

MEMO



Senate of Pennsylvania

DATE: 3-30-88

TO: Senator F. Joseph Loeper  
Senator Edward Zemprelli

FROM: Senator Stewart J. Greenleaf

SUBJECT: Amendment to House Bill 418, P.N. 2963

Attached is an amendment I plan to offer to the above bill at the request of Barbara Hart, Counsel to the Pennsylvania Coalition on Domestic Violence.

The first amendment clarifies that legal fees may be directed and paid to Legal Services which represents many plaintiffs in domestic violence cases. As presently drafted, it appears that only the plaintiff is eligible for reimbursement.

The second change regards the Coalition's intent to encourage district justices to give relief under Section 6(a)(1) (cessation of abuse) in all cases and to award it simultaneously with (a)(2) (eviction from jointly owned/leased residence) or (a)(3) eviction from defendant's residence). The qualifier that the relief be necessary to protect the plaintiff or minor children from abuse remains the same.

Finally, as H.B. 2099, providing funding for rape crisis centers, will soon be voted upon, the amendment adding the funding to H.B. 418 has been removed.

cc: Steve MacNett  
C.J. Hafner

LEGISLATIVE REFERENCE BUREAU

AMENDMENTS TO HOUSE BILL NO. 418

Mr.

Printer's No. 2967

Amend Sec. 1 (Sec. 2), page 4, lines 15 through 27, by striking out all of said lines

Amend Sec. 5 (Sec. 6), page 10, line 26, by striking out "attorney fees;"

Amend Sec. 5 (Sec. 6), page 10, line 27, by inserting after "sustained."

In addition to out-of-pocket losses, the court may direct the defendant to pay reasonable attorney fees.

Amend Sec. 5 (Sec. 8), page 11, line 26, by inserting a bracket before and after ", (2) or" and inserting immediately thereafter

and (2) or (1) and

Amend Sec. 6 (Sec. 8.3), page 13, lines 19 through 30; page 14, lines 1 through 8, by striking out all of said lines on said pages

Pa.R.A.P. 2744.<sup>7</sup> Appellee Rosey's conduct in connection with this appeal was not dilatory, obdurate or vexatious.

Accordingly, the request for appellate counsel fees is denied.

Order vacated; case remanded for proceedings consistent with this opinion. Jurisdiction is relinquished.



COMMONWEALTH of Pennsylvania

v.

Edmund PRICE, Appellee.

Superior Court of Pennsylvania.

Argued June 25, 1996.

Filed Oct. 30, 1996.

Defendant was charged with aggravated assault, recklessly endangering another person, possessing instrument of crime, and firearms violations. The Court of Common Pleas, Philadelphia County, Criminal Division, Lehrer, J., No. 9402-0959-0962, nolle prossed case without prejudice and subsequently denied Commonwealth's petition to lift nolle prosequi. Commonwealth appealed. The Superior Court, No. 989 Philadelphia 1995, Del Sole, J., held that district attorney did not have conflict of interest due to victim's status as defendant in unrelated criminal case.

Reversed and remanded.

1. Criminal Law ⇨1024(3)

Generally, when criminal charges are dismissed, Commonwealth can simply refile charges and therefore, appeal from such dismissal order is interlocutory.

7. Rule 2744 provides that counsel fees may be awarded by the appellate court "if it determines that an appeal is frivolous or taken solely for delay or that the conduct of the participant

2. Criminal Law ⇨1024(3)

If charges against defendant had been dismissed solely because witnesses were not present, Commonwealth's appeal of dismissal order would be interlocutory, as Commonwealth could cure defect by refile charges.

3. Criminal Law ⇨1024(3)

Trial court order that nolle prossed charges primarily for belief that district attorney had conflict of interest was "final order" for purposes of appeal; any conflict would not disappear upon refile of charges.

See publication Words and Phrases for other judicial constructions and definitions.

4. Criminal Law ⇨639.1

District attorney did not have conflict of interest due to victim's status as defendant in unrelated criminal case; district attorney's "client" was Commonwealth and people who lived in Commonwealth, not victim.

See publication Words and Phrases for other judicial constructions and definitions.

Karen A. Brancheau, Assistant District Attorney, Philadelphia, for Com., appellant.

Kathleen A. Martin, Philadelphia, for appellee.

Before DEL SOLE, TAMILIA and BROSKY, JJ.

DEL SOLE, Judge:

The Commonwealth appeals an order refusing to lift a nolle prosequi in this aggravated assault case. We reverse the trial court's order and remand for trial.

Appellee Eugene Price was charged with aggravated assault, recklessly endangering another person, possessing an instrument of crime and firearms violations. During a fight, Price shot Donald Williams in the leg and face. Williams' mother and brother witnessed the shooting.

against whom costs are to be imposed is dilatory, obdurate or vexatious." Pa.R.A.P. 2744, 42 Pa. C.S.