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RE: People vs. Marc W. Mongan, 2016 CV 52 & 53

Dear Mr. and Mrs. Swaziek and Mr. Wells:

The purpose of this letter is to follow up on the previous meetings and email conversations that you have had with my office in regard to the above-referenced case. Although I believe that most of the information addressed in this letter has been discussed either in person or by email, I am reducing it to writing in hopes that it will allow you to have a clear understanding of the status of the case.

On or about June 24, 2016 the Defendant, Marc Mongan, was arrested by the Illinois Conservation police for the misdemeanor offenses of Operating a Watercraft Under the Influence of Alcohol and Reckless Operation of a Watercraft. Additional investigation was completed by the Illinois Conservation Police, which included a boat crash reconstruction, and two separate search warrants for the Defendant's cell phone and information from his boat motor. Additionally, my office requested some follow up investigation regarding possible additional witnesses. After the completion of the investigation, the case was presented to the Ogle County Grand Jury for the consideration of the felony charges of Operating a Watercraft Under the Influence of Alcohol and Reckless Operation of a Watercraft. The felony charges presented to the Grand Jury contained the same elements as the misdemeanor charges with the additional element which alleged that the Defendant caused the death of Megan Wells.

During the extensive presentation to the Grand Jury, which took an entire day, my office



presented the live testimony of the arresting officer regarding his observations of the Defendant, the Defendant's performance on field sobriety tests and his opinion that the Defendant was under the influence of alcohol. The arresting officer also presented the findings of the boat crash reconstruction prepared by the Illinois Department of Natural Resources. The Grand Jury also heard the live testimony of some occurrence witnesses along with video statements of others. A lengthy video statement taken from the Defendant the night of the incident was also presented. As a result of this fact, the Grand Jury was able to observe the Defendant's actions, demeanor and speech as close as possible to the relevant time. In addition, the Grand Jury had the opportunity to consider other evidence such as photographs.

It is important to note that due to the legal nature of the Grand Jury process, the case was presented without the Defendant having the opportunity to present evidence on his behalf. Likewise, the Defendant's attorney was not present to cross examine witnesses or attempt to otherwise cast doubt on the evidence presented by my office. Despite this, the Grand Jury found that there was no probable cause to proceed with felony charges against the Defendant.

Under Illinois law, there must be a finding of probable cause to proceed with a felony charge. Since the Grand Jury has found that there is no probable cause to proceed with felony charges my office is not legally able to move forward with any felony prosecution against Mr. Mongan in regard to this matter.

During our early meetings, both First Assistant State's Attorney Robert Schuman and I expressed to you our concerns regarding the strength of the evidence in this case. Specifically, we discussed the difficulty of proving the intoxication of the Defendant beyond a reasonable doubt without any chemical testing showing the Defendant's blood alcohol concentration. I believe that we also spoke about issues with the field sobriety testing. Specifically, the fact that according to the arresting officer the Defendant failed the field sobriety tests, but he also completed some of the field sobriety tests with little difficulty. For example, during the "alphabet test" the Defendant is reported to have recited the alphabet correctly, with the infractions of singing the alphabet and adding the word "and" between the letters "y" and "z." In performing the "finger count test" the Defendant did not touch the exact tips of his fingers together. In addition, the field sobriety tests were not video recorded. It was also noted that the Defendant did not have difficulty walking the approximately 100 yards from the riverside to the location where field sobriety tests were administered. It could also be argued that the video recording of the Defendant's statement on the night in question is inconclusive as to the issue of his intoxication.

Despite these issues, the decision was made to present this matter to the Grand Jury to determine if there was probable cause for felony charges of Operating a Watercraft Under the Influence of Alcohol and Aggravated Reckless Operation of a Watercraft to proceed. The Grand Jury was presented with the evidence outlined above, the proposed felony charges, and the legal definitions of "under the influence of alcohol" and "reckless operation." After thorough consideration, the Grand Jury found that there was no probable cause to move forward with these felony charges.

The totality of the evidence indicates that the Defendant did consume alcohol on the night in question. As we have discussed, however, the proof of mere consumption of alcohol is not enough to sustain a charge of Operating a Watercraft Under the Influence of Alcohol. For a defendant to be found guilty of either the felony or misdemeanor charge of Operating a

NO ONE FROM  
POSITION  
BOAT WERE  
CALLED FOR  
LIVE TESTIMONY



Watercraft Under the Influence of Alcohol the State must prove, beyond a reasonable doubt, that the defendant was legally under the influence of alcohol in that "his mental or physical faculties are so impaired as to reduce his ability to think and act with ordinary care." Likewise, the State would need to prove, beyond a reasonable doubt, that the Defendant operated a watercraft "with willful or wanton disregard for the safety of persons or property" to sustain either the misdemeanor or felony charges of Reckless Operation of a Watercraft. Based upon the determination of the grand jury that there was no probable cause to proceed with the felony versions of these charges, it is a legal impossibility that the charges could be proven beyond a reasonable doubt with the same evidence.

The Defendant, through his attorney, has filed a "Motion to Dismiss and Other Relief" which is set for hearing before Judge Redington on April 25, 2017 at 1:30 p.m. In response I have filed a document entitled "People's Answer and Motion to Strike Portions of Defendant's Motion to Dismiss an Other Relief." Copies of both of these documents are enclosed for your review. The Defendant's motion contains two arguments.

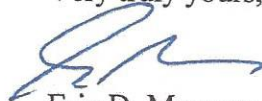
The first argument is that the finding of the grand jury that there was no probable cause to proceed with the felony charges legally bars the State from proceeding with the misdemeanor versions of the charges. Unfortunately, for the reason addressed above, I believe that the this argument may be well taken by the Court and the charges could be dismissed. If the misdemeanor charges are dismissed by the Court, we will be left in a situation where we are not legally able to proceed with either the felony or misdemeanor versions of the offenses.

The second argument in the Defendant's motion is that the suspension of the Defendant's driving privileges should be rescinded or removed by the Court because of a lack of probable cause. As stated in our response, the relevant statute indicates that the sole remedy for the Defendant in this situation is a request for administrative review by the Illinois Secretary of State and not relief through the circuit court. This request should be denied by the Court.

Mr. Swaziek had previously requested to view the police reports, photographs and video recordings at my office. After reviewing this issue, I believe that the under the Freedom of Information Act, he can be provided copies of certain items. I would ask that he complete the enclosed Request for Public Records and return it to my office for the file. We will then process the request. I would note that it will be necessary to redact certain identification information from these items.

After you have had the opportunity to review the information contained in this letter, please contact me with any questions or concerns that you may have. As always, my staff and I are available to discuss this matter with you and address any questions.

Very truly yours,



Eric D. Morrow

EDM/cke  
Enclosures