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By Paul Daquilante • Staff Writer • January 28, 2016

Defense says dental practice charges bogus

Defense Counsel Krista Shipsey of Portland said the Yamhill County District Attorney's Office should never have brought charges against two employees of a local dental practice, because they never did anything wrong in the first place.

Linda Hixson and Sherry McMullen, both longtime employees of McMinnville dentist Dr. James Nelson, were each charged with four counts of first-degree theft, a Class C felony, for allegedly misappropriating money from the practice. The District Attorney's Office eventually dropped the charges, but not until the eve of trial, putting the two through a months-long ordeal that Shipsey and her co-counsel, Jason Thompson of Salem, consider unwarranted and unnecessary.

District Attorney Brad Berry defended his office's handling of the case, which was prosecuted by Deputy District Attorney Kate Lynch.

He said the case was not dismissed because it lacked merit. He said it was dismissed because Circuit Judge Cynthia Easterday, a former prosecutor herself, tipped the balance when she ruled testimony on alleged "prior bad acts" prejudicial and thus inadmissible.

"This is an unusual end result," Berry conceded.

But he defended the grand jury indictment that set the case in motion in the first place. Based on "the evidence we ended up with, and the information we provided," he said, "we believed it was the right course to take."

Shipsey, who represented McMullen, disputed that statement. She said it was not simply a matter of the prosecution's inability to win a conviction, as Berry suggested.

"Both Ms. Hixson and Ms. McMullen did not commit any crime," she said in a written statement provided to the News-Register on her client's behalf. "It's a shame that Ms. Hixson and Ms. McMullen were subjected to this whole ordeal. This case should have never been charged."

The evidence excluded involved unemployment benefits that they were ordered to repay by the state.

The prosecution felt that showed an inclination to use their positions of office trust to seek improper gains. The defense said the two women were simply following longstanding office practice with explicit approval; they had no idea what they were doing violated state rules; and they made prompt repayment in full. And in the end, Easterday ruled it inadmissible.

Thompson also provided a detailed written statement to the News-Register. In it, he said:

"There was one motion that the state filed attempting to introduce other acts by Ms. McMullen that the state wanted to introduce before the jury to try and persuade the jury that Ms. McMullen is the kind of person who would steal." But he said, referring to Nelson, "Evidence would have been presented at trial that this was his idea."

Thompson said the case went off the tracks during the grand jury process.

In Oregon, the prosecution alone determines what information is provided to the grand jury, and by whom, he said. The defense has no opportunity to present any evidence, or even to be present to represent clients' interests.

“The information the state presented to the grand jury was far from unbiased or from an independent source,” Thompson said. He said the defense was in possession of ample evidence to disprove the allegations, but was not allowed to bring it to bear at the outset, when it might have served to preclude unwarranted prosecution.

The theory the defense would have presented at trial, Thompson said, was that Hixson and McMullen were entitled to everything they received from the dental practice.

He said every benefit they obtained was explicitly authorized by Nelson. He said testimony at trial would have shown he discussed details of those benefits both with the two women and with his accountant on multiple occasions.

McMullen worked for the practice for more than 24 years, Thompson noted. And he told the News-Register, “Dr. Nelson, in 2010, stated that, ‘In over 26 years of practice, I have not had a better, more well-rounded chairside assistant.’”

Shipsey said Hixson enjoyed an equal level of tenure and trust.

“Ms. Hixson was given a great deal of authority to manage the practice,” Shipsey said. “After being there for more than two decades, she earned the trust of Dr. Nelson.

“She was a loyal hard working employee. When employees had questions for Dr. Nelson, he often referred them to Ms. Hixson, saying she was the one in charge.”

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