

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

MARY L. SWAIN
CLERK OF COURTS

FEB 24 2020

STATE OF OHIO

Plaintiff

vs.

JEFFERY W. COUCH

Defendant

CASE NO. CR2019-03-0352 FILED in Common Pleas Court
BUTLER COUNTY, OHIO

OSTER, M.

PLAINTIFF'S SENTENCING
MEMORANDUM

This case has received wide attention in both the press and in social media so there is an opportunity here for public awareness of how this case has been processed. It must be held firmly in mind that the defendant is before the Court for sentencing because of his plea and acknowledgement of guilt to felony aggravated assault. His acceptance of responsibility to be held accountable is, in this prosecutor's opinion, a key factor in determining a disposition. It is worth repeating here, as I often say, that the road to redemption begins with a good act of contrition. His plea of guilty was made with the advice and counsel of a highly skilled defense trial lawyer and with full knowledge that his felony conviction is not subject to expungement. I have been made well aware of the potential financial hardship his conviction may have on his family and his many employees in his successful local business. He and his attorney are aware that those considerations cannot play any role in prosecutorial discretion considering my oath of office not to consider "persons or property" in plea negotiations.

From the beginning of this case, I was aware from experience, as all prosecutors are, that felony assaults involving family members carry special challenges. This case is no exception and follows an expected course from a willing victim to one ultimately with deep regret for the consequences to the victim and the one charged with a serious crime. This is so because unlike assaults between strangers or non-family members, there exists love, social and financial consequences that uniquely affect a victim. These factors usually lead to efforts to rewrite the history of an event in an effort to change the outcome of a just and lawful result.

In this case, the proof of the location of the assault matched physical, testimonial and photographic evidence beyond any doubt. The victim was able to run approximately a half mile on a cold winter night to seek help from friends, and stated the facts of the assault along with blood visibly pouring from a scalp wound linked to the location of the assault. Ordinarily these, and other factors including the expert opinion of the victim's emergency room doctor that serious physical harm had occurred, would suffice for an unclouded trial. In this case, the waters did become muddied over time.

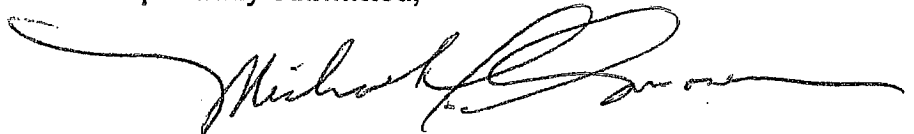
The victim did testify at Grand Jury, but there she had no memory of the actual events of the assault. That is, while recalling an argument and minor assaultive behavior between her and her defendant husband, she claimed no recollection of the final felony assault. This testimony was then ordered released by the Court to the defendant at my request, and is permitted to be

disclosed in this proceeding. Under this circumstance, I informed the victim that I would not call her as a witness for the State and she was free, of course, to testify for the defense, if that was her choice. As I said on day one of the public report of this case, just as I do not need a victim to prove a murder, I always expect that I will not need the testimony of a family member to prove a felony assault case. For this, it was not unexpected that the victim would now criticize my decision in her written impact statement not to speak with her shortly before the trial was to commence and now claims a better memory of events at variance with her Grand Jury testimony and the physical evidence.

In spite of the victim's memory loss at Grand Jury, she was always attended to by my victim advocate every step of the way with the court procedures that would take place. She lobbied heavily through her own private attorney for a lesser misdemeanor charge and again my position remains unchanged. Mutual alcohol use was also acknowledged, but is not a defense. Nevertheless, it is important to note that there has apparently been a successful reunification between the victim and the defendant. He has successfully completed counseling for alcohol abuse and anger management and continues in his business pursuits unabated, at least for now, that permits me to agree with probation as a result under the totality of the circumstances to date.

One final observation is in order especially in view of recent events in Washington, D.C. concerning the power of the President to pardon behavior not subject to expungement. That power is also given to the Ohio Governor for state charges such as this. While this case is not subject to expungement, proof of good deeds and an exemplary life going forward may be considered by the Ohio Governor for a pardon to relieve the burden of a felony conviction. With the defendant's unique ability to do good work to benefit society and remain free from similar conduct, I leave it to him to prove himself as an appropriate candidate for such consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael T. Gmoser", with a long, sweeping underline that extends to the left and right.

MICHAEL T. GMOSER (0002132)
BUTLER COUNTY PROSECUTING ATTORNEY
315 High Street, 11th Floor
Hamilton, Ohio 45011
Telephone: (513) 887-3474