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APRIL 2, 2019
WACO, TEXAS

For Immediate Release and/or Publication
Statement from Barry Johnson, McLennan County Criminal District Attorney

RE: MAY 17, 2015, INCIDENT AT TWIN PEAKS RESTAURANT IN WACO, TEXAS.

I was sworn into office as the elected Criminal District Attorney of McLennan County on January 1, 2019, approximately 90 days ago.

During my campaign I was critical of the manner in which the prior District Attorney had conducted the prosecution of the criminal offenses arising from the May 17, 2015, public violence between rival motorcycle clubs which took place at the Twin Peaks restaurant located at the Texas Central Marketplace shopping center. This brawl resulted in 9 deaths and at least 20 serious injuries. All of the deaths and injuries were confined to the bikers who had gathered at Twin Peaks on that day. Fortunately, there were no uninvolved persons or residents of McLennan County who were physically injured by this public violence.

There were approximately 200 members of rival motorcycle gangs and their support groups, as well as some independent bikers, involved in the incident at Twin Peaks. A majority were members of either the Banditos or Cossack motorcycle gangs. At the direction of the prior District Attorney, 177 bikers were arrested as members of criminal street gangs. 155 were later indicted for the offense of engaging in organized criminal activity. All but 24 of those indictments had been dismissed before I took office on January 1st of this year.

I agree that there was reasonable suspicion to support the detention, and sufficient evidence to provide probable cause to support the arrest and the grand jury's subsequent indictment of the 155 persons for the offense of engaging in organized criminal activity. It is after the initial indictment of the 155 individuals that I disagree with the manner in which the prior District Attorney handled this matter.

Following the indictments, the prior District Attorney had the time and opportunity to review and assess the admissible evidence to determine the full range of charges that could be brought against each individual who participated in the Twin Peaks brawl, and to charge only those offenses where

the admissible evidence would support a verdict of guilt beyond a reasonable doubt. In my opinion, had this action been taken in a timely manner, it would have, and should have, resulted in numerous convictions and prison sentences against many of those who participated in the Twin Peaks brawl. Over the next three years the prior District Attorney failed to take that action, for reasons that I do not know to this day.

When I assumed office on January 1st of 2019, the statute of limitations had already expired on most of these offenses. While there may be legal argument that could be made to attempt to avoid the effect of the statute of limitations, I do not believe those arguments would be successful. I believe that any effort to charge and prosecute these individual charges at this time would only result in further waste of time, effort and resources of the McLennan County judicial system and place a further unfair burden on the taxpayers of McLennan County.

As District Attorney, when my office presents evidence to a jury in McLennan County, I know the jurors will conscientiously perform their duties. Regardless of whether a jury renders a verdict of guilty or not guilty, every member of the district attorney's office appreciates their service as jurors and will accept and respect their verdict, even though we may on occasion disagree with the verdict. The McLennan County residents were gracious enough to elect me as their District Attorney to make decisions on their behalf as to the prosecution of crimes occurring in McLennan County. I will not in the Twin Peaks matter, nor in any case, instruct the excellent assistant district attorneys in my office to proceed to trial on any case where I do not believe there is a very strong likelihood of the evidence establishing the guilt of the person charged beyond a reasonable doubt.

My opinions as to what the prior District Attorney should have done in prosecuting the Twin Peaks matter is of less importance than what he did do. I assume that it was only after a thorough re-evaluation of the evidence, following the sole Twin Peaks case which was tried over a period of several weeks and resulted in a hung jury and a mistrial, that the prior District Attorney dismissed all but 24 of the indictments for engaging in organized criminal activity arising from the Twin Peaks incident. As a result, most of those participants in the Twin Peaks brawl were beyond the reach of criminal prosecution by my office by the time I entered office on January 1st, 2019. Although the remaining 24 individuals remain indicted on engaging in organized criminal activity, the prior District Attorney's office advised the Court that our office would not proceed with prosecution of that charge, and I will respect that decision. The prior District Attorney did, however, re-indict the remaining 24 individuals on a charge of riot.

Riot is a class B misdemeanor punishable by up to 180 days in jail. However, provisions within the riot statute provide that, under certain circumstances, the offense can be increased to the classification of any offense of a higher grade committed by anyone in the riot. Thus, it would be possible for our offices to proceed to trial on these 24 individuals and seek to hold all 24 responsible for the conduct of one or more other persons in order to elevate a class B misdemeanor to felony offense which would carry much greater potential range of punishment.

I believe that should I elect to proceed with the prosecution of these 24 individuals on the charge of riot, and should my office obtain guilty verdicts as to one or more individuals, there are a number of assertions of error that will be raised on appeal after any such convictions. One such assertion is

whether the re-indictment was in fact an amendment of the prior engaging in organized criminal activity indictment. If such assertion were successful on appeal, all convictions obtained would likely be set aside, and the expended resources of our judicial system, and more importantly, the expended tax dollars of our McLennan County taxpayers, would have been wasted.

A separate assertion of error that could be made post conviction of any of the 24 individuals on the riot charge would involve the use of the misdemeanor riot statute to obtain felony convictions up to and including murder against these individuals. I believe that without doubt, should we obtain such convictions, the use of the riot statute in this manner will be appealed. As to whether the appellate courts will uphold such a use of the riot statute, I do not have the degree of confidence that I believe necessary to justify the large expenditures of judicial and law enforcement time and resources, as well as taxpayer dollars, over a period of the next several years, while running a significant risk of having the convictions set aside at a time far in the future by an appellate court.

I do not believe that it is a proper exercise of my judgment as District Attorney to proceed with the further prosecution of what I believe to have been an ill-conceived path that this District Attorney's Office was set upon almost four years ago by the prior District Attorney, and I do not believe that path should continue to be pursued.

This is a difficult decision which must be made based on the existing facts and evidence in accordance with the laws of this state and in the interest of justice, and not a decision that can be made based on emotions or personal feelings or preferences.

As such, I am today announcing that I am instructing members of my office to prepare and file the appropriate documents to dismiss all remaining indictments arising from the Twin Peaks incident which are currently pending in McLennan County, Texas.