

STATE OF INDIANA)
)
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT

STATE OF INDIANA)
)
VS.)
)
SEAN M. PURDY)
JERRY COX II)
VAUHXX R. BOOKER)

CAUSE NO. 53C02-2007-F5-000613
CAUSE NO. 53C02-2007-F5-000614
CAUSE NO. 53C02-2107-F6-000605

ADDENDUM/SPECIAL PROSECUTOR REPORT
IN SUPPORT OF MOTION TO DISMISS

It is unusual for a Special Prosecutor to file a report in a case where there have been charges filed. However, the nature of this case, the high degree of attention it has received and the unusual nature of the resolution seemed to warrant an explanation to the Court and the public.

Statement of facts:

The events that formed the basis for the charges in the three above listed Cause numbers happened on July 4th, 2020. This was the summer of the Covid pandemic and a national election year. Families and friends were gathered all over the country celebrating our Independence Day.

Sean Purdy and Jerry Cox gathered with friends and family at Lake Monroe on property owned by the McCord family. Vauhxx Booker came to meet with individuals at the Lake who were planning to watch the lunar eclipse that evening. That gathering was being held on a piece of property adjacent to the McCord property. There was an initial interaction between Mr. Purdy and Mr. Booker when Mr. Booker was trying to find his way to his party and Mr. Purdy advised him that he was on private property and drove him on an ATV to the property line.

One person arriving later in the group with Mr. Booker reported hearing someone yelling “white power” when he was making his way to the meeting site. This prompted Mr. Booker to return to see if he could talk with individuals on the McCord property.

The efforts of Mr. Booker to have a conversation with Mr. Purdy and/or Mr. Cox and/or other members of that party became confrontational, verbally and physically. Video clips were

posted publicly that reflect very small portions of what actually occurred. Mr. Booker ultimately returned with some of his friends to the property they were using and law enforcement was called. The Department of Natural Resources came to the scene. They were confronted with a chaotic scene wherein it appeared the arguing parties had successfully separated and no one appeared to have serious injuries. They were advised through repeated conversations with the prosecutors office that they should not outright arrest anyone, to collect identifying information from the individuals on scene and conduct a thorough investigation of the allegations.

The Department of Natural Resources conducted an investigation that included gathering numerous recorded statements of individuals at the scene, taking photographs, obtaining on line videos and statements made by various parties, obtaining medical records and determining property lines. A nine (9) page probable cause affidavit was filed with the Monroe County Prosecutors Office. The Prosecuting Attorney filed charges against Mr. Purdy and Mr. Cox and then recused herself, resulting in the ultimate appointment of this Special Prosecutor.

The Course of Prosecution:

On September 18th, 2020, this Special Prosecutor accepted her appointment by Special Judge Lance Hamner. All three of the defendants had representation, although Mr. Booker was not charged with a criminal offense at the time. Very soon after entering her appearance, an attorney for Mr. Purdy contacted the Special Prosecutor with a suggestion that a restorative justice approach be considered in this case. Although this Special Prosecutor was familiar with what the concept of “restorative justice” is, this is not a process that has been previously used in Indiana to resolve criminal cases. Therefore, several determinations needed to be made in this case as to whether restorative justice was even a feasible path to pursue. First, were all parties willing to consider voluntarily engaging in such a process. Secondly, could an individual or entity be found that would be willing to facilitate the process. Thirdly, what would be the end result in the event of compliance on the part of the participants. And, fourth, would the Special Judge approve the process.

When confronted with this potential option and after doing their own due diligence, the attorneys for all three individuals indicated their willingness to participate in this process if a facilitator could be agreed upon. After researching some resources, all parties agreed to the services of a facilitator at the Center for Community Justice in Elkhart. Attached to this Addendum/Report is a copy of their brief Outline for a Restorative Justice Process. (Exhibit A, 2 pp.) Attorney conferences took place in late 2020 and early 2021 advising the Court of the proposed path the attorneys had agreed upon for a possible resolution of the charges. The

Court approved these efforts and the three parties began engaging via zoom in individual sessions with the facilitator. The sessions with the facilitator were confidential and no attorneys were allowed to be present.

It should be mentioned that at this point in time there was no written agreement between the State of Indiana and any of the parties. The State advised as a precursor to engaging in this process the defendants had to waive CR4 to give the process a chance to work, and that if the process was completed successfully the existing charges would be dismissed. It was further understood that if the process broke down, the Special Prosecutor could resume her review of the case and decide whether to take the cases to a Grand Jury or file additional charges on her own authority against one, two or all three individuals.

It should also be mentioned that, although the investigating department does not have the authority to control prosecutorial decisions, the Department of Natural Resources investigators were consulted as the process evolved and were supportive of the restorative justice approach to resolving the case. There was immediate recognition that the high profile nature of the initial attention the case received and the emotionally charged actions and words of individuals involved, along with other factors, were not conducive to a clear delineation of culpability and that a process that would allow individual actions and words to be examined with a professional trained to point out individual decisions that may have contributed to the day's events could be constructive and serve as an example to others in similar situations.

The process appeared to be progressing well until the end of June, 2021. As the anniversary of the events approached, Mr. Booker declined to continue his participation. This led to a re-docketing of the two existing cases and the Special Prosecutor resumed her review of the investigation and filed charges against Mr. Booker for his role in the events of that day.

These events resulted in a lot of chaos for every one of the individuals involved in trying to resolve this matter constructively. Mr. Purdy and Mr. Cox and their attorneys were understandably upset that they had voluntarily and in good faith participated in a process that now appeared dead. Mr. Booker, his attorney and many of his supporters were upset that he was charged. And this Special Prosecutor received phone calls, hate mail and a disciplinary complaint was filed against her (which was summarily dismissed).

As criminal prosecution proceeded in the three cases with discovery, depositions and motion hearings, Mr. Booker requested an opportunity to reengage in the restorative justice process. The other defendants remained interested in resolving the cases through that mechanism as well, since they had invested substantial time with the process through the Center for Community Justice. It was agreed by everyone involved that the likelihood of a planned encounter involving all parties (pursuant to the process outlined in Exhibit A) was not going to be workable in the existing environment of the case. In addition, each of the parties

and their attorneys wanted a written agreement so that the failure of one participant to complete the process would not result in nullification of this process for anyone who was compliant. This resulted in the Agreements for Alternative Disposition Through A Restorative Justice Process that were executed by each of the defendants, filed with the Court and approved by the Special Judge in December 2021 and January 2022. The facilitator was consulted about this revised approach and felt that it was a workable solution that she was willing to undertake with each of the parties. In March and April of 2022 the facilitator filed reports in each of the defendants' cases indicating the satisfactory and good faith compliance with the program.

Having completed the portion of the Agreement relating to participation in the restorative justice program through the Center, there remained one provision in paragraph 6.i. that needed to be addressed. That provision provided as follows:

“6. The defendant shall cooperate in the following goals of the process:

“i. Work with his attorney, the Special Prosecutor and the facilitator to prepare and participate in a public acknowledgement concerning the outcome of this process from his perspective and whether or not it might serve as a model for similar events or disputes in the future.”

All three of the defendants and their counsel completed statements to comply with this requirement. These are attached as Exhibits B (Purdy statement), Exhibit C (Hennessey statement), Exhibit D (Cox statement), Exhibit E (Lozano statement), Exhibit F (Booker statement) and Exhibit G (Leill statement).

This Prosecutor's Perspective:

Assessing this process needs to involve 1) an evaluation of how it worked in this case; and 2) an evaluation of whether the concept has merit in a criminal justice setting in general.

As it applies to this case, we were all trying to figure this out together in a case that received a lot of publicity at the outset, which had some tendency to distort the public's perception of what actually happened and whether or not the actions of the parties were being appropriately addressed on any level. As a Special Prosecutor with twelve plus (12+) years serving as a deputy prosecutor, sixteen (16) years as an elected prosecutor and ten (10) years of service as a Senior/Special Prosecutor, I believe I have some foundation of knowledge concerning the benefits and shortcomings of the criminal justice system in Indiana. It has always been my philosophy that a prosecutor needs to do what is right within the boundaries of the law and ethics guiding our profession. This includes being open to new ideas for doing justice. This attitude made me open to the possibilities that restorative justice seemed to

present in this type of case. And while trying not to be too melodramatic, this case embodies so much of what is happening in our country today. Going into a courtroom and “duking it out” in front of a jury does not seem to me to be an ideal forum for having people examine their words and actions with a view to reconciling anger and hate. The vehicle of having willing participants in a process that might reconcile each of them to the role they may have played in escalating a situation that could have resulted in irreparable consequences seems more constructive and as if it might have more long lasting effects. This is the possibility restorative justice offers.

In this particular case the results were disappointing in that it did not result in a face-to-face meeting between the parties. There were reasons why this did not occur in this case, but I believe that to be an important component to a successful completion of a restorative justice process.

That having been said, A LOT OF WORK REMAINS TO BE DONE if restorative justice is to prove useful in the resolution of criminal cases. The process in this case was cumbersome and time consuming. There were also costs involved that would need to be examined. However, those might be ameliorated with local agencies offering restorative justice services in local jurisdictions. Ultimately, the costs would be more than offset with the prospect of the changes in hearts and minds of individuals able to make personal changes that might help them address behavior and become better citizens without the stigma of a criminal conviction and all of its ramifications.

I laud the defendants and their lawyers who persevered to try to make the outcome as good as possible in this case. I am grateful to Special Judge Hamner for giving us the opportunity to try this concept out. And we could not have done any of this without the direction, dedication and professionalism of the facilitator at the Center for Community Justice in Elkhart.

Respectfully submitted,

_____/s/ Sonia J. Leerkamp_____
Special Prosecuting Attorney