



WHITMAN COUNTY PROSECUTING ATTORNEY

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FOR IMMEDIATE RELEASE

RE: Whitman County Prosecutor decision regarding Pullman Police Department Investigation 13P-2727
(Injury to Dr. David Warner)

The decision of this office is that no criminal charges will be brought in regards to this incident. There is not sufficient evidence to prove beyond a reasonable doubt that Dr. David Warner was criminally assaulted. The available evidence certainly supports that Dr. Warner suffered a significant injury, but an injury alone does not prove that a crime occurred. Since this is very obviously a significant case to not only Dr. Warner and his family, but also to the community in general, the prosecutor's office is issuing this explanation as to why no person is being charged with assaulting Dr. Warner.

The evidence in this case consists largely of footage from several video cameras as well as numerous witness statements, and medical evidence. No camera provided a clear view of everything that happened. But based on a thorough review of all of the available evidence, the following is a summary of what can be proven:

The time stamps on the video recording assist in establishing a timeline of the event. The recording time stamps establish that Dr. Warner and his friend, Mr. McDonald, entered the general vicinity of the incident at 01:50:18 on 30 March 2013. The video evidence shows Dr. Warner and Mr. McDonald walking together and Mr. McDonald engaging several people in some kind of conversation. Eyewitness statements indicate that much of what Mr. McDonald stated was drunken ranting. By his own admission, Mr. McDonald was very intoxicated and he has no memory of what he said. This generally goes on until 01:51:40 when the four people who were later arrested walk by Dr. Warner and Mr. McDonald's location. Those people are Madeline Fouts, Joshua Nantz, Robert Bean, and Matthew Soriano. Some kind of verbal exchange happens between the four subjects and Mr. McDonald. From there, the four subjects go into the parking lot and Dr. Warner and Mr. McDonald are off camera and well away from the subjects. From the various angles it can be inferred that Mr. McDonald is engaging in some kind speech that is drawing the attention of several people - including the subjects. As time goes on, there are various reactions to Mr. McDonald's "rant" and Dr. Warner can be seen to be maintaining space between Mr. McDonald and others.

While the video clearly shows that Dr. Warner is working to keep the parties separated, Mr. McDonald moves past Dr. Warner at about 01:57:44, moving aggressively towards the four. Within one second of him passing Dr. Warner, Dr. Warner lunges forward and proceeds to wrap his arms around Mr. McDonald and begins to pull back. As Dr. Warner moves backward, Mr. Nantz appears in the video frame again and proceeds to move from right to left at about the same speed that Dr. Warner and Mr. McDonald are moving back. The speed of this movement increases and Dr. Warner and Mr. McDonald both fall back to the ground and out of view of the camera behind a parked car. Mr. Nantz falls forward as well, also out of view. Mr. Nantz reappears after about 1.3 seconds, is grabbed by Ms. Fouts, and they begin to walk away. After Dr. Warner fell to the ground, Mr. Bean moves in and, for less than a second, is out of view behind the car. Mr. Bean can be seen moving his foot, possibly kicking Dr. Warner, possibly not. He and Mr. Soriano then walk away together with Ms. Fouts and Mr. Nantz.

A significant challenge in this case is reconciling the video evidence with what eyewitness testimony there is in determining what can be proven beyond a reasonable doubt. This challenge is exacerbated by the "blind spots" in the video feeds and the incomplete or inconsistent eyewitness testimony. Most of the witnesses who have come forward can only provide an incomplete reflection of the event. In some instances, the witnesses were intoxicated, in some instances, the witnesses report things that are directly contradicted by the video recordings.

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Charging Decision - Warner Investigation Press Release

However, combining the video recordings with the credible eyewitness statements, the prosecutor could prove that:

Mr. McDonald was intoxicated and belligerent. Dr. Warner repeatedly tried to keep him separated from others. But at 01:57:44 – Mr. McDonald got past Dr. Warner. He went after Mr. Nantz. McDonald then was either pushed or punched back by Nantz, or McDonald was pulled back by Dr. Warner, or both (the evidence is not clear which). This caused Dr. Warner to fall backwards onto the pavement, with the intoxicated McDonald on top of him. Dr. Warner's head hit the pavement. Mr. Bean might or might not have then kicked Dr. Warner. If Mr. Bean did kick Dr. Warner, the kick may have been to Dr. Warner's head, causing the serious injury, or it may have been to Dr. Warner's body or legs, not causing any injury from the kick – there simply is not enough evidence to say.

Dr. Warner suffered a severe head injury. A doctor's opinion is that the injury is consistent with being caused by a kick to the head, but also consistent with being caused by a fall to the pavement.

The above constitutes the facts that can be proven. The next question is: what law applies to the case?

In order to convict someone of assault, a prosecutor must prove not only that a defendant pushed or punched or kicked someone, but that the defendant was not acting in self defense when the defendant did so. And the prosecutor must prove these things beyond a reasonable doubt.

In this case, it is possible that Nantz pushed or punched McDonald, causing McDonald to fall into Dr. Warner, in turn causing Dr. Warner to fall and hit his head on the pavement. However, we certainly cannot prove that beyond a reasonable doubt. In addition, even if we could prove that is what caused Dr. Warner's fall, we could not prove beyond a reasonable doubt that such a push or punch by Nantz against McDonald would not have been in self defense, since McDonald was so clearly the aggressor. In addition, we very clearly cannot prove beyond a reasonable doubt that Bean kicked Dr. Warner. It is possible that Bean did so, and possible that such a kick caused Dr. Warner's head injury. But the evidence does not exist to prove beyond a reasonable doubt that such a possibility actually happened.

None of the above is intended to minimize the significant injury that Dr. Warner suffered in the early morning hours of 30 March 2013. Dr. Warner's life has been forever altered. This office believes that Dr. Warner was trying to prevent anyone from being hurt. But it is the prosecutor's duty to carefully follow the evidence – no matter where it may lead. A significant injury, no matter how life altering, does not automatically mean that a crime occurred.

In this case, no reasonable jury could conclude beyond a reasonable doubt that a criminal assault occurred, which caused Dr. Warner's tragic injury. Therefore, this office will not be filing criminal charges.

Approved for release:



Bill Bruffel, Chief Deputy Prosecutor



Denis Tracy, Prosecutor