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November 18, 2022

Honorable Diane Kiesel
Acting Supreme Court Justice
New York State Supreme Court
111 Centre Street, Room 733
New York, NY 10013

Re: People v. McCarter, Ind. No. 746/2020

Dear Justice Kiesel:

Tracy McCarter is charged in the above-referenced matter in a one-count Indictment with murder in the second degree for fatally stabbing her husband, James Murray. Mr. Murray's death was a tragedy, and I am fully aware of the gravity of this incident and the many people who have been affected by Mr. Murray's death. However, after carefully reviewing all the evidence and extensively discussing this matter with members of my office, I have a reasonable doubt of whether Ms. McCarter stabbed Mr. Murray with the requisite intent to support a conviction of murder in the second degree.

While I respect the role of the jury in the fact-finding process of a criminal prosecution, I have an independent, constitutional obligation as District Attorney to "determine whom, whether and how to prosecute" a criminal matter. *Matter of Haggerty v. Himelein*, 89 N.Y.2d 431, 436 (1997) (quoting *Matter of Schumer v. Holtzman*, 60 N.Y.2d 46, 52 (1983)); see also *People v. Viviani*, 36 N.Y.3d 564, 577–78 (2021). The continued prosecution of a criminal action is "solely within the broad authority and discretion of the district attorney's executive power." *Matter of Soares v. Carter*, 25 N.Y.3d 1011, 1013 (2015). And I cannot in good conscious allow a prosecution to proceed to trial and ask a jury to reach a conclusion that I have not reached myself.

I have not come to this decision lightly. The procedural history of this case since I became the New York County District Attorney reflects my attempt – after reviewing the evidence in the case – to find a disposition that would provide a measure of accountability for Ms. McCarter without asking a jury to reach a conclusion that I cannot reach myself.

Accordingly, in May 2022, I pursued a negotiated disposition under which Ms. McCarter would have entered a plea of guilty to manslaughter in the second degree and menacing in the second degree, without an admission of responsibility. Pursuant to the proposed plea, Ms. McCarter would have been permitted, after a year of mandated medical treatment, to have her manslaughter plea vacated. The Court rejected the proposed plea as impermissible under CPL 220.10.

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Thereafter, in August 2022, I moved to dismiss the instant indictment and requested leave to file a superior court information charging Ms. McCarter with manslaughter in the first degree. *Cf. Matter of Donnaruma v. Carter*, 41 Misc. 3d 195, 200 (Albany Sup. Ct. 2013) (quoting judge’s criticism of the District Attorney for declining to prosecute based on “subjective feelings” and “verbalization of his prosecutorial discretion” without moving to dismiss in the interests of justice), *aff’d sub nom. Matter of Soares v. Carter*, 113 A.D.3d 993 (2014), *aff’d*, 25 N.Y.3d 1011 (2015); *Matter of Cloke v. Pulver*, 243 A.D.2d 185, 188 (3rd Dep’t 1998) (criticizing District Attorney for declining to prosecute a “weak” indictment without replacing or amending the indictment).

On August 30, 2022, the Court denied the People’s motion and ordered a trial on the murder charge. The Court held, among other things, that the “People’s concern that a murder charge is unwarranted here can be addressed and ameliorated at trial. Manslaughter in the first degree is a lesser included offense to murder in the second degree and can be submitted to the trial jury without the need for an SCI.” While the Court retains the discretion to submit appropriate charges to the jury after trial, that procedural option does not address or ameliorate my concern that I cannot proceed to trial on a charge that I do not believe in. At this stage – with the proposed plea and reduced charge foreclosed¹ – the options remaining available to me as District Attorney are stark: to proceed or decline to proceed to trial on a charge where I have reasonable doubt. Given those options, I decline to proceed with prosecution of the indictment. Accordingly, because “courts lack the authority to compel the prosecution of criminal actions,” *Matter of Soares*, 25 N.Y.3d at 1013, I also recommend that the indictment be dismissed.²

I make this decision with full awareness of the life that was taken in this tragic incident and the many people who are impacted by Ms. McCarter’s stabbing of Mr. Murray. I regret that my constitutional prerogative is limited now to a choice between proceeding or not on a charge of murder in the second degree. Between those choices, however, I cannot responsibly go forward.

Respectfully,



Alvin L. Bragg, Jr.

cc: Sean Hecker, Esq.

¹ Representing the case to the grand jury and submitting only a charge of manslaughter does not address the current murder charge, which would not be superseded or dismissed by a second indictment. *See* CPL 200.80.

² This position is presented for the Court’s potential action in a separately provided “Dismissal on Recommendation.”