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Kansas City abuse case decision expected to center on 'mandated reporter' statute

Joshua J. McElwee | Apr. 3, 2012

Bishop Robert W. Finn of Kansas City-St. Joseph, Mo., is seen concelebrating Mass March 12 with other bishops from Iowa, Nebraska, Kansas and Missouri at the tomb of Blessed John Paul II in St. Peter's Basilica during "ad limina" visits to the Vatican. (CNS photo /Paul Haring)

KANSAS CITY, Mo. -- The first criminal case against a Catholic bishop in the decades-long clergy sex abuse scandal is expected to take a pivotal turn this week, as a county judge decides whether Bishop Robert Finn, head of the Kansas City-St. Joseph diocese, can be tried on charges of failing to report suspected child abuse.

Central to the decision will be the question of whether Finn can be considered a "mandated reporter" in the case.

Prosecutors say Finn, who has publicly apologized for his handling of a diocesan priest prosecutors say the bishop knew had created child pornography, was criminally liable in not reporting the priest to police.

In motions filed by his lawyers in February, Finn denied guilt of the charges and claimed that because others in the diocese were primarily tasked with reporting abuse, he was absolved of primary responsibility in the case and should not be considered a mandated reporter.

The decision expected this week is to come from Jackson County, Mo., Circuit Court Judge John Torrence, who heard arguments on the motions March 27. After two hours of arguments, the judge said he?d need at least a week to decide on the issues at hand, as they involve ?an unusual set of circumstances.?

The charge against Finn centers on the case of Fr. Shawn Ratigan, a diocesan priest who was arrested last May on charges of possession of child pornography. While the bishop has acknowledged that he was aware of questionable images on the priest?s laptop as early as December 2010, Ratigan was not reported to police by the diocese until May 2011.

In the first indictment of a sitting Catholic bishop related to the sex abuse crisis, prosecutors last October alleged that delay in notification amounted to failure to report suspected child abuse. In separate indictments, they charged both Finn and the Kansas City-St. Joseph diocese as a whole with criminal misdemeanors.

Last week, the judge heard arguments from Finn?s lawyers centering on four motions they filed in February, three of which asked the judge to toss out the case against the bishop altogether.

Those three assert that the charges against the bishop were unconstitutionally vague and that prosecutors had improperly given the grand jury that indicted the bishop ?erroneous legal instruction? regarding Missouri statutes on the responsibility of mandated reporters.

Saying that others at the diocese were primarily responsible for reporting Ratigan to police, the latter motion alleges that, while Finn may normally be considered a mandated reporter, ?his legal duty to report is extinguished when the religious organization designates an agent or agents to report in an official capacity on behalf of the organization.?

The fourth motion -- which asks that if the case against Finn goes forward, the bishop be tried separately from the diocese -- fleshes out lawyers? arguments that Finn cannot be considered a mandated reporter in the case.

That motion seems to direct blame for the diocese?s lack of response squarely on Msgr. Robert Murphy, the diocesan vicar general, who received the first reports of concerns about Ratigan?s behavior.

According to a 138-page report on the case conducted for the diocese by former U.S. attorney Todd Graves, Murphy was first made aware of concerns about Ratigan in May 2010.

That?s when Julie Hess, the principal at the elementary school attached to the priest?s parish, hand-delivered a letter to Murphy warning that parents and staff members there were concerned about "significant red flags" about Ratigan's behavior and were worried he "fit the profile of a child predator."

Asserting multiple times that Murphy had not provided Finn with anything more than brief, insubstantial updates regarding Ratigan in the year before the priest?s arrest, the motion requesting separate trials alleges that the diocesan sex abuse response team ?became solely responsible? for making a report to police about the priest.

Citing Murphy by name, who served as a member of the diocese?s clergy sexual abuse response team until he was removed from that position last summer, the motion alleges Finn?s obligations to report the suspected abuse ?extinguished? when Murphy became aware of it. Murphy remains the vicar general.

That motion also alleges that the judge should try the bishop and diocese separately as any jury would necessarily be subject to ?substantial prejudice? toward the bishop once they hear the evidence presented by prosecutors against the diocese.

?Based on the anticipated gross disparity in the nature and quantity of evidence against the diocese as compared to Bishop Finn, the jury cannot be expected to fairly compartmentalize the evidence as to each defendant in order to make an independent determination of guilt as to Bishop Finn and the Diocese,? the motion reads.

Moreover, the motion argues that by trying the cases together, the judge will essentially pit the diocese and the bishop against one another at trial, creating ?the potential for a mutually antagonistic situation between Bishop Finn and the Diocese.?

Should a jury hearing a joint trial for the bishop and diocese agree that the bishop was not responsible for reporting the suspected abuse to the police, the motion alleges, it would almost necessarily have to find that the diocese was guilty in the case.

?The jury?s acceptance of Bishop Finn?s defense that he had no duty to report because he was not the Diocese?s designated reporter would tend to preclude an acquittal of the diocese,? the motion reads.

In the two motions asking Torrence to toss out the case on constitutional grounds, Finn?s lawyers argue that the charges against the bishop are unconstitutional ?on their face? and as applied in the case.

The first motion states that Missouri law requiring mandated reporters to ?immediately report? suspected abuse doesn?t specify exactly how quickly people are expected to report suspicions of abuse and gives the prosecutor ?unbridled discretion to determine whether a report of suspected child abuse was made quickly enough to satisfy the mandate.?

The second of the motions claiming the charges are unconstitutional makes many of the same arguments as the first, also calling into question the use of the words ?immediately report? in the charges, saying they ?fail ... to identify the date on which the report allegedly should have been made.?

Among other arguments, the motion arguing that the charges against Finn are unconstitutional ?on their face? states that Missouri law requiring mandated reporters to act when ?a child may be subjected to abuse? is ?overbroad? and doesn?t give those reporters an adequate standard ?to determine when a report is required.?

Specifically in this case, the motion alleges, the Missouri statute does not cover the fact that, because Ratigan is charged with possession of child pornography and not sex abuse, there may not be testimony ?typically indicative? of sex abuse trials -- namely, that of victims ?in different stages of healing? or with ?unexplained injuries.?

?The focus in this case will be on the perceptions centered to Ratigan?s interaction with children,? the motion alleges. ?The focus will be on Ratigan as a possible ?abuser,? and not focused on a particular child as a victim of abuse.?

According to a report in *The Kansas City Star* [1], the allegation that there are no victims who can testify against Ratigan?s abuse of them was contradicted at last week?s hearing by Assistant Jackson County Prosecutor Tricia Lacey.

?There are victims in this case,? the *Star* reported Lacey as saying during the hearing. ?We have parents of children who were photographed who will testify.?

Finn?s lawyers? motion alleging the charges are unconstitutional as applied in the case also calls into question whether a supposed lack of victims of Ratigan?s behavior would ?lead ... to a conclusion that the statute is vague and confusing as applied.?

?This case does not involve any physical evidence of possible abuse,? reads that motion. ?In fact, there is no specifically identified ?victim.??

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