018 story.

Finally, it must be noted that, despite possible misunderstandings of the role of a prosecutor by a news reporter or by members of the public, a prosecuting officer is ethically and morally obligated to pursue justice in accordance with the law. This obligation includes dismissing charges and even entire cases when evidence no longer supports continued prosecution or when the law has been misapplied, as the longtime, career appellate attorneys in the district attorney's office determined when they filed the "people's statement conceding reversal of conviction."

DOCUMENTS

Amended Petition to Unseal (<https://www.denverda.org/wp-content/uploads/2018/11/AMENDED-PETITION-TO-UNSEAL-FILED-ON-BEHALF-OF-THE-PEOPLE-OF-THE-STATE-OF-COLORADO.pdf>)

Order Granting Petition to Unseal (<https://www.denverda.org/wp-content/uploads/2018/11/Order-Granting-Petition-to-Unseal.pdf>)

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