

IN THE FOURTH JUDICIAL CIRCUIT COURT
SHELBY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

V

)
)
)
)
)

CASE NUMBER

██████████

██████████

UNOPPOSED MOTION TO NOLLE PROSSEQUI

Now Comes the People of the State of Illinois, by and through Robert T. Hanlon, the State's Attorney in and for the County of Shelby, with its motion to Nolle Prosequi and dismiss the criminal charges against the Defendant, ██████████, in the above entitled cause, and in support of this motion, states as follows:

1. The Defendant, ██████████ is charged with the crime of Aggravated Criminal Sexual Abuse with a victim less than 17 years of age in violation of 720 ILCS 5/11-1.60(c)(1)(i), a class 2 felony. See Amended Information.
2. The State bears the burden of proving each element of this crime beyond a reasonable doubt.
3. The State's Attorney has considered the applicable statutory provisions and applicable precedent.

4. The State's Attorney has considered the investigative file, the allegations, the six-year delayed report, and events and circumstances that existed in the penumbra of the events at the time the complaint was brought forth including the then existing divorce between Defendant and the then child's mother (The reported victim in this case is now an adult, age 19). In addition to the matters in this case, the prosecution has reviewed other proceedings before this Court involving the parties and reviewed the respective witnesses testimony concerning the allegations of the Information.

5. Having reviewed the documents and testimony available to the State, it is clear at the time the charges were levied against the Defendant, there was "probable cause" and in fact "probable cause" was found by this Court.

6. Nevertheless, the evidentiary threshold for "probable cause" is substantially below the standard for conviction requiring proof of guilt beyond a reasonable doubt.

7. The Defendant is charged with a serious crime involving the **purported criminal sexual abuse of a child**. Such crimes are an abomination and ought to have harsh consequences for those criminals the State possesses sufficient evidence of guilt to meet the evidentiary standard.

8. The State has conducted additional investigation into this matter and the prosecution has interviewed witnesses likely to be called at trial in this case so as to make a proper assessment of the ability of the State to meet its burden of proof in this case.

9. Prosecutors are not just advocates for the People's position. Rather, a prosecutor has a duty to be a minister of justice pursuant to Illinois Supreme Court Rule 3.8. Moreover, a State's Attorney is bound by the Rules of Professional Conduct and in particular Rules of Professional Conduct 3.1, 3.3, 3.4, and 3.8 (see also note 1 to Rule 3.8). Prosecutors are not to try cases with the expectation of losing the case, sometimes referred to as "Try it to lose it case." Such an approach is contrary to law and contrary to the ethical rules governing prosecutors.

10. The State's Attorney in his official capacity is the representative of all of the people, including the defendant, and it is as much his duty to safeguard the constitutional rights of the Defendant as much as any other citizen. See *People v Cochran*, 313 Ill. 508, 526 (1924). See also *Berger v United States*, 295 U.S. 78, 88; 79 L.ed. 1314, 55 S.Ct. 629, 633 (1935).

11. To properly serve all of the people requires that the prosecution advance to trial only those cases it believes it has the necessary evidence to establish each element of the crime charged and that the evidence it advances is not improperly tainted.

12. The State's Motion to Nolle Prosequi this case is not the product of capricious or whimsical thought and is not a vexatiously repetitious act. See *People v. Murray*, 306 Ill. App. 3d 280, 281. Rather, the decision to advance this motion was made only after substantial deliberation and subsequent witness interviews.

13. The State has concluded that it cannot meet the professional standards required of a prosecutor in light of the six-year delayed report after the alleged crime first became known to the mother of the victim, absence of any physical evidence or forensics, inconsistencies in victim and family testimony, recently discovered facts, tainted testimony, the quality of the evidence against the Defendant, absence of notes from the original charging State's Attorney, and the inconsistent docket entries concerning a negotiated resolution by the former State's Attorney and defense counsel having been later terminated. Given these factors and new analysis of factual contentions in this case, the State's Attorney determined it cannot advance this case to trial and has a professional impediment to submit certain evidence to this court. The State's Attorney has also determined is not in the interest of justice to proceed to a trial on the merits of this case and to do so would likely violate the Defendant's rights.

14. The State's Attorney conferred with defense counsel on the evening of March 6, 2023, and this motion is unopposed.

Wherefore the People of the State of Illinois pray that this honorable court Nolle Prosequi this cause and request that this Court enter an order dismissing this case with prejudice.

Respectfully submitted,

/s/Robert T. Hanlon

Robert T. Hanlon State's Attorney Shelby County

CERTIFICATE OF SERVICE

I, Robert T. Hanlon, States Attorney for Shelby County, Illinois certifies that a true and accurate copy of this motion was served upon counsel for the defendant on March 7, 2023, along with a Notice of Motion setting the presentment date of this Motion on March 13, 2023, at 9:00am by electronic means on the following:

/s/Robert T. Hanlon