



Statement from Middlesex District Attorney Marian Ryan

Long, MaryBeth (DAA) [REDACTED]

Fri, Jul 26, 2013 at 2:48 PM

Hi Susan,

Here is the statement we sent out in May.

thanks,

MaryBeth



THE COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX DISTRICT ATTORNEY
15 COMMONWEALTH AVE WOBURN, MA 01801

Marian T. Ryan
District Attorney

Tel: 781-897-8325

Statement from Middlesex District Attorney Marian Ryan:

The Middlesex District Attorney's Office continues its open and active investigation into the triple homicide that occurred in Waltham in 2011, working closely with the Massachusetts State Police, Waltham Police and the FBI.

While we can not discuss details pertaining to the investigation, including evidence, suspects or witnesses, this office and its law enforcement partners have conducted a thorough, far-reaching investigation beginning in 2011 when this horrific crime occurred. This investigation has not concluded and is by no means closed.

As with any open investigation, we can not comment on any details pertaining to that investigation, under the Massachusetts Rules of Professional Conduct for Prosecutors.

Specifically, the rules bar the District Attorney from disclosing any information on a pending investigation, including making any "extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." (*The Massachusetts Rules of Professional Conduct, Rule 3.6, "Trial Publicity"*)

Further Rule 3.6 specifically states: "There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

- (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
- (2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
- (3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
- (5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial, or;
- (6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.
- (7) Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations of prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.
- (8) Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others."

We will not be issuing any further comment at this time.

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