No charges for officers who violently shoved 75-year-old protester in Buffalo, New York

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A grand jury in Buffalo, New York, has decided not to indict two police officers who were suspended eight months ago for violently shoving and injuring a 75-year-old man at a protest against police brutality.

Video from June 4, 2020, shows Martin Gugino being pushed to the ground by officers Aaron Torgalski and Robert McCabe as Buffalo police cleared Niagara Square to enforce a curfew. Gugino fell backward and hit his head on the pavement, causing him to bleed. He suffered a skull fracture and brain damage, forcing him to spend a month in the hospital.

The video was shared widely online and was seen by hundreds of thousands of people by the next day. Outrage over the blatant display of police brutality caused the push of Gugino to become a major symbol for the mass protests against police violence that took place for months following the police murder of George Floyd.

Torgalski and McCabe faced charges of assault in the second degree, a Class D felony. New York state law requires that if a victim is over the age of 65 and is assaulted by a person at least 10 years younger it must be considered a felony offense.

Two days after the incident both officers were suspended from their positions and charged with assault. However, they were allowed back on the payroll 30 days after their suspension and await an internal affairs investigation before they return to their jobs.

The trial was delayed for an extended period due to the pandemic, according to Erie County District Attorney John Flynn. Though Flynn also explained that this case was not considered a priority, likely the more influential consideration in the delay of the trial was the widespread anger sparked by the attack.

Jurors were presented with the viral video, potentially also viewing police body camera footage which had previously been unavailable when the charges were made and remains undisclosed to the public.

The defense team for the officers argued that the evidence provided by the district attorney was not sufficient to determine the intent of the officers to cause harm.

Thomas Burton, the lawyer for McCabe, explained the core the defense's argument that "the unfortunate outcome with Mr. Gugino cracking his head is not the legal issue you have to look at. The real issue is what is the intent and whether it was criminal with the minimal force both officers used."

The lawyer for Torgalski, Joseph Latona, said: "We feel they made the right decision. And obviously it was their decision to make."

This is a dangerous legal position. The core argument of the defense is that the consequences of the actions of an officer are irrelevant, it is only the intention of the officer to cause harm that matters. Essentially, the police have the right to cause as much physical harm to protesters as they see fit as long as they claim their intention was only to administer the legally acceptable level of force.

This argument would carry little weight if the defendants were not police officers. If a non-law-enforcement person had shoved an elderly man to the ground without provocation, causing severe injury, that person would face the full legal consequences of their action. Instead, this case has made it clear that the police effectively operate under a different set of laws.

Offering support and excuses for the officers, the Buffalo Police Benevolent Association argued that they were simply following orders. The union issued a statement after the jury's decision was announced, stating, "Officers McCabe and Torgalski were simply

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following departmental procedures and the directives of their superiors to clear Niagara Square despite working under extremely challenging circumstances.”

These “challenging circumstances” were to escort a few dozen protesters from the square to enforce an 8 p.m. curfew.

The statement also said that the union was “extremely pleased” with the decision and that they are in “staunch support” of the two officers.

According to Flynn, there was probable cause to press the charges against the officers but that it could not be proven beyond a reasonable doubt that the officers had committed a crime.

During a press conference after the announcement of the jury’s decision, Flynn said: “At this point right now, it’s 50/50 in my mind as to whether or not it was intentional or reckless. If it’s 50/50, that’s not beyond a reasonable doubt. That analysis factors into my mind, but I can’t articulate to you what was going on in [grand jurors’] minds.”

With the court proceedings sealed, the public is unable to learn about what evidence was provided to the grand jury or how the prosecution chose to argue the case. However, responding to criticism that he had “sandbagged” the trial, Flynn stated that he had presented all available evidence to the jury and made a comprehensive case for indictment.

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