

Lynn over the years, and documents relating to other priests with whom Lynn conspired to hide their crimes so they could stay in ministry.

Following are the arguments the Commonwealth presented in its legal memorandum in support of its motion to add the conspiracy charges.

The facts alleged establish that Lynn and others in the Philadelphia Archdiocese conspired with Avery and Brennan to endanger children.⁶

Criminal conspiracy does not require direct evidence of a criminal agreement; the agreement may be proved inferentially by circumstances, including knowledge of and participation in the crime, as well as the “relation, conduct or circumstances of the parties.” *Commonwealth v. Davolos*, 779 A.2d 1190, 1193 (Pa. Super.), allocatur denied, 790 A.2d 1013 (Pa. 2001); *Commonwealth v. Rogers*, 615 A.2d 55, 63 (Pa. Super. 1992). “Indeed, direct proof of an explicit or formal agreement to commit a crime can seldom, if ever, be supplied and it need not be for ‘it is established law in this Commonwealth that a conspiracy may be proved by circumstantial evidence as well as by direct evidence.’” *Commonwealth v. Roux*, 465 Pa. 482, 488, 350 A.2d 867, 870 (1976). The nature of the crime usually makes it susceptible of no other proof than by circumstantial evidence. *Commonwealth v. Gibson*, 668 A.2d 552, 555 (Pa. Super 1995); *Commonwealth v. Evans*, 190 Pa.Super. 179, 154 A.2d 57 (1959), aff’d 399 Pa. 387, 160 A.2d 407 (1960), cert. denied, 364 U.S. 899, 81 S.Ct. 233, 5 L.Ed.2d 194, reh. denied, 364 U.S. 939, 81 S.Ct. 377, 5 L.Ed.2d 371. In addition to the relationship and conduct of the parties, “the

⁶ Although the facts clearly do establish conspiracy, the standard of review at this stage of the proceedings is merely a *prima facie* case. *Commonwealth v. Rick*, 366 A.2d 302, 303-304 (Pa. Super. 1976)(“The question at a preliminary hearing is not whether there is sufficient evidence to prove the defendant guilty beyond a reasonable doubt; rather, the question is whether the prosecution must be dismissed because there is nothing to indicate that the defendant is connected with a crime.”)

circumstances surrounding their activities can be examined to deduce, inferentially, if a conspiracy exists.” *Commonwealth v. Robinson*, 505 A.2d 997, 1000 (Pa. Super. 1986), quoting *Commonwealth v. Tumminello*, 292 Pa. Super. 381, 386 (Pa. Super. Ct. 1981).

“The essence of criminal conspiracy is a common understanding, no matter how it came into being, that a particular criminal objective be accomplished.” *Commonwealth v. Volk*, 444 A.2d 1182, 1185 (Pa. Super. 1982), quoting *Commonwealth v. Carter*, 416 A.2d 523, 524 (Pa. Super. 1979).

The criminal objective shared by Lynn, the Archdiocese officials he worked with and reported to, and the priests he supervised was not necessarily to harm children – just to knowingly put them in harm’s way. The shared understanding alleged is simply that Lynn and his accomplices knowingly placed minors at risk of harm in violation of their duty to protect and care for the children in the schools and churches of the Archdiocese.

The risk was created by agreeing to permit men with histories of improper and criminal conduct with minors to retain their status as priests, thereby giving them not only access to children, but also extraordinary power and influence over them and their families. The danger was exacerbated by collusion between Archdiocese managers and the priests to deceive parishioners concerning the continued ministry of errant priests and the reasons for their leaves, retirements, and transfers.

The Grand Jury’s presentment details abundant evidence that Lynn conspired with others to endanger the welfare of children in parishes of the Archdiocese of Philadelphia. As Secretary for Clergy from 1992 to 2004, he worked with accused priests and with his superiors within the Archdiocese to place known sexual predators in positions where they would have continued access to children and then to make sure that parishioners were

kept ignorant of the peril (Presentment, 8-19; 2011 Grand Jury Report, 43-54; 2005 Grand Jury Report, 29-58, 79-177, 197-233, 243-405). Lynn acceded to abusers' requests to be transferred to assignments with friendly supervisors where their behavior would likely go unreported. He colluded with accused priests and Archdiocese managers to deceive parishioners so that known child abusers could continue as active and revered priests without complaint from parents or others who remained unaware of the priests' predatory behavior. He repeatedly thwarted victims' efforts to have their attackers removed from positions where they could harm other children.

The evidence that Lynn coached, counseled, and colluded with suspected, known, and even confessed abusers is overwhelming. Avery and Brennan were just two of many such priests whom Lynn and his Archdiocese superiors actively abetted. [The Grand Jury's presentment (Appendix A), which served as the factual basis for the affidavit of probable cause for the arrest warrants, references the 2005 report of the Philadelphia Investigating Grand Jury of September 17, 2003 (Appendices C and D). That report was reviewed by the Grand Jury and has been incorporated into the record of this case. The 2011 Grand Jury Report is included as Appendix B.]

Lynn's objective in the instant cases – to help Avery and Brennan cover up their inappropriate and criminal behaviors so that the priests could remain in active ministry and escape exposure – was understood and shared by the priests and others in the Archdiocese. Lynn often reported to the priests or asked them to participate in deceptions designed to keep their secrets and to mislead others. In numerous ways, he acted as their accomplice in knowingly placing children in harm's way.

After hearing from a man in 1992 that Avery had sexually abused him as a teenager, Lynn assured the victim that the Archdiocese would take appropriate action so that Avery would not be in a position to harm another child. It was Lynn's duty to investigate the victim's allegation against Avery, to recommend appropriate action, and to supervise the priest. Lynn did none of these things. Instead, by offering false assurances, he persuaded the victim that it was unnecessary to take other actions that would have resulted in the predatory priest's removal from his position and put parishioners on guard to protect their children. Lynn reported his conversations with the victim to Avery. (Presentment, 9-10, 17-18; Documents, 0551-00307, 0551-00147, 0551-00306, 0551-00215 through 0551-00217, 0551-00219 through 0551-00229, 0551-00235, 0551-00213 through 0551-00214, 0551-00249, 0551-00250, 0551-00253 through 0551-00255, 0551-00198 through 0551-00207, 0551-00191, 0551-00193 through 0551-00194.)

Lynn permitted Avery to remain in his assignment as pastor for months after learning of the priest's crimes. When Avery was finally removed from his assignment to enter a treatment facility, Lynn and his supervisors had Regional Vicar Charles Devlin, and Avery himself, lie to parishioners, telling them that Avery was resigning because of his health. (Presentment, 12-14; Documents 0551-00280, 0551-00277, 0551-00278, 0551-00647; N.T. 12/18/03, 23-24.)

Lynn went even further to deceive parishioners, telling those who were suspicious that the Archdiocese had never received "anything but compliments" regarding Avery, and that anything different that parishioners might have heard was just "rumors" (Presentment, 14; Documents 0551-00577 through 0551-00578, 0551-00402 through 0551-00404). The falsehood that an accused priest was resigning for health reasons is one

that Lynn and other Archdiocese officials used often to cover up priests' crimes so that the perpetrators could later be returned to ministry after a stint in an Archdiocese facility for "treatment."

After Avery was released from the treatment facility, with strict instructions from the clinic staff that he should not minister to adolescents or vulnerable minorities, Lynn, who was in charge of supervising the priest, did what he did in the cases of other priests (Documents, 0551-00196, 0551-00247, 0551-00285, 0551-00297). He allowed Avery to completely ignore the therapists' cautionary directions, and he covered for the priest (Presentment, 14-18; N.T. 12/18/03, 24-26, 90).

Lynn pretended that Avery was participating in an aftercare program with an "aftercare team" of supervisors that supposedly included the Secretary for Clergy. In fact, no one was supervising Avery (Presentment 15-18; Documents, 0551-00301, 0551-00303; N.T. 5/13/10, 59-61, 66, 77, 103, 106, 108, 115, 124, 130; N.T. 4/30/10, 25-26; N.T. 6/24/10, 13-15). At one point, one of Avery's fellow priests reported to Lynn that Avery was not complying with his supposed program (the priest believed Avery was being treated for "workaholism"), and that he was constantly out disc jockeying (the setting in which, Lynn well knew, Avery had abused the teenaged victim). Lynn ignored the priest's warnings (Presentment, 15-17; Documents, 0551-00300, 0551-00298, 0551-00299, 0551-00609, 0551-00610, 0551-00406, 0551-00618 through 0551-00619, 0551-00617; N.T. 6/24/10, 19, 29, 40).

Instead of disciplining Avery, suggesting that he be removed from his assignment, or even simply taking steps to limit his access to minors, Lynn coached the priest "to be more low-keyed than he has been recently" (Presentment, 18; Documents, 0551-00193).

One year before Avery sexually abused [redacted] Billy [redacted] at St. Jerome Parish, the Secretary for Clergy wrote that he had told Avery that his earlier victim had been back in touch with Lynn. The victim had asked about Avery. He wanted to know that his attacker was not in a position to harm any other children. Lynn reported to Avery that he had concealed the priest's whereabouts and assignment. Lynn said that he had told the victim "that the Archdiocese had taken proper steps in the matter, without stating where Father Avery was stationed" (Presentment, 17; Documents, 0551-00193 through 0551-00194).

As the Grand Jury concluded: "Monsignor Lynn's obscure language, the pride he seemed to take in relating to Father Avery that he had not told [the victim] that the priest was living in the rectory of a parish with a school, and the warning to the sexual predator to be 'low-keyed' all seem like the product of someone trying to aid and abet an abuser in escaping detection" (2011 Grand Jury Report, 28).

The facts alleged in the presentment establish that the Secretary for Clergy was also Brennan's accomplice in endangering children. When Lynn was told in 1995 that Brennan was hosting parties for Cardinal O'Hara High School students at his residence and was serving them liquor, the Secretary for Clergy did not act as one charged with supervising priests in order to protect children. He did not call Brennan in, discipline him, or report him to law enforcement. He did nothing to address the problem of Brennan's inappropriate behavior with adolescent students – not even when a nun at Brennan's residence reported that the priest was living with one of the students under the false pretense that the boy was his nephew. (Presentment, 20-23; Documents, 0551-01093 through 0551-01096.)

Instead, Lynn acted to help a predator stay in a position that gave him access to and power over potential victims while avoiding scrutiny or exposure. Responding to complaints about the priest's behavior with minors at his residence, Lynn moved Brennan to a new residence – in a rectory of a parish with an attached school. In doing so, he acceded to Brennan's request that he be stationed under the supervision of a priest with whom he was friendly. (Presentment, 21-22; Documents, 0551-01097 through 0551-01099.)

Less than a year later, Brennan requested a leave of absence. In meetings with both Lynn and Cardinal Bevilacqua, the priest said he needed to deal with psychological ramifications stemming from his own childhood sexual abuse. He told Lynn that he was “in a sense giving scandal to others” and was not performing up to expectations. His explanation was so strange that Cardinal Bevilacqua noted that he questioned Brennan's honesty. The Cardinal wrote that Brennan seemed especially anxious to talk about being sexually abused, and speculated that Brennan was not telling the real reason for his leave. (Presentment, 22; Documents, 0551-01230 through 0551-01231, 0551-01234, 0551-01239.)

A few months after his meetings with Lynn and Bevilacqua, in June 1996, Brennan called Lynn. He was upset because he had heard that a rumor about him was circulating among priests in the cafeteria of the Archdiocese headquarters. The rumor was that Brennan had requested a leave in order to “shack up” with a former student. He wanted to know from Lynn who was spreading the story. He told Lynn that very few people “knew about his previous situation.” (Presentment, 22-23; Documents, 0551-01105)

Lynn wrote in a memo that he “told [Brennan] not to be concerned about these rumors; that we only take facts as we find them. Rumors are not put in personnel files. Father Brennan seemed relieved to hear that.” (Presentment, 23; Documents, 0551-01105.)

By covering up for Brennan, Lynn assured that the priest retained the position and status that made the parents of Mark Bukowski, Brennan’s victim, feel comfortable about their son spending the night with him. It was this unwarranted status, protected by Lynn and other Archdiocese officials, that afforded Brennan the opportunity to rape Mark in the summer of 1996. It is immaterial that Brennan was on leave during the summer he assaulted Mark. He was still a priest, with all of the attendant goodwill, authority, and trust granted to clergy. And he was still subject to the supervision of his bishop and, therefore, Lynn.

The evidence presented to the Grand Jury demonstrated that Brennan had confessed to Lynn that he suffered from debilitating psychological problems caused by his own sexual abuse as a child. He told Lynn he feared he was “giving scandal to others.” Lynn knew of Brennan’s parties, at which he served alcohol to minors, and of his inappropriate relationship with at least one of those students. The Secretary for Clergy knew that Brennan was lying when he told nuns that the boy living with him was his nephew. Nevertheless, Lynn aided Brennan in covering up the improper relationship so the priest could return to a parish assignment if he so desired. In the meantime, while on leave, Brennan retained his full faculties as a priest and could exercise his ministry whenever he wanted to.

Lynn's memo to the file indicated that it was a common understanding among the Archdiocese officials responsible for assigning priests (the Cardinal, the Vicar General, and the Secretary for Clergy) that reports of sexual abuse by a priest would not hinder future assignments unless a victim made a formal allegation. Accordingly, when Brennan announced in 1998 that he was ready to return from his leave, Cardinal Bevilacqua and Lynn welcomed him back and assigned him to St. Jerome Parish. They placed him in a parish with a school even though they were fully aware of his troubling relationships with minors and his confessed psychological problems. (Presentment, 27; Documents, 0551-00930 through 0551-00932, 0551-01129 through 0551-01131.)

In 2000, Brennan informed Lynn and Bevilacqua that he felt he needed to isolate himself at an abbey. When asked why, he described "a primordial struggle being lived out in a tormented state of unbridled passion." He wrote to his supervisors of "the filth and stench of my wanton failures of yesterday." They agreed to allow him to go to an abbey in South Carolina. When he became unhappy there too, Lynn and Bevilacqua accepted him back to the Archdiocese, and they gave him another assignment in a parish with a school. (Presentment, 28; Documents, 0551-01148, 0551-01151 through 0551-01157, 0551-01159 through 0551-01164, 0551-01166.)

Lynn clearly was working, in concert with other Archdiocese officials and the perpetrator-priests, toward a common purpose: Their actions were designed to keep the offending priests in ministry and their parishioners ignorant and unequipped to protect their children. The effect was to endanger children, including the victims of the crimes charged in this case. Under these facts, it is difficult not to infer a criminal agreement among the defendants.