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July 9, 2020

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Governor Ralph Northam

P.O. Box 1475

Richmond, VA 23218

Re: Matthew Rushin

Dear Governor Northam,

I am aware that you have received multiple inquiries, as well as a pardon request, related to the Matthew Rushin case. Unfortunately, the numerous social media posts, and the pardon request itself, are filled with misinformation and inaccurate facts in an effort to gain some sort of clemency for Mr. Rushin. As you know, Commonwealth's Attorneys try cases in a court of law and not the court of public opinion. However, the public dialog surrounding this case has become so far removed from what actually took place that I find it necessary to send you this letter and attachment. Before altering any decision by the Virginia Beach Circuit Court and the Virginia Court of Appeals, it's important that you have an accurate account of Matthew Rushin's actions on January 4, 2019, as well as the subsequent investigation and prosecution of this matter.

Thank you,


Colin D. Stolle

Virginia Beach Commonwealth's Attorney

CC:

Mark R. Herring, Attorney General

Kelly Thomasson, Secretary of the Commonwealth

Brian Moran, Secretary of Public Safety and Homeland Security

Tonya D. Chapman, Chair of the Virginia Parole Board

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Linda L. Bryant, Vice Chair of the Virginia Parole Board
Rev. A. Lincoln James, Member of the Virginia Parole Board
Kemba Smith Pradia, Member of the Virginia Parole Board
Sherman P. Lea, Sr., Member of the Virginia Parole Board

The Commonwealth v. Matthew Rushin

The offense

On January 4, 2019, Rushin, operating a 2007 Chevy Tahoe, struck an occupied vehicle leaving the parking lot of Total Wine at the intersection of Laskin Road and First Colonial Road. His vehicle struck the front driver's side of the victim's vehicle and Rushin fled the scene. As he fled at a high rate of speed through the Total Wine parking lot and onto First Colonial Road, he entered the unoccupied left turn lane and ran the red light crossing Laskin Road. Rushin then made a U-turn, crossed through an empty paved median, and drove into oncoming traffic. He intentionally struck a Ford Explorer driven by George Cusick and occupied by George's wife, Danna, who was in the front passenger seat. Rushin's vehicle violently rotated, ultimately causing a Honda Element to impact it from the rear. The driver and passenger in the Honda Element were transported to the hospital where they were treated and released. Danna and George Cusick suffered serious injuries, and George will suffer from his severe injuries for the rest of his life.

The investigation

Virginia Beach police responded to the scene and began an investigation to the crash. Crash data from Rushin's Tahoe captured the 2.5 seconds prior to impact, and showed that the accelerator pedal position was 100% activated until just one (1) second before the collision. Rushin accelerated from 60 m.p.h. at 2.5 seconds before the crash, to 65 m.p.h. 1.5 seconds before the crash, remaining at 65 m.p.h. just .5 seconds before impact. He was not wearing his seatbelt and never applied the brakes at any point in the 2.5 seconds leading up to the collision. He did not begin to let off the accelerator until one (1) second before impact. An analysis of a 2007 Chevrolet Tahoe's specifications and performance data review shows that Rushin's vehicle would take approximately 8.3 seconds to accelerate from 0-60 m.p.h.

A witness uninvolved with the crash as well as several responding officers made contact with Rushin immediately following the crash. When asked by the driver of the Honda Element what Rushin was thinking, the civilian witness heard Rushin state, "I don't know man, I was just trying to kill myself." Officer G. Cordingley, while standing with Rushin, heard Rushin yell to the driver of the Honda Element, "I was trying to kill myself." Officer R. Nash also heard Rushin state, "I was trying to kill myself." Officer M. Smith heard the driver of the Honda Element ask Rushin, "Who do you think you are? You almost killed me and my wife." Officer Smith then heard Rushin reply, "I was trying to kill myself, okay?" Immediately, Officer Smith relayed that statement to Officer J. Curtin, and the relay of that information was captured on police body worn camera just minutes after the crash. During a subsequent interview with Detective J. Hosang and Officer J. Dolida, Rushin stated multiple times, "I said well maybe I was trying to fucking kill myself." Det.

Hosang is a Crisis Intervention Team (CIT) training instructor for the police department. She has completed over a dozen training courses to include Disability Awareness for Law Enforcement.

It's important to review Rushin's similar vehicular crash that occurred on January 6, 2017. Rushin struck the metal gate at the entrance of a little league field where the roadway ended. After striking a parking lot divider and rolling multiple times, Rushin's 2012 Mazda 3 came to rest against a tree. Rushin, who was not wearing a seatbelt, was ejected from the vehicle and landed in a creek. The lead investigator found no evidence of vehicle defect, impairment by Rushin, or evidence to suggest Rushin tried to avoid the crash. Crash data from the Mazda showed no attempt by Rushin to apply his brakes in the 5 seconds prior to the crash. In fact, Rushin's speed escalated from 68 m.p.h. at five (5) seconds before impact to 81 m.p.h. at impact. The engine accelerator was at 100% in the three (3) seconds leading up to the crash. Rushin was hospitalized for approximately two weeks and suffered a traumatic brain injury.

In the early morning hours of January 6, 2019, Rushin's mother, Lavern Rushin, called Officer C. Daley and relayed that Matthew Rushin had attempted to kill himself in the January 6, 2017 single vehicle collision. In his interview with Detective Hosang and Officer Dolida, Rushin initially denied being involved in a previous accident. He eventually went on to admit that the characteristics from the crash that night were very similar to the characteristics of the 2017 crash, and that it looks like he was trying to kill himself. He also stated, "I wanted to die," "maybe I do want to kill myself," and "maybe I was trying to kill myself."

The prosecution

Rushin's legal team, Melinda Glaubke and Larry Slipow, are among the most experienced attorneys in the area. Their combined experience in practicing criminal law is almost 80 years. In addition to being extremely competent attorneys, this legal team has a deeper understanding and appreciation for Rushin's Autism Spectrum Disorder diagnosis. Mr. Slipow's son is autistic, and Mr. Slipow and his wife have long been community activists for autism. Mr. Slipow and Ms. Glaubke approached the prosecution team and provided information about Rushin's background, history, and diagnoses. At the time, Rushin was charged with two counts of Aggravated Malicious Wounding (victims George and Danna Cusick) as well as Hit and Run (involving the victim Rushin struck first in the Total Wine parking lot). Rushin's legal team requested a plea offer that would allow Rushin to plead guilty to two lesser charges of Malicious Wounding plus one count of Hit and Run. Sentencing would be left up to the judge's discretion. After conferring with supervising Commonwealth's Attorneys as well as the victims, prosecutors extended the requested offer to Rushin, who accepted and pled guilty on August 6, 2019.

When a defendant enters a guilty plea to a felony charge, a guilty plea questionnaire is filled out by the defendant with his counsel, signed by each of those parties, and reviewed aloud by the judge in open court. Among the questions asked of Rushin were:

- Do you fully understand the charges against you?

- Have you discussed the charges and their elements with your lawyer and do you understand what the Commonwealth must prove beyond a reasonable doubt before you may be found guilty of those charges?
- Have you had enough time to discuss with your lawyer any possible defenses you may have to the charges?
- Have you discussed with your lawyer whether you should plead not guilty, guilty, or nolo contendere?
- After this discussion did you decide for yourself that you should plead guilty?
- Are you entering your plea of guilty freely and voluntarily?

Rushin answered yes to each of those questions. The questionnaire goes on to prescribe the maximum punishment for the crimes charged, and asks:

- Have you discussed the sentencing guidelines with your attorney?
- Do you understand that the Court is not required to follow those guidelines and may sentence to you to more than the guidelines suggest, so long as the court does not exceed the maximum punishment provided by law?

Rushin answered yes to each of those questions. He went on to answer “yes” to questions about being entirely satisfied with the services of his attorney, whether he has discussed and reviewed this information with his attorney, and whether he fully understood these questions. He answered “no” to having any questions he wished to ask the Court. He signed a document titled “Stipulation of Facts” and summarizes what the Commonwealth’s evidence would have been should the case have gone to trial.

The court had the discretion to impose a sentence of up to fifty (50) years in prison at the sentencing hearing on November 6, 2019. On the evening prior to sentencing, Rushin discussed the upcoming sentencing proceedings with his mother and father in recorded jail phone calls. Rushin explained to his mother that he planned to make an allocution, and his mother told him to be sincere. An allocution is the defendant’s opportunity to formally address the Court to express remorse and provide any additional information that might mitigate his or her sentence. Rushin discussed the same with his father, and his father told him, “I am quite sure you got it covered,” to which Rushin replied, “yeah.”

Both the prosecution and the defense provided a thorough presentation of evidence at the sentencing hearing on November 6, 2019. The defense submitted letters from fifteen (15) of Rushin’s family members, friends, and his employer. Rushin’s mother, Lavern Rushin, provided testimony about Rushin’s history and diagnoses at the sentencing hearing. Also, a Licensed Clinical Psychologist/Forensic Evaluator, Dr. David Keenan, evaluated Rushin, provided a report to the Court, and testified at the sentencing hearing. Dr. Keenan’s report and testimony addressed Rushin’s diagnoses of Autism Spectrum Disorder (Asperger’s Disorder), Attention Deficit Hyperactivity Disorder, traumatic brain injury, and anxiety. Dr. Keenan also included in his report

and testimony information about a second suicide attempt by Rushin on July 23, 2018. Rushin cut his wrists with a razor and was admitted to Eastern State Hospital as a result.

The Commonwealth presented evidence from multiple victims, including George Cusick's wife, Danna, and their son, George. The Cusicks testified to the lasting, permanent damage Rushin inflicted upon George Cusick. Prior to the crash, Mr. Cusick was an energetic Veteran and a loving father, grandfather, and husband. As a result of the crash, Mr. Cusick is permanently in a long-term care facility and will not regain the ability to walk, talk, feed, or care for himself. He has lost memory of his family.

After carefully considering all of the evidence, the Court imposed a sentence of fifty (50) years with forty (40) years suspended, leaving ten (10) years to serve.

Post-sentencing

Immediately following the sentencing hearing, Rushin discussed the outcome with his family in recorded jail phone calls. He stated to his mother, "Mom, I will be fine," and "When the Cusick son got up I guess he wanted a Grammy award. As soon as he started talking, I knew that was fake." In a different phone call, he stated, "50 years I have 40 years suspended. I mean it could have been worse I guess," and "I am going to be able to get good credit and good behavior and be able to work to get credit. So 7.5 years will turn into 5, 5 and a half years. That's not too bad." He went on in various phone calls to express that he understood the amount of time he will serve, and that he could "deal with that." He also told his mother, "Mom, you gotta look at it like this. At least he didn't give me the full 50 years. He could have. Because like I was saying, I have credit. I will join a work force to get credit. I will have good behavior. In total I will honestly only have to do 5-6 more years."

Also on the evening of the sentencing, Rushin spoke to a loved one via recorded iPad conversation. Referencing the sentencing judge, Rushin stated, "I don't really think it was race, I think he read all the facts and went strictly off of that, and he went off my testimony. ... And he went off of what I said, and what my mom said, and all the letters, because he really could have given me 50 years but he didn't."

The appeal

In his argument to the Court of Appeals, Rushin contends that he would have "received a lesser sentence" had the trial court adequately considered the mitigating circumstances, including his mental health diagnoses, work and volunteer history, and traumatic brain injury. The Court of Appeals rejected this argument, citing that the record reflects that the trial court considered those mitigating circumstances and specifically stated Rushin's mitigating evidence warranted a sentence significantly below the term sought by the prosecution. The Court of Appeals concluded that Rushin's mitigating evidence was balanced against the tragic consequences for the victims. Calling Rushin's conduct "callous and malicious," the Court of Appeals believes it tragic that Mr.

Cusick is unable to care for himself and has no memory of his family. The Court of Appeals order states that when Rushin entered his guilty pleas, he understood the total maximum sentences he could receive and that the Court was not bound by the sentencing guidelines. They concluded that the trial court imposed a sentence it deemed appropriate and properly exercised discretion when sentencing Rushin.

Conclusion

The investigation and prosecution of Matthew Rushin were thorough, professional, and just. The impact his crimes had on the victims in this case, especially the Cusicks, are severe. Rushin's behavior has escalated from self-harming and self-destructive actions to actions that pose a severe danger to the community at large. A number of people became victims of Rushin's intentional, malicious conduct on January 4, 2019. If he is released, the public at large is at risk of becoming Rushin's next victim.

The Commonwealth was careful in its consideration to amend the charges and allow Rushin to escape two potential life sentences. The defendant's mitigating evidence was clearly considered very carefully by the Court during the sentencing hearing. To allow Rushin's sentence or conviction to be vacated or altered would not serve the interests of justice.