

STATE OF MICHIGAN
56A JUDICIAL DISTRICT COURT, EATON COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

OPINION AND ORDER

Plaintiff,

v

File No. 18-2261-FY

LOU-ANNA K. SIMON,

Defendant.

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Dr. Lou Anna K. Simon was president of Michigan State University in May of 2014 when the first known complaint was made to the university by a young woman about the sexualization of her medical treatment by Dr. Larry Nassar of the College of Medicine. The current charges against Dr. Simon arise out of the limited answers Dr. Simon gave to questions asked of her by the Michigan State Police detectives about what she knew of that first complaint and the problems created by Dr. Nassar's behavior.

MCL 479c(1) states:

Except as provided in this section, a person who is informed by a peace officer that he or she is conducting a criminal investigation shall not do any of the following:

... (b) Knowingly and willfully make any statement to the peace officer that the person knows is false or misleading regarding a material fact in that criminal investigation.

MCL 479c(2) states in part:

(c) If the crime being investigated is a felony punishable by imprisonment for 4 years or more, the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(d) If the crime being investigated is any of the following, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both:

... (iii) A violation of section 520b (first degree criminal sexual conduct.)

Counts 1 and 2 involve investigation of the crime of first degree criminal sexual conduct.

Count 1 alleges that defendant did knowingly and willfully make a statement to the officer that she knew was false or misleading in that she claimed that she was not aware of the nature of the complaint regarding Amanda Thomashow in 2014. Count 2 alleges that defendant gave a similarly false or misleading statement by claiming to be aware that in 2014 there was a sports medicine doc who was subject to a review and not acknowledging that she was aware specifically of Larry Nassar.

Counts 3 and 4 involve investigation of the crime of misconduct of a public official. In Count 3, the Attorney General claims that defendant's statement that she was not aware of the nature of the Thomashow complaint in 2014 was false or misleading. Count 4 alleges that

defendant made a false or misleading statement when she stated she was aware of a sports medicine doc who was subject to review without stating that she knew it was Larry Nassar.

The question by the detective and Dr. Simon's response that have resulted in these charges are as follows:

Question: Were you aware of any prior investigation, you know, before the story broke in the news, were you aware of any prior investigation with Larry Nassar or, you know, misconduct for that matter, anything?

Answer: I was aware that in 2014 there was a sports medicine doc who was subject to a review. But I was not aware of any of the substance of that review, the nature of the complaint, that was all learned in '16 after it became clear in the newspaper. . .

The question before the court is whether there is probable cause to believe that defendant committed these four counts.

. . .the preliminary examination has a dual function, i.e., to determine whether a felony was committed and whether there is probable cause to believe the defendant committed it. At the examination, evidence from which at least an inference may be drawn establishing the elements of the crime charged must be presented. . .The probable-cause standard of proof is, of course, less rigorous than the guilt-beyond-a-reasonable-doubt standard of proof. . .Probable cause requires a quantum of evidence "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt". . .Yet to find probable cause, a magistrate need not be without doubts regarding guilt. The reason is that the gap between probable cause and guilt beyond a reasonable doubt is broad. . .and finding guilt beyond a reasonable doubt is the province of the jury. *People v Yost*, 468 Mich 122, 125.

Based upon this probable cause standard, I do find that these crimes have been committed and that there is probable cause that Lou Anna K. Simon committed them. An analysis follows based upon the elements set forth in M Crim JI 13.20.

First, Detectives Cavanaugh and Arndt were peace officers who were conducting an investigation of a criminal offense. There can be no reasonable doubt of that.

Second, the crimes being investigated were first degree criminal sexual conduct and knowingly and willfully making a statement to officers defendant knew was false or misleading.

Third, Detective Cavanaugh informed defendant that he and Detective Arndt were conducting a criminal investigation. The testimony of the detectives who both expressed confidence that the required notice had been given prior to the commencement of questioning reaches the probable cause threshold. There is no legal requirement that defendant be notified of what crimes the detectives were investigating.

Fourth, the defendant provided false information regarding that investigation to the peace officer in a statement that the defendant knew was false or misleading. The history from the testimony of Kristine Moore and Paulette Granberry Russell supports this. On May 15, 2014, Kristine Moore had a lengthy telephone conference with Amanda Thomashow during which she was informed of the allegations of sexual abuse by Dr. Larry Nassar against Amanda. Moore was "shocked". Shortly thereafter, at about 9:00 p.m., she called her supervisor, Paulette Granberry Russell to inform her. Before 8:00 a.m. the next day, Russell had emailed the defendant a terse message about the incident. The next business day, evidence suggests that this was a topic of conversation in a meeting between Simon and Russell. All of this indicates that the allegations against Nassar aroused serious, very significant concern. It is not credible to believe that Simon would have heard even the outline of Thomashow's story and forgotten it. Testimony from other witnesses who worked closely with her described her as a president who was very responsible and dedicated about her work at MSU. She paid attention to detail. She was very engaged in Michigan State University. Forgetting about the Thomashow allegations against Larry Nassar does not match that description.

Fifth, that the defendant acted knowingly and willfully. There is probable cause to believe that defendant concealed the information voluntarily and intentionally with the intent to deceive and not by mistake. When questioned about Larry Nassar, Dr. Simon only acknowledged being aware of a “sports medicine doc” prior to 2016. The reasonable inference from that statement is that she did not know of Larry Nassar specifically. *People v Seewald*, 499 Mich 111, 116 (2016) She also denied being aware of the nature of the complaint generated from the 2014 MSU Title IX investigation of Amanda Thomashow’s allegations. Again, defendant’s knowledge can be inferred by Kristine Moore and Paulette Granberry Russell’s treatment of the allegations as an emergency of which defendant needed to be notified. The allegations, the “nature of the complaint” are extraordinary, are “shocking” as Moore stated. They would not easily be forgotten.

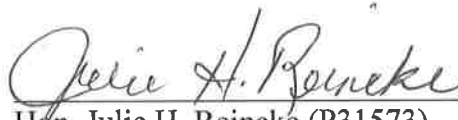
Sixth, that the information allegedly concealed involved a material fact, information that a reasonable person would use to decide whether to do or not do something. Dr. Simon’s lack of acknowledgement of any specific knowledge of Nassar’s system of treating young athletes along with her credibility as the long-term president of Michigan State University appears to have resulted in an investigation that was like looking for a needle in a haystack instead of having focus on a limited number of persons and communications. Had the detectives asked more questions of Simon despite her denial of knowledge, they might have been able to circumvent her denials. But they weren’t required to pursue information she claimed to know little or nothing about.

Considering all of these elements in the light most favorable to the prosecution, I do find probable cause that defendant committed the offenses as charged. It is not my role to decide whether there is proof of guilt beyond a reasonable doubt or to comment on the fairness of this brief question and response being treated as four separate acts.

Defendant is bound over to Eaton County Circuit Court on the offenses as charged. Status conference is scheduled for December 20, 2019, Circuit Court Arraignment, unless waived, is December 12, 2019. Bond is continued.

Respectfully submitted:

Dated: October 28, 2019

A handwritten signature in cursive script, reading "Julie H. Reincke", is written over a horizontal line.

Hon. Julie H. Reincke (P31573)
56-A District Court