

COURT RULES THAT REPORTING SEXUAL ASSAULT ALLEGATION TO POLICE ALONE CANNOT SUPPORT A DEFAMATION CLAIM

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A New York Appeals Court has ruled that the victim of an alleged sexual assault cannot be sued for statements she made to the police investigating her claim. In *Sagaille v. Carrega*, 2021 NY Slip Op 01369 (1st Dep’t March 9, 2021), the Court weighed whether the person reporting the alleged assault should be covered by a “qualified privilege”—making her immune from a civil defamation claim—for her statements to authorities, given the damaging effect that such allegations can have, if untrue, on the alleged perpetrator.

In the defamation lawsuit, the Plaintiff was a former Assistant District Attorney with the Brooklyn District Attorney’s Office who prosecuted sex crimes. He met the Defendant, a reporter for the Daily News, at a mutual friend’s baby shower. The alleged sexual assault occurred when they were driving home from the shower. The day after the alleged assault, the defamation-Defendant reported the event to the police.

Just over a month before the criminal trial was scheduled to start—and exactly one year after the initial police report—the defamation-Plaintiff sued, alleging claims of libel per se, defamation, injurious falsehood, and prima facie tort, claiming that the defamation-Defendant lied to police about the sexual assault. The defamation-Plaintiff alleged that the defendant was motivated by actual malice because she sought to further “her career by creating a false sex crimes story against an assistant district attorney whose job it was to prosecute sex crimes.” At the ensuing criminal trial, a mistrial was declared on the fifth day of deliberations due to a hung jury. The case was ultimately disposed of by way of an adjournment in contemplation of dismissal.

In the defamation lawsuit, the trial court dismissed many of the claims against the defamation-Defendant (*i.e.*, the reporter) but the libel per se and defamation claims remained. The trial court held that, while police reports are subject to a qualified privilege, the defamation-Plaintiff had overcome that privilege by his pleadings because actual malice could be inferred from the accusations of “reprehensible criminal conduct.”

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The Appeals Court reversed the trial court's decision to allow the defamation and libel per se claims to proceed, and dismissed the case in its entirety. The Court began its analysis with a discussion of the statistics presented by the amicus briefs. Noting the high incidence of rape against women (1 in 5) and men (1 in 14) and other forms of sexual assault (2 in 5 women and 1 in 4 men), the Court remarked that it was cognizant of the vast underreporting of such events to authorities and the primary reason for that underreporting—fear of retaliation. The Court was concerned that permitting a defamation claim by the alleged perpetrator to proceed based solely on statements made to the police, could be a form a retaliation against the alleged victim; perpetuating a culture of silent suffering by sexual assault victims.

The court held that “[t]he doctrine of qualified immunity shields individuals who, like defendant, act ‘in the discharge of some public or private duty, legal or moral, or in the conduct of [her] own affairs, in a matter where h[er] interest is concerned.’” To overcome the privilege, the defamation-Plaintiff had to allege that the statements were made with actual malice, which is defined as a “defendant ‘act[ing] out of personal spite or ill will, with reckless disregard for the statement’s truth or falsity, or with a high degree of belief that [her] statements were probably false.’”

The court rejected the trial court’s holding that actual malice could be presumed “from the ‘reprehensible’ nature of the alleged false accusation of sexual assault.” The court held that such a sweeping proposition “would effectively extinguish any burden on a defamation plaintiff asserting claims predicated on reports of sexual assault to law enforcement. . . .” Rather, evaluating the allegations in the complaint, the court found that the defamation-Defendant’s statements were a “straightforward rendition of the incident,” and there was nothing excessive that would support an inference of actual malice. The court dismissed the defamation-Plaintiff’s allegations that the Defendant was simply trying to further her career because there was no factual support for the conclusory allegation and, if taken as true, would imply she was motivated, at least in part, by economic interests, not spite or ill will toward the Plaintiff.

Finally, the court dismissed the defamation-Plaintiff’s reliance on subsequent reporting in the Daily News on the events, noting that after-the-fact events could not support an allegation of actual malice at the time of the alleged statements at issue.

Having failed to plead facts sufficient to overcome the qualified privilege, the Appeals Court dismissed the remaining claims against the defamation-Defendant.

Takeaway: New York courts are very protective of alleged victims’ rights to report crimes to the authorities, fearful of discouraging the reporting of legitimate criminal conduct. To overcome the protection afforded those reports, based on this recent decision in *Sagaille*, a defamation Plaintiff must be prepared to allege specific facts that existed at the time the subject report was made that would permit an inference of actual malice on the part of the alleged victim/defamation defendant. An example (albeit an extreme one) would occur if a defamation plaintiff had tried to extort the defamation defendant prior to filing the police report—*i.e.* pay me or I will falsely accuse you of a highly embarrassing/damaging crime.

For any question you have regarding whether this recent decision impacts any of your organization’s activities, please contact [Ryan Cummings](#) (716.848.1665) or [Aaron Saykin](#) (716.848.1345).