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Press Release

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Federal Judge sharply critical of Pigram Indictment, Says federal Grand Jury may have been instructed “erroneously” by Federal Prosecutors, “Seriously” questions whether federal Indictment is “valid on its face”

Buffalo, New York, July 2, 2020 – In a sharply critical decision filed last night, United States Magistrate Judge Jeremiah J. McCarthy granted a defense motion to inspect materials presented to a federal grand jury that voted to indict Semaj Pigram, Walter Stewart, and Deyanna Davis of being a “felon in possession of a firearm.” The federal charge relates to an incident that occurred on June 1, 2020, in which Ms. Davis’ car drove through a police line, seriously injuring one New York State Trooper. Following the incident, police located a handgun in the vehicle and the Erie County District Attorney’s Office charged Pigram, Stewart, and Davis with Criminal Possession of a Weapon, the New York State version of the federal “felon in possession” statute. Two days later, a federal grand jury indicted Pigram, Stewart, and Davis for the exact same offense in Federal Court.

Pigram’s attorney, Robert C. Singer, Esq., of Singer Legal PLLC, and Stewart’s attorney quickly filed motions for a review of the grand jury materials as well as the instructions federal prosecutors used to secure the federal indictment. Singer argued that evidence proving that Pigram knowingly possessed the handgun in the car was lacking and the federal charge was legally defective. Yesterday, Magistrate Judge McCarthy agreed. He stated that based on federal prosecutors’ “erroneous” interpretation of federal law it is “possible that the grand jury concluded, improperly, that mere proximity [of Pigram to the handgun] would be sufficient to constitute [knowing] possession,” a requirement under the law. Magistrate Judge McCarthy also stated that federal prosecutors charged Pigram under an “aiding and abetting” theory “[t]hat is legally impossible” and, as a result, “it is not clear to me how the grand jury could properly find probable cause for a violation of [aiding and abetting] by any of these defendants.” The Magistrate concluded: “I seriously question whether this Indictment is valid on its face.”

In response to the decision, Pigram’s attorney, Robert C. Singer, Esq., stated: “This decision comes as no surprise. From the beginning, this federal indictment reeked of politics and prosecutorial overreach. The federal indictment in this case was procured in the wake of public statements made by Attorney General Barr and President Trump calling for “law and order” and federal prosecution of protestors who were “outside agitators.” Following the events of June 1, 2020, New York authorities quickly charged all three defendants in this case with being a felon in possession. Then, two days later, U.S. Attorney J.P. Kennedy chose to levy the same charges in federal court absent

any indication that 1) Mr. Pigram or his codefendants are “outside agitators,” 2) that New York was dropping the felon in possession charge, or 3) that there is a “substantial” federal interest that is not being vindicated by the New York prosecution. The decision to do this violates not only AG Barr’s recent guidance limiting federal prosecution to “outside agitators” only, but the Department of Justice’s long-standing *Petite* policy of not filing federal charges when State prosecutors have charged the exact same offense in State court.”

Attorney Singer added: “Recent protests have talked about overactions by the police, but this case highlights an example of an overaction by the other arm of law enforcement: Prosecutors. Our system of justice is grounded in fairness. The purpose of the Department of Justice’s *Petite* policy is to ensure that fairness guides prosecutorial decision-making, not politics, to ensure that criminal defendants do not have the exact same charges piled on their back by State *and* Federal prosecutors *at the same time*. The decision to disregard this policy is irregular, but not very surprising given how little regard officials in the DOJ and Trump Administration have towards rules that preserve fairness. The concerns Magistrate Judge McCarthy expressed in his decision regarding the flaws in the federal indictment are well-founded. And this decision and order presents an opportunity for U.S. Attorney Kennedy to do what he should have done in the first place: permit Mr. Pigram’s case to proceed in State court only. I urge him and his office to follow long-standing DOJ rules designed to ensure fairness and to dismiss this flawed indictment in the interests of justice.”

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