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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
HARBOR JUSTICE CENTER
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DAVID H. YAMASAKI, Clerk of the Court
BY: J. ROSAS, DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE, HARBOR JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

GRANT WILLIAM ROBICHEAUX
CERISSA LAURA RILEY,

Defendants

Case No.: 18HF1291

PEOPLE'S RESPONSE TO COURT'S OPINION DENYING PEOPLE'S MOTION TO DISMISS FOR INSUFFICIENT EVIDENCE AND NOTICE OF INABILITY TO PROCEED WITH PROSECUTION

INTRODUCTION

On February 7, 2020, the People moved this Court to dismiss the charges in this case pursuant to Penal Code Section 1385(a) on the grounds that insufficient evidence exists to prove the charges beyond a reasonable doubt. This Court took the People's motion under submission and requested that the parties and Marsy's Law counsel submit materials in support of their respective positions. On March 18, 2020, the People complied and submitted a 57-page brief along with supporting materials including a PowerPoint presentation, investigative reports, and audio recordings. Both defense and Marsy's Law counsel later submitted their respective briefs. On June 5, 2020, this Court held a hearing and issued a 25-page opinion denying the People's

motion to dismiss. At that hearing, this Court expressed concerns regarding the Orange County District Attorney's Office's continued involvement with this case and requested a response from the OCDA by June 12, 2020. The People hereby submit their response and do not oppose referral of this case to the state Attorney General.

A. THE EVIDENTIARY REVIEW WAS CONDUCTED IN GOOD FAITH AND CALIFORNIA LAW AND ETHICS MANDATED WE SEEK A DISMISSAL

As career prosecutors, reading this Court's June 5, 2020 Opinion was nothing short of devastating. Throughout our involvement in this case, there has been a persistent theme that we have thrown away our ethics, integrity, and reputations by succumbing – either consciously or subconsciously – to pressure from Mr. Spitzer to reach a foreordained conclusion. Or, alternatively, we are painted as pathetic incompetents brought in to do a job for which we have neither the experience nor talent. Whether these assertions are rhetorical advocacy devices to discredit our evidentiary conclusions or whether they are sincerely-held beliefs by those advancing such allegations, we do not know. Regardless, neither of these scenarios is even remotely true. But, we are extremely disappointed that the Court appears, at least in part, to give credence to these utterly baseless allegations.

While we are Mr. Spitzer's employees – as we would be of any elected district attorney in Orange County – we are not Mr. Spitzer's lackeys, yes-men, or sycophants. We have ethical responsibilities independent from any supervisor or elected District Attorney and we take those responsibilities with the utmost seriousness. We care deeply about the rights of victims and we care deeply about ensuring that a defendant's constitutional rights are protected and that the criminal justice process is fair. At times, there may be a conflict in victims' eminently understandable desires to proceed and the constitutional rights of a defendant. In those circumstances, prosecutors are called upon – as they must be – to resolve such conflicts in an objective and ethical manner by analyzing the facts and law *alone* without regard to politics or other external agendas. We have done so here in the utmost good faith. We would therefore request that those who are unfamiliar with our body of prosecutorial work, our deep care for and

work with sexual assault victims, and our skills as trial lawyers refrain from imputing malicious motives to us and unfairly maligning our reputations. And, whatever the Court may think of elected officials' behavior in this case, we would request that this Court recognize – even if it disagrees with our conclusions – that we have endeavored to discharge our prosecutorial responsibilities in accordance with what we understand our legal and ethical obligations to be.

Our review was conducted without interference and without any pre-ordained conclusion. Our motion was based on our sincere – and continuing – belief that the totality of the evidence in this case is insufficient to prove the charges beyond a reasonable doubt. We have repeatedly told Mr. Spitzer that we would refuse an order to prosecute this case as currently charged and we remain steadfast in that refusal. The evidence and our conclusions were peer-reviewed by highly experienced prosecutors before being presented to management. The results of that review were unanimous that the charges could not be proven beyond a reasonable doubt. Upon presentation of the evidence to management – almost all of whom were appointed to management by Mr. Rackauckas, not Mr. Spitzer – there was again a unanimous conclusion that insufficient evidence existed to prove this case beyond a reasonable doubt. No less than ten veteran prosecutors reviewed the presentation of evidence in this case and reached the same conclusion.

Prosecutorial ethics thus mandated us to seek a dismissal of the charges. California State Bar Rule 3.8 states that "a prosecutor must not institute *or continue to prosecute* a charge a prosecutor knows is not", at a minimum, "supported by probable cause." (emphasis added). The American Bar Association Standards go further: "After criminal charges are filed, *a prosecutor should maintain them only if the prosecutor continues to reasonably believe* that probable cause exists and *that admissible evidence will be sufficient to support conviction beyond a reasonable doubt*." (ABA Standard 3-4.3(b))(emphasis added). Notably, the Orange County District Attorney's Office itself trains prosecutors that the initiation and continuation of criminal charges must be based on a belief that all admissible evidence is sufficient to prove the charges beyond a reasonable doubt. Such a standard is in lock-step with the California Supreme Court, which has held that *where a prosecutor believes that the available evidence is sufficient to raise a*

reasonable doubt, it is proper for the district attorney to move for a dismissal. (*People v. Polk* (1964) 61 Cal.2d 217, 229).

We certainly accept that this Court may disagree with our conclusions and we accept the Court's denial of the People's motion to dismiss. We are not asking for a reconsideration and do not wish to re-litigate the matter. We do ask, however, that this Court recognize that, despite its denial of our motion, we, as career prosecutors and officers of the court, acted in good faith and based on what we believe our ethical responsibilities entail. To assume otherwise without any actual evidence to the contrary and accuse us of seeking a "back-door dismissal" when we have been nothing but candid with this Court, unfairly maligns our reputations and personal character with a judicial imprimatur that is exceedingly difficult, if not impossible, to fully erase.

B. THE COURT'S OPINION MISSTATES KEY FACTS AND MISCONSTRUES THE BASIS FOR THE PEOPLE'S MOTION

Several portions of the Court's opinion misstate key facts and misconstrues the basis for the People's motion. While not a comprehensive list, the People wish to correct several critical misstatements in the Court's opinion.

1. In denying the People's motion, this Court stated that "It must be stressed that this Court is not weighing or evaluating the strength or weakness of anticipated evidence" (Op. at 15) and chided the prosecution for its "victim-specific' concerns and for conducting an "analysis to paralysis' assessment." (Op. at 23). Yet conducting such a thorough analysis is *exactly* what we as prosecutors are required to do and our motion was specifically based on the weakness of the evidence supporting the charges. Before we even file charges, we must be convinced that all admissible evidence – including potential impeachment and available defenses – supports a conviction. And, where multiple victims exist, it is incumbent on us to analyze the specific evidence relating to each and every victim both on her own as well as in combination. To assert that we are "focus[ing] on the minor, while overlooking the major" is inapt – it is our prosecutorial duty to focus on all the evidence and not wish away severe

deficiencies. Furthermore, as stated in our motion to dismiss, we have looked at the "major", which reveals a pattern apart from the charged victims of contacting and engaging in sex with hundreds of consenting partners. This pattern is borne out in the vast amount of digital data we reviewed and that, as a practical matter, is too voluminous for this Court to review. While not conclusive on its own, such a "major" pattern must be taken into account when evaluating the strength of the evidence in this case – particularly with regard to the defendants' state of mind;

2. The Court states that "The prosecution is asking that this case be dismissed based upon victim credibility concerns when the alleged victims have never been given the opportunity to testify." (Op. at 15). This assertion is incorrect. We have taken the victims' statements to law enforcement at face value and, for the most part, evaluated them as the truth. We have never said the victims were untruthful in their statements. While credibility and impeachment must always be part of a prosecutorial analysis it was never our primary concern. Our principal concern was whether the **complete** statements the victims actually made to investigators – in combination with the other evidence – supported a criminal conviction. Our conclusion, based on the totality of the evidence, was that even if taken as true, the statements of the victims do not provide sufficient evidence to prove the case beyond a reasonable doubt;

3. The Court asserts that the lead OCDA investigator in this case has been terminated. (Op. at 17). This is incorrect - she is still employed by the OCDA. In addition, the Court states that the lead investigator was suspended "while these changes were taking place with the prosecution team." (*Id.*) Again, this assertion is simply incorrect.

4. The Court also states that "Mr. Spitzer and his deputies" never met with the victims in this case. Mr. Spitzer specifically offered to meet with any victim prior to the February 7, 2020 hearing. In fact, Mr. Spitzer did meet with Marsy's counsel, in particular Mr. Murphy at Mr.

Murphy's request on behalf of Jane Doe #8, prior to the court hearing. Mr. Spitzer likewise spoke by phone with Jane Doe #1, Jane Doe #2 and Mr. Fell on behalf of Jane Doe #4 prior to the hearing. And, all the victims were contacted prior to the February 7th court hearing. As this Court knows, the People regularly file and dismiss cases based on investigative reports and interviews without re-interviewing crime victims. In this particular case, even when we did speak with them, some of the victims continued to give inconsistent statements which served to further weaken the case. Mr. Spitzer does acknowledge, however, that he should have informed this Court and the victims of his prosecutorial decision prior to calling a press conference. Mr. Spitzer and the executive management team, however, were shocked and dismayed by the results of the de novo review, and were demonstrably shaken by the office's inability to proceed. Mr. Spitzer believed such a miscarriage of justice was occurring that he needed to act immediately;

5. The Court writes that the OCDA did not inform the Attorney General of the weaknesses in this case when it first declared a conflict in September 2019. (Op. at 17). But the reason this was not done was because the deficiencies in this case *were not known at that time*. The de novo review did not begin until the end of October 2019 and was not complete until January 2020. And, the reason the OCDA referred the case to the Attorney General was due to a perceived conflict of interest based on pre-trial statements made by the former District Attorney, not for any evidentiary basis. As noted in the OCDA's September 19, 2019 letter to the Attorney General:

> "The former District Attorney and his chief of staff repeatedly engaged in prosecutorial misconduct by exploiting pre-trial publicity for re-election purposes. In doing so, they each further victimized the victims in this case and prohibiting the Orange County District Attorney's Office from exercising its sacrosanct duty to ensure a fair trial and its duty to seek justice. As the newly elected District Attorney, I have a duty to ensure the integrity of the process so not to further expose this case to further appellate issues and further prolong the agony of these victims. In order to fulfill that duty, I must declare a conflict and turn the case over to the California Attorney General for prosecution." (September 19, 2019 OCDA Letter to the Attorney General p.2)

The Attorney General then responded on September 25, 2019 and determined that the OCDA did not have a conflict of interest: "Our office has thoroughly reviewed your concerns and determined that the former District Attorney's actions have not created a current conflict of interest requiring you to recuse yourself from prosecution." (September 25, 2019 Attorney General Letter to OCDA p. 1). The OCDA then resumed responsibility for the case. But, it was impossible for the OCDA to inform the Attorney General of weaknesses in a case that it was unaware of at the time.

C. THE ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE IS UNABLE TO PROCEED WITH PROSECUTION OF THIS CASE AND DOES NOT OPPOSE REFERRAL TO THE ATTORNEY GENERAL

While the criminal charges in this case remain active due to the Court's denial of the People's motion, the Orange County District Attorney's Office is unable to proceed with the further prosecution of this case. Legally and ethically this office cannot present evidence against or seek the conviction of these defendants for the crimes currently charged in the First Amended Complaint. The OCDA, therefore, does not oppose referral of this case to the state Attorney General for further prosecution. (*See People v. Toland* (1902) 135 Cal. 412, 414-15 (upon disqualification of the district attorney, the duty to conduct the prosecution falls upon the attorney general and the court's duty "is to inform the attorney-general of the condition")). We likewise need not address the mischaracterization of facts or attempts to create new law by Mr. Murphy in his recusal motion as we believe this case should be referred to, and reviewed by, the Attorney General for further proceedings.

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Respectfully submitted,

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