

**In The Court of Common Pleas of the
County of York**

Commonwealth of Pennsylvania : CP-67-CR-0007632-2018
 :
 vs. :
 :
 :
 :
 Stuart Harrison :

The Commonwealth through the District Attorney makes application to Nolle Prosequi the charge(s) of Simple Assault, 18 Pa. C.S. 2701(a)(2) for the following reason(s):

See attached memo.

Date BY N/A
Assistant District Attorney

I agree to the request set forth above.

5/19/20
Date BY [Signature]
District Attorney

ORDER

AND NOW, TO WIT, this ___ day of _____ 20___, it is hereby ordered and directed that charges against the above-captioned defendant are hereby dismissed.

BY THE COURT,

Judge

Distribution: Original – Clerk of Courts
Copy – Defendant
Copy – District Attorney
Copy – Counsel for the Defendant
Copy – York County Prison Records

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	:	
vs.	:	
	:	
	:	
Stuart Harrison	:	

MEMORANDUM IN SUPPORT OF NOLLE PROSEQUI

AND NOW, to wit, this 19th day of May, 2020, comes the Commonwealth of Pennsylvania, by and through District Attorney David W. Sunday Jr., and files this Memorandum of Law in Support of the Commonwealth’s Motion for Nolle Prosequi:

In the above-captioned matter, Stuart Harrison was charged with one count of Simple Assault, a Misdemeanor of the 2nd degree. For the reasons discussed herein, the Commonwealth is requesting a nolle prosequi of this charge as being in the interests of justice.

Initially, the Commonwealth notes that it is making this recommendation pursuant to its ethical obligations in seeking justice. The National District Attorney’s Association “National Prosecution Standards – Third Edition” appropriately states that “[a] prosecutor should zealously protect the rights of individuals, but without representing an individual as a client. A prosecutor should put the rights and interests of society in a paramount position in exercising prosecutorial discretion in individual cases.”

Additionally, “[a] prosecutor is the only one in a criminal action who is responsible for the presentation of the truth. Justice is not complete without the truth always being the primary goal in all criminal proceedings. A prosecutor is not a mere advocate and unlike other lawyers, a

prosecutor does not represent individuals or entities, but society as a whole. In that capacity, a prosecutor must exercise independent judgment in reaching decisions while taking into account the interest of victims, witnesses, law enforcement officers, suspects, defendants and those members of society who have no direct interest in a particular case, but who are nonetheless affected by its outcome.” *Id.*

The Commonwealth finds the general standards for sentencing considerations found in 42 Pa.C.S. § 9721 to be equally instructive in determining whether the interests of justice warrant proceeding with a prosecution. Specifically, the Commonwealth analyzed whether continuing a prosecution and seeking a conviction “is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant.” 42 Pa.C.S. § 9721(b). We will first discuss the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant, followed by a discussion regarding the impact of the crime on the life of the victim and on the community.

Initially, the Commonwealth notes that Defendant, Stuart Harrison, was fifty-six years of age on the date of this incident. He has no prior criminal convictions and a prior record score of zero. Additionally, Mr. Harrison served as a police officer for approximately 16 years; starting with the York City Police Department and serving with the now-defunct Southwest Regional Police Department from January of 2003 until he was suspended in June of 2018 pending the outcome of this matter.

As noted, Mr. Harrison was charged with one count of simple assault. Under 18 Pa.C.S. § 2701(a)(2), simple assault requires that the Commonwealth prove the defendant negligently caused bodily injury to another with a deadly weapon. 18 Pa.C.S. § 302(b)(4) defines criminal negligence as follows: “A person acts negligently with respect to a material element of an offense when he

should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation." Criminal negligence is the lowest level of culpability in the Crimes Code.

Simple assault is graded as a misdemeanor of the second degree. Given Mr. Harrison having a prior record score of zero, the sentencing guideline range for this count of simple assault is RS-1. Additionally, a deadly weapon enhancement is not applicable because the use of a deadly weapon is an element of the offense.

Simple assault is a crime of violence found in Chapter 27 regarding Assault within Title 18. The victim in this case, Ryan Smith, suffered serious bodily injury as a result of being shot by Mr. Harrison. Any personal injury crime clearly is serious and requires thorough review and care within the criminal justice system. Within the scope of assault crimes resulting in personal injury, however, simple assault is a lesser offense as a second degree misdemeanor solely requiring a *mens rea* of criminal negligence.

Next, concerning the protection of the public, there is no evidence to support any assertion that Mr. Harrison is a danger to the public. Prior to this incident, Mr. Harrison was a highly regarded member of law enforcement. Prior to being an exemplary public servant for most of his adult life, Mr. Harrison served in the United States Marine Corps. Nothing throughout his career or personal life gives rise to the slightest concern that Mr. Harrison presents a future danger requiring an ongoing prosecution to protect the public.

In this same vein, Mr. Harrison's rehabilitative needs are minimal at best. As with the protection of the public, nothing in Mr. Harrison's professional or personal history demonstrates

that he has ongoing needs for counseling or supervision requiring a criminal conviction and sentence. In fact, given the steps that Mr. Harrison took to address his actions that led to his charges post-arrest, Mr. Harrison would be a strong candidate to receive a sentence of guilt with no further penalty should he receive a conviction based upon him being such a low risk to recidivate.

As noted, Mr. Harrison took great steps to prove to the Commonwealth that he was such a low risk to reoffend. Throughout the investigation and prosecution, Mr. Harrison expressed a tremendous amount of remorse for injuring Ryan Smith. Mr. Harrison, through his counsel and personally, expressed that he did not want protracted litigation. Instead, Mr. Harrison and the Commonwealth agreed that proactive positive engagement with the community during the prosecution would be the appropriate course of action. Mr. Harrison agreed to attend police academy classes within this region and provide educational presentations to cadets regarding appropriate interactions while on duty with all individuals, especially those with mental health issues. Mr. Harrison specifically spoke to the cadets about his experiences and this tragic shooting of Mr. Smith, instructing them on how to prevent this from occurring to them while on a police call. Mr. Harrison conducted two such trainings to date, both of which received high praise.

Mr. Harrison's conduct and measures taken post-arrest establish that he highly appreciates the seriousness of this offense and his great degree of remorse for injuring Mr. Smith. This further reaffirms that further prosecution of Mr. Harrison is unnecessary at this time to protect the public or to further any rehabilitation of Mr. Harrison.

Finally, and of great importance, we consider the impact of this crime on the victim and society. The impact of this crime on the victim, Ryan Smith, is self-evident. Mr. Smith was shot in the leg and suffered serious bodily injury that required emergency medical attention.

A second victim for our consideration is Mr. Smith's mother, Christine Smith. Ms. Smith was within feet of Mr. Harrison and her son at the time of the shooting. Ms. Smith also acted as her adult son's caretaker and power of attorney due to Mr. Smith's mental health issues. The serious impact of this crime upon Ms. Smith is equally as self-evident. The Commonwealth greatly appreciates and shows great concern for the unimaginable trauma suffered by Ms. Smith in being present at this shooting.

The Commonwealth did meet and communicate with Ms. Smith on multiple occasions. These included separate in-person meetings with me accompanied by our Victim/Witness and County Detective representatives, as well as by our First Assistant District Attorney accompanied by a Victim/Witness Coordinator. At each of these meetings, as well as in other communications to this office, Ms. Smith stressed two matters as critical outcomes for this case: (1) Mr. Harrison no longer carry a firearm in service as a police officer; and (2) this case serve as an educational example for law enforcement in engaging with those presenting mental health challenges so that what happened to her son did not happen to anyone else.

Both outcomes desired by Ms. Smith did occur. First, Mr. Harrison is no longer working as a police officer. In fact, Mr. Harrison's place of employment, the Southwest Regional Police Department, no longer exists in part due to this incident. Second, as noted previously, Mr. Harrison conducted the aforementioned trainings for police cadets so that what happened to Mr. Smith would not happen to anyone else. The Commonwealth believes that these primary outcomes sought by Mrs. Smith are accomplished.

The Commonwealth does note that Mrs. Smith wants the Commonwealth to continue with the prosecution and obtain a conviction against Mr. Harrison. We certainly understand and respect her desire for further punishment. But we conclude that would be the sole purpose behind

obtaining a conviction at this point: punishment for punishment's sake. We conclude that justice requires that this cannot be the sole consideration for continuing a prosecution if all other factors merit discontinuing the case.

And concerning punishment, it is undeniable that Mr. Harrison has, in fact, undergone a lasting punishment, especially for an individual who until this incident led an exemplary life of public service. Perhaps the most important decision made in the criminal justice process is the decision to arrest an individual. Being charged brings forth a set of collateral consequences and public stigma that lasts regardless of whether a conviction occurred. This is why police and prosecutors should only bring forth charges where all burdens of proof can be met and the pursuit of justice requires such action.

Mr. Harrison is a perfect example of this. As we stated, Mr. Harrison is no longer a police officer and his police department no longer exists. Additionally, Mr. Harrison is forever associated with being charged with a criminal offense for shooting Mr. Smith. In this age of the internet and social media, this stigma is easily surfaced through a mere website search. By its very nature, this is compounded by the profound remorse that Mr. Harrison feels and expresses over what happened to Mr. Smith. Quite frankly, these circumstances provide far more of a lasting sanction than anything that a conviction would bring.

The impact of this crime on the victim and society required that Mr. Harrison be charged with and prosecuted for simple assault. As alleged, a police officer in the line of duty caused serious bodily injury by shooting another in a criminally negligent manner. Mr. Smith required medical care for his serious injuries to his leg as a result of Mr. Harrison's conduct. The interests of justice on a societal level and individual victim level required the prosecution of Mr. Harrison.

And the Commonwealth would continue its prosecution through trial if Mr. Harrison lacked remorse or any accountability for what occurred.

But the interests served by continuing the prosecution of Mr. Harrison are outweighed by all of the aforementioned considerations, especially in light of the proactive measures taken by Mr. Harrison post-arrest, the sincere remorse he continued to demonstrate, and the consequences that Mr. Harrison will continue to face even after the case concludes. Moreover, the proactive engagement with police cadets concerning how to interact while on duty with those having mental health issues may have helped prevent incidents like this occurring in the future. The interests of justice sought by this prosecution are now fulfilled and seeking a conviction is no longer required. Accordingly, the Commonwealth respectfully requests that this Honorable Court nolle prosequi the charge of simple assault against Stuart Harrison.