VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

COMMONWEALTH OF VIRGINIA)	
)	
)	CR22000525-00
V.)	through -29
)	
)	
CORY BIGSBY,)	
Defendant)	

COMMONWEALTH'S MOTION TO NOLLE PROSEQUI

COMES NOW, the Commonwealth of Virginia, by and through counsel, to ask this Honorable Court to allow the Commonwealth leave to *nolle prosequi* the charges currently pending before this Court. In support of this Motion, the Commonwealth states the following:

- 1. The Defendant is scheduled for trial by jury on July 14, 2025, on the following charges:
 - a. Twenty-four (24) counts of Gross, Wanton, or Reckless Care for a Child, in violation of § 18.2-371.1(B) of the Code of Virginia (1950), as amended, all felonies;
 - b. Four (4) counts of Child Abuse and Neglect, Leading to Serious Injury, in violation of Va. Code § 18.2-371.1(A), all felonies; and
 - c. Two (2) counts of Failure to Secure Medical Attention for an Injured or Battered Child, in violation of Va. Code § 18.2-314, both misdemeanors.
- 2. Under Va. Code § 19.2-265.3, the decision to allow a *nolle prosequi* is solely within the discretion of the trial court, "upon motion of the Commonwealth with good cause therefor shown."
- 3. The primary witness in the Commonwealth's case at bar, D.B., is the Defendant's minor child. D.B was four (4) and five (5) years old on the dates of offense in this case.
- 4. Now eight (8) years old, D.B. is undergoing intensive counseling and therapy as a result of the Defendant's actions that led to these charges, as well as the death of D.B.'s younger brother at the hands of the Defendant, for which D.B. provided testimony at the trial in this Court that began on March 4, 2024, and concluded on March 12, 2024, when D.B. was seven (7) years old.
- 5. Due to his age and the serious nature of these charges, the Commonwealth would like the opportunity for D.B. to continue his counseling and therapy before subjecting him to another jury trial, so as to better to protect his mental and emotional well-being.

- 6. Additionally, there is a second witness for the Commonwealth, also a minor, who is currently undergoing counseling. The Commonwealth would like the opportunity for this witness to also progress in their therapy before subjecting them to a jury trial.
- 7. Virginia's appellate courts have provided guidance on what may constitute good cause for a nolle prosequi. Specifically, in the case of Harris v. Commonwealth, 258 Va. 576, 583-84 (1999), the Supreme Court of Virginia noted that good cause for a nolle prosequi can be extremely broad. In the Harris case, good cause was found in light of the Commonwealth's failure to timely obtain necessary documents for their case, which the Court noted was partially an issue of the Commonwealth's own making and partially outside of their control. However, it was still good cause. The Court opined that absent a showing of "bad faith" or "oppressive tactics" on the part of the Commonwealth, to such a degree as would amount to prosecutorial misconduct, a trial court's discretionary determination of good cause is judicially sound. See id., (cited by, Moore v. Commonwealth, 59 Va. App. 795, 810 (2012). Good cause for a nolle prosequi has been found to include issues with locating and obtaining the cooperation of witnesses, as the Court of Appeals noted in cases such as Duggins v. Commonwealth, 59 Va. App. 785 (20212) and Arnold v. Commonwealth, 18 Va. App. 218 (unpub., 1994).
- 8. The mental well-being and emotional healing of the minor witnesses in this matter are of paramount importance to the Commonwealth, and must be balanced with the public interest inherent in prosecuting these offenses.

For the foregoing reasons and good cause shown, the Commonwealth respectfully requests that this Honorable Court grant the motion to *nolle prosequi* the charges against the defendant at this time.

Respectfully Submitted

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City of Hampton

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Certificate of Service

I hereby certify that the foregoing Motion to *Nolle Prosequi* was emailed to Amina Matheny-Willard, Kenneth Singleton, and Curtis Brown counsel for the defendant,

Emma A. Cleary

Assistant Commonwealth's Attorney

City of Hampton