

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

STATE OF MISSOURI,)	
Plaintiff,)	
)	
vs.)	Case No. 1116-CR04467
)	Division 14
ROBERT W. FINN, et al.)	
Defendants)	
)	

ORDER REGARDING PRETRIAL MOTIONS

NOW, on this 5th day of April, 2012, the Court takes up Defendants' Joint Motion to Dismiss Indictment Because §§ 210.115 and 352.400 RSMo are Unconstitutionally Vague as Applied, Defendants' Joint Motion to Dismiss Indictment Because §§ 210.115 and 352.400 RSMo are Unconstitutionally Vague on Their Face, Defendants' Joint Motion to Dismiss Indictment for Failure to Properly Instruct Grand Jury, Defendant Robert Finn's Motion to Dismiss for Failure to State an Offense in that Bishop Finn is not the "Designated Reporter" for the Diocese, Defendant Catholic Diocese of Kansas City-St. Joseph's Motion to Quash Subpoena for Criminal Investigation, Defendants' Joint Motion to Extend Pretrial Deadlines, and Defendants' Joint Motion to Sever Parties. Having heard oral argument on March 27, 2012 and after a review of the relevant points and authorities, the Court finds and concludes as set forth below.

Regarding the Joint Motion to Dismiss due to vagueness as applied, the essential argument of the defendants is that the phrases "immediately report" and "reasonable cause to suspect" do not provide fair warning of the conduct prohibited under the statutes at issue in this case. This Court first notes that "Statutes are presumed to be

constitutional.” *Reproductive Health Services of Planned Parenthood v. Nixon*, 185 S.W.3d 685, 688. (Mo. Banc 2006). “The test for vagueness is whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.” *Id* at 689. “If the terms or words used in the statute are of common usage and are understandable by persons of ordinary intelligence, they satisfy the constitutional requirements as to definiteness and certainty.” *State v. Faruqi*, 344 S.W. 3d 193, 200 (Mo. Banc 2011).

The Missouri Supreme Court has held that the phrase “reasonable cause to suspect” was “readily understandable by ordinary persons.” *State v. Brown*, 140 S.W.3d 151 (Mo. Banc 2004). The language of the statute is comprised of terms and words of common usage and puts a mandated reporter of ordinary intelligence on notice that when they have good cause to suspect a child may have been abused, they have a duty to immediately report to the appropriate authorities. In addition, this Court finds and concludes that persons of ordinary intelligence have no difficulty understanding the meaning of “immediately report.”

IT IS THEREFORE ORDERED that Defendants’ Joint Motion to Dismiss Indictment Because §§ 210.115 and 352.400 RSMo are Unconstitutionally Vague as Applied is DENIED.

Defendants next argue that the statutes are unconstitutionally vague on their face as a matter of law. Essentially, defendants argue that the phrases “immediately report” and “a child may be subjected to abuse” do not provide fair warning of prohibited conduct. It is also asserted that there is a due process violation resulting from a conflict between the standards of “reasonable cause to suspect” (§210.115) and “probable cause

to believe” (§352.400) set forth in the statutes at issue. It is argued that this conflict fails to establish a single standard for the public and law enforcement to follow.

Again, this Court notes that “Statutes are presumed to be constitutional.” *Reproductive Health Services of Planned Parenthood v. Nixon*, 185 S.W.3d 685, 688. (Mo. Banc 2006). “If the terms or words used in the statute are of common usage and are understandable by persons of ordinary intelligence, they satisfy the constitutional requirements as to definiteness and certainty.” *State v. Faruqi*, 344 S.W. 3d 193, 200 (Mo. Banc 2011). “The test is whether the language of the statute conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct and does not leave enforcement to arbitrary judgments by law enforcement officials.” *Cocktail Fortune v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957.

Mo. Rev. Stat. 210.115 states that a person shall immediately report or cause a report to be made to the division in accordance with the provisions of sections 210.109 to 210.183. The statutory language directs the reader to these additional statutes where a mandated reporter is given very clear direction as to reporting the suspected abuse.

It is not necessary to determine if a situation could be imagined in which the language used might be vague or confusing; the language is to be treated by applying it to the facts at hand. *Faruqi* at 200. Suffice it to say that the facts in this case appear sufficient to allow a jury to conclude that, at various times, the defendants had reasonable cause to suspect a child may have been subjected to abuse. “If a statute can be applied constitutionally to an individual, that person ‘will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.’” *Id.*

When considering the issue of the constitutionality of a statute the court must “construe the whole statute and do so in light of a strong presumption of a statute’s validity.” *Reproductive Health Services of Planned Parenthood* at 688. The language of the statute is comprised of terms and words of common usage and puts a mandated reporter of ordinary intelligence on notice that when they suspect a child may be abused, they have a duty to immediately report. This Court finds the statutes to be facially constitutional and further concludes that there is not a due process violation created by the asserted failure of the legislature to establish a single standard of behavior for the public and/or law enforcement to follow.

IT IS THEREFORE FURTHER ORDERED that Defendants’ Joint Motion to Dismiss Indictment Because §§ 210.115 and 352.400 RSMo are Unconstitutionally Vague on Their Face is DENIED.

IT IS FURTHER ORDERED that Defendants’ Joint Motion to Dismiss Indictment for Failure to Properly Instruct Grand Jury is DENIED. The State’s Filing of the Information in Lieu of Indictment renders Defendants’ motion moot.

IT IS FURTHER ORDERED that Defendant Robert Finn’s Motion to Dismiss for Failure to State an Offense in that Bishop Finn is not the “Designated Reporter” for the Diocese is DENIED. The Court finds that the evidence in this case is sufficient to allow a jury to conclude that Bishop Finn was a designated reporter as defined by Missouri law.

IT IS FURTHER ORDERED that Defendant Catholic Diocese of Kansas City-St. Joseph’s Motion to Quash Subpoena for Criminal Investigation is GRANTED because the State is attempting to use the investigative subpoena as a post-Indictment discovery tool in violation of §56.085 RSMo which restricts the use of such a subpoena to use “during the course of a criminal investigation.” *Johnson v. State of Missouri*, 925 S.W.

2d 834, 837. This Court finds that the State of Missouri is no longer engaged in a "criminal investigation" as contemplated by §56.085 RSMo. Defendant Catholic Diocese of Kansas City-St. Joseph's Motion to Quash Second Subpoena for Criminal Investigation is GRANTED as the State concedes the argument of the defendant.

IT IS FURTHER ORDERED that Defendants' Joint Motion to Extend Pretrial Deadlines is GRANTED.

Defendants finally argue that the parties should be severed for trial. "A Motion to Sever is appropriate only where there exists a serious risk of compromise of the defendant's right or the jury's ability to make a reliable judgment about guilt or innocence." *State v. Isa*, 850 S.W.2d 876 (Mo. 1993). In many instances, measures less drastic than severance will suffice to avoid the risk of prejudice. *Id.*

This case consists of two defendants and two counts. At the risk of oversimplification, the jury in this case will be charged with determining when the respective parties were exposed to certain information and whether and when such information was reported to the appropriate authorities as required by the law of the State of Missouri. The trial will not consist of complex issues and the jury should have no problem compartmentalizing the evidence.

This Court genuinely believes that a joint trial of both defendants will not result in actual prejudice to either party. Serious consideration will be given by this Court to the use of any limiting instruction(s) offered by either defendant. "Jurors are presumed to follow instructions given to them by the Court." *State v. Kidd* 990 S.W.2d 175, 182 (Mo. App. W.D. 1999).

The statutes and rules permitting joint trials are designed to promote judicial economy and efficiency and to avoid multiple trials. *Zafiro v. United States*, 506 U.S. 534

(1993). There has been no showing of serious risk of prejudice so severe as to prevent a fair trial.

IT IS THEREFORE ORDERED that Defendants' Motion to Sever is DENIED.

A jury trial of this matter shall proceed as scheduled.

IT IS SO ORDERED.

April 5, 2012



JOHN M. TORRENCE, CIRCUIT JUDGE

Copies to all counsel sent by email
on this 5th day of April, 2012:

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