STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

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Peter F. Neronha
Attorney General

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By Email Only – anitabruno330@gmail.com

Ms. Anita Bruno

Re: State of Rhode Island v. Joseph Hanley

Dear Ms. Bruno,

I hope that this letter finds you well.

You have asked several questions regarding this Office's charging decisions in the above-captioned matter. This letter will address those questions and is consistent with the response I have provided to others, privately and publicly.

Before I begin, let me explain that I will use the term "alleged" in this letter, because Sergeant Hanley is presumed innocent unless and until he either is convicted at trial or pleads guilty to the offense charged. In every case, I, and my Office, speak of charges in the context of "allegations," because that is all that they are until a defendant is adjudged guilty by a judge or jury.

You reference a report prepared by the Providence External Review Authority ("PERA") concerning this matter. As I understand it, from that report and press accounts, two principal questions have been raised regarding our charging decisions in this case. First, if as alleged Sergeant Hanley struck the victim more than once, then why was he not charged with multiple counts of assault? Second, why was Sergeant Hanley charged with misdemeanor simple assault, as opposed to felony assault? My answers to these questions follow.

Sergeant Hanley was charged with one count of simple assault, as opposed to multiple counts of simple assault based on a series of separate alleged strikes against the body of the victim, because under Rhode Island Supreme Court precedent, a series of strikes (punches, kicks, acts of choking, etc.) must be

charged as a single assault if they are part of a continuing course of conduct, without a break in time.

So, for an example, if a person were to get into an argument with their spouse at a restaurant, and slap, punch and kick their spouse, that would be a single (domestic) assault, as that is a single continuing offense. If the couple were then to drive home after the assault, and then once they arrived home the person again slapped and kicked their spouse, that would be a second instance of (domestic) assault. Thus, in such a case, the person would be charged with two counts of simple assault. It would not be five counts of simple assault, based on five distinct assaultive strikes.

The Supreme Court made this clear in State v. Haney, 842 A.2d 1083, 1084-85 (2004). In that case, the defendant got into an argument with his girlfriend while the girlfriend was driving him in her car to their home in Burrillville. While in the car, the defendant assaulted his girlfriend. After arriving at their Burrillville home, the defendant again assaulted his girlfriend. Only fifteen minutes separated the assaults. But that fifteen-minute time period created enough of a temporal break between the assaultive acts so as to constitute two separate assaults, as opposed to one continuous act that would have constituted only a single assault.

With respect to whether Sergeant Hanley should have been charged with felony assault, as opposed to misdemeanor assault, there are two bases for charging felony assault (leaving aside assaults on persons over 60 and other assaults involving specific categories of victims) under Rhode Island law.

First, a felony assault can be charged where a person suffers serious bodily injury. Serious bodily injury is defined by Rhode Island statutory law as physical injury that: (1) creates a substantial risk of death; (2) causes protracted loss or impairment of the function of any bodily part, member, or organ; or (3) causes serious permanent disfigurement. In determining the appropriate charge in the Hanley case, we inquired as to whether the victim had suffered or been treated for any injury. The victim suffered no injury that meets this definition or comes anywhere close to it. That is not to minimize the alleged assault. I say this only in the context of determining what was the appropriate charge.

Second, a felony assault can be charged where an assault is committed with a dangerous weapon. Some objects are inherently dangerous weapons, such as guns and knives. Other objects can be dangerous weapons, depending on how they are used. For example, a lit cigarette can be a dangerous weapon, if it is applied to certain parts of the body, such as the eye. A piece of iron rebar can be a dangerous weapon, if it is employed as a club. What the Rhode Island Supreme Court requires is that the object be "employed in such a manner as to be likely to produce substantial bodily harm." State v. Storey, 102 A.3d 64, 648 (2014). In another case, the Supreme Court similarly held that "a dangerous weapon is

defined as an object used in a manner capable of producing serious bodily injury." State v. Bolarinho, 850 A.2d 907, 910 (2004).

The Supreme Court has held that in limited instances a person's hands or a shod (i.e. non-bare) foot can be a dangerous weapon, but, again, only where those hands or shod foot are used in such a way as to be capable of producing serious bodily harm. What does this mean in the practical sense? It means that the hands or shod foot must be used in a way that is different from a standard punch or kick. If that were not the case, then every time someone punched or kicked another person while wearing a shoe, the person would be guilty of an assault with a dangerous weapon. If that were the case, given the number of times that people in the State of Rhode Island punch and kick one another, particularly in the domestic context, we would need a lot more Superior Court Judges to handle these newly created felony cases, and far fewer District Court Judges, who handle misdemeanor cases.

So what is required? In the context of a person who kicks someone with a shoe on, we look to a number of factors, applying a totality of the circumstances analysis, with no one factor being determinative: the number of kicks, the force applied during the kicks, where relative to the body the person was kicked, was it a stomping rather than a mere kick, was the defendant wearing steel-toed boots, and whether injury resulted, an important factor, though injury is not a requirement. The Office has charged shod foot felonies over the years, but very rarely, because, again, it would make no legal sense to charge a felony in every instance where someone kicked someone else with a shoe on.

The facts of Bolarinho are a good example of what the Rhode Island Supreme Court, and this Office, looks for in "shod foot" cases. In that case, the victim and the defendant got into a dispute, and both threw punches. As described by the Supreme Court, the defendant then "began kicking and striking [the victim] repeatedly with twirl kicks and chops. Although [the victim] attempted to strike back, he was unsuccessful, and quickly fell to the ground. As [the victim] lay on the ground, defendant continued to kick on his face and chest and on his back and arms. [The victim] testified that he covered his face and his head with his arms but the defendant 'kept on hitting me when I was on the ground, stepping on my arms and kicking them.' His right wrist was broken as 'I was trying to cover my face' and 'my right arm took the most damage.'" After the defendant left the scene, the victim "was bleeding from the head, eyes and mouth, and had suffered a black eye, bruises, abrasions and a broken wrist." He had to wear a cast on his wrist "for an extended period, was still experiencing problems with his wrist [at the time of trial], and since the attack it had never been 'one hundred percent.'" 850 A.2d at 908. The Supreme Court also noted that the defendant has used his shod foot with "karate-like precision." 850 A.2d at 910.

These kinds of circumstances simply do not exist in the Hanley case. Again, that is not to minimize the alleged assault here. It simply means that in

our considered judgment, misdemeanor simple assault is the appropriate charge. Indeed, while it may not be apparent to the public generally, misdemeanor simple assault is the appropriate charge in many cases where the alleged assaultive conduct is quite serious. I have personally handled many domestic misdemeanor simple assault cases where the injuries suffered are quite visible, and significant: bruises, black eyes, bloodied noses and lips. In those cases, under Rhode Island law, misdemeanor assault is the appropriate charge. Many find that reality quite unsettling.

There is no existing felony assault charge for a police officer striking someone while in handcuffs, or violating police department policies. When analyzing allegations of excessive force by police, as required by the United States Supreme Court, we look at whether or not the force is reasonable under the circumstances. If the use of force was not reasonable, then the question is: what is the appropriate charge? That analysis is what is described above. If it was an assault with a dangerous weapon or it resulted in serious bodily injury, it is a felony assault. If it is not, it is a misdemeanor simple assault.

You also asked about this Office's ability to bring a color of law prosecution against Sergeant Hanley for allegedly violating the victim's civil rights. Such prosecutions, typically based on allegations of excessive force, must be brought by federal authorities, in this case the United States Attorney's Office for the District of Rhode Island, as such cases are predicated on federal law, specifically, 18 United States Code 242. Indeed, I recall well just such a prosecution of a Woonsocket Police Officer while I was the United States Attorney for the District of Rhode Island. It is our practice to share allegations of excessive force by police officers with our federal counterparts, and of course they may initiate civil rights investigations on their own. I cannot speak to any decision that that Office may or may not have made with respect to the Hanley matter. You might consider reaching out to that Office, which can be reached at (401) 709-5000.

I hope that this letter answers your questions regarding this Office's charging decisions in the Hanley case. As you know, that case is pending in state court. We were able to successfully oppose Sergeant Hanley's motion to dismiss the prosecution based on the pretrial release of the videos, because: 1) importantly, this Office did not authorize their release; 2) at least initially this trial will not be before a jury; and 3) the Judge who will try the case has not seen the video. The case will proceed to trial in the District Court shortly. In the event that Sergeant Hanley is convicted in District Court, in accordance with Rhode Island law, he will have a right to appeal his case to the Superior Court, where he is entitled to a new trial, before a jury. In that event, I expect that we will see a renewed motion to dismiss the prosecution as a result of the pre-trial release of the video evidence.

I have great confidence in the Civil Rights Team we announced publicly in December of 2020, which now handles all cases involving allegations of excessive

force by police and hate crime prosecutions. The team is presently prosecuting two cases involving police officers, including the Hanley matter, as well as several hate crime cases.

Thank you for your advocacy for the protection of the civil rights of all Rhode Islanders.

Sincerely,

Peter F. Neronha
Attorney General