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June 2, 2023

The Honorable David E. Johnson
 The Honorable Steven B. Novey
 Judge, Chesterfield County Circuit Court
 9500 Courthouse Road, 2nd Floor
 Chesterfield, VA 23832-0125

In re: John David Blanchard

Dear Judge Johnson and Judge Novey:

Please allow this letter to serve as the formal notice of my decision in the case involving potential Defendant John Blanchard with respect to the reinstatement of any potential criminal charges in Chesterfield County.

I. THE PROCEDURAL CIRCUMSTANCES

Defendant was originally arrested on felony warrants on October 29, 2021. He was admitted to an unsecured bond that same day. He subsequently retained counsel, and counsel and the Office of the Commonwealth's Attorney for Chesterfield (OCA) engaged in very lengthy "discussions" via email. I want to thank OCA for providing those emails to me so that I could understand what happened in the district court.

The eventual outcome in the district court was that orders of nolle prosequi were entered on the motion of OCA on October 11, 2022. There was no finding of evidence sufficient.

Although my job is not to sit as an appellate body to review what happened in the

district court, nothing strikes me as unusual about how things played out in the district court. Indeed, I enter into dispositions similar to this one from time to time in Brunswick, though we have had very limited prostitution-type prosecutions, perhaps because of the small populations in southern Virginia. Of course, the facts of each case are different.

II. MY TASK

What led to the possibility of appointing a special prosecutor was the reporting of the discovery of “new evidence.” By verbal pronouncement (and subsequent written order) on February 3, 2023, Judge David Johnson appointed me special prosecutor to decide whether to reinstitute criminal charges against Defendant Blanchard. I interpreted my task as not to review what has happened so far but more to decide whether - - in light of the “new evidence” - - justice would suggest that the prosecution should be reinitiated.

III. THE NEW EVIDENCE

I have reviewed the new evidence. I will not discuss in any detail what that new evidence is. I have discussed this evidence in person with members of the Chesterfield County Police Department (CCPD). Now is a good time to mention that CCPD has done an excellent job on this case from day one from everything I can see. And since my involvement with the case, every member of CCPD has treated me and my staff with nothing but consummate professionalism. Therefore, I also want to thank CCPD for its handling of this case. Having met with the CCPD officers more than once, I learned a lot from this team of dedicated specialists. We do not have a “vice squad” or “special victims unit” in Brunswick and have not had any type of “prostitution operation” in Brunswick, so there was a learning curve for my assistants and me.

Again without going into detail about what the new evidence is, the new evidence - - in my respectful opinion - - does not affect the prosecution of what happened on that [offense] date in October of 2021. The evidence, if admissible, might be found to bolster the government’s case against Defendant. It was impressive that CCPD was able to uncover that new evidence.

IV. THE FINAL DECISION

A. PROBABLE CAUSE

The first hurdle in any criminal case is whether probable cause exists to charge. Since the arresting police officers found probable cause to arrest Defendant, and since the magistrate subsequently found probable cause to issue the warrants against Defendant, it does

not seem like a great quantum leap to conclude that probable cause still exists to reinstate the charges against Defendant. Further, it does not appear that the “new evidence” would have made any difference in the decision of what/how to charge.

B. BEYOND A REASONABLE DOUBT PROOF

Prosecutors are trained to look for proof beyond a reasonable doubt. Because of what will be discussed below, we need not really reach the academic answer as to whether proof beyond a reasonable doubt can be presented to a trier of fact that Defendant committed the alleged crimes.

C. THE GOVERNMENT DOESN'T GET A “DO-OVER”

While a nolle prosequi does legally allow the government to reinstitute charges, such reinitiating of charges (in this case) would take the form of a felony indictment. Since felony indictments cannot be served by summons, such indictment would result in Defendant being arrested again and deprived of his liberty for some amount of time. Defendant has already been arrested once on the facts of this case and deprived of his liberty for at least some minimal time. I have always taken the position that even if the government may *legally* deprive a man of his liberty for a second time for the *exact same reasons as the first time*, there must be a compelling reason to do so. For example, the government may have sought nolle prosequi as part of an agreement to plead guilty to another crime. If the defendant then fails to plead guilty to that other crime, the government could reinstate charges. Another example would be if a witness has disappeared but then reappears at a later time. The government could then bring the charges back since the witness has resurfaced.

In this case, the reason being considered to bring the charges back is the discovery of new evidence. As noted earlier, while there is “new evidence,” in my respectful opinion, that “new evidence,” to the extent it is even admissible, does not change the overall, final analysis in this case.

By overall, final analysis, I mean we are not simply looking at whether evidence exists to take Defendant to trial. We presume, *arguendo*, that the new evidence is admissible and bolsters the government’s case for guilt. At the time of the email plea discussions, the government already had a case against Defendant. The CCPD built a sound case. The government - - well within the bounds of its discretion - - essentially took the matter under advisement and allowed Defendant to submit to counseling (indeed to specialized counseling) from more than one counselor while the case was continued on the docket. Defense counsel provided multiple reports to the Commonwealth demonstrating that Defendant was apparently perfectly compliant with all counseling with all counselors as was

requested of him. [And it further goes without saying that he was of general good behavior (i.e. he incurred no new law violations known to OCA)].

Presumably in exchange for Defendant keeping up his half of the agreement/bargain/deal, the government sought and received nolle prosequi on the charges. Again this arrangement is not uncommon in criminal cases in Brunswick County, at least in cases that we feel such an agreement would properly vindicate the people's interest.

Depriving a person of his or her liberty is something that the representative of the government (i.e. the prosecutor) should not ever take lightly. In my twenty-five years of prosecution, I can count on one hand the number of cases for which nolle prosequi was entered which I reinstated [and therefore perhaps deprived that defendant of his/her liberty for a second time]. One example of another reason for reinstating the charge was the defendant failed to honor his half of some type of plea agreement. No such allegation is made in the present Chesterfield case. If anything, in this case, Defendant *did* honor his half of the unwritten plea agreement. In the vernacular of the people, it is often said that "the government doesn't get a do-over [in a criminal prosecution]."

D. WHAT RECOURSE IS LEFT ?

In this case, the government got its bite at the apple. The Chesterfield OCA, an office elected by the people of Chesterfield, resolved the case in the district court how that office saw fit. As I mentioned earlier, although I am not tasked with reviewing that resolution, I saw nothing that raised my eyebrows in how this case was handled.

So this conclusion begs the question of what recourse does an aggrieved citizen have if the government doesn't get a second bite at the prosecution apple? The answer is in the political arena through democratic processes. If enough people are not satisfied with a particular outcome, there are political remedies to change members of the executive, legislative and even judicial branches. Indeed, in every decision I make, for example, on plea agreements in Brunswick, I have to consider whether that decision can be defended as fairly representing justice especially if it might not be the politically popular decision with the voters. Such is the nature of elected prosecutors.

Thus in conclusion, I will not be reinstating criminal charges against Defendant John Blanchard for his conduct on October 21, 2021. I note that two of my deputy Assistant prosecutors were with me every step of this proceeding and independently formed their own opinions on the case. They independently reached the same conclusion that I did, though ultimately the final decision rested with me as the Commonwealth's Attorney of Brunswick County.

Please let me know if I can provide any further services to the people of Chesterfield County.

Sincerely,



Bill Blaine
Commonwealth's Attorney for Brunswick County