

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MINNESOTA**

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City of West St. Paul,

Crim. No. 10-12 (ADM)

Plaintiff,

v.

**MEMORANDUM AND ORDER**

Mary Jane Duchene,

Defendant.

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**I. INTRODUCTION**

This case was initiated in the state district court for Dakota County, Minnesota, when the City of West St. Paul, Minnesota, filed a criminal complaint against the above-named Defendant, charging her with having a “Noisy Dog,” in violation of a City of West St. Paul ordinance. The matter is presently before this Court pursuant to Defendant’s self-styled Notice of Removal, (Docket No. 1), by which she is attempting to remove the case into federal court. Defendant did not pay the \$350.00 filing fee for her Notice of Removal, but she instead filed an application for leave to proceed in forma pauperis, (“IFP”), (Docket Nos. 2 and 3), which is also before the Court at this time.

When a defendant in a state criminal case attempts to remove the case to federal court, the federal district court must promptly examine the Notice of Removal and determine whether the case can properly be removed. 28 U.S.C. § 1446(c)(4). “If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.” Id. The Court finds that the present case cannot properly be removed to federal court, for reasons discussed below. Therefore, the case will be summarily remanded to the

state district court for Dakota County.

## II. BACKGROUND

As noted above, Defendant has been charged with violating a city ordinance for having a noisy dog. According to the criminal complaint, on July 24, 2009, a police officer “parked her squad car three houses south of Defendant’s residence and listened to the dog at Defendant’s property bark constantly for five minutes with no more than a 20 to 30 second break between each bark.” (Notice of Removal, [Docket No. 1], p. 8, “Exhibit A.”) The exhibits attached to Defendant’s Notice of Removal show that Defendant has mounted a vigorous defense to the charges that have been brought against her in this case. She has argued that the complaining police officer could not have heard the dog, as alleged in the criminal complaint.

Defendant now contends that this case should be removed to federal court, because of several alleged improprieties pertaining to the matter. She alleges that the “Dakota County criminal action is observably a malicious prosecution by the plaintiffs in that action and the plaintiffs failed to comply with the legal process required by law and the Fourteenth and Fifth Amendment to the US Constitution.” (Notice of Removal, p. 1, ¶ (1).) She further alleges that she “cannot get a fair trial in Dakota County... as there has been a hostile history with the Dakota County,” (*id.*, p. 2, ¶ (3)), and that her “First Amendment rights are also being abused by this action as this action appears to be retaliation by the City of West St. Paul Attorney for speaking out on disability issues, via a web site,” (*id.*, p. 4, ¶ (4).)

Defendant is seeking “[a]n injunction prohibiting the City of West St. Paul from continuing this malicious prosecution, and continuing to solicit and engage in due process violations in this action.” (*Id.*, p. 4, “Relief Requested,” ¶ 1.) She is also seeking “an unspecified amount” of money

damages “for engaging in a long term pattern of harassment against the Defendant.” (Id., ¶ 2.)

### III. DISCUSSION

Defendant filed her current Notice of Removal pursuant to 28 U.S.C. § 1443(1), which provides as follows:

“Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof....”

Defendant apparently believes that she is being deprived of her “equal civil rights” under federal law and the Constitution, and that she is therefore entitled to remove this state criminal case pursuant to § 1443(1). That reasoning, however, is precluded by the Supreme Court’s decision in Georgia v. Rachel, 384 U.S. 780 (1966).

In Rachel, the Court determined that “the phrase ‘any law providing for... equal civil rights,’” as used in § 1443(1), “must be construed to mean any law providing for specific civil rights stated in terms of racial equality.” Id. at 792. Thus, the Court held that removal of state criminal cases pursuant to § 1443(1) is permissible only in certain types of cases involving racial discrimination. As later explained by the Eighth Circuit Court of Appeals, “[s]ection 1443 applies only to denials of specific rights of racial equality and not the whole gamut of constitutional rights.” United States ex rel. Sullivan v. State, 588 F.2d 579, 580 (8th Cir. 1978) (per curiam) (emphasis added). See also Neal v. Wilson, 112 F.3d 351, 355 (8th Cir. 1997) (a defendant seeking to remove a state criminal case pursuant to § 1443(1) “must show that he relies upon a law providing for equal civil rights stated in terms of racial equality”).

In Johnson v. Mississippi, 423 U.S. 213 (1975), the Supreme Court reiterated that removal under § 1443(1) can be accomplished only if the defendant shows that he or she is being deprived of federally protected rights pertaining to racial equality. The Court explained that –

“Claims that prosecution and conviction will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination, will not suffice. That a removal petitioner will be denied due process of law because the criminal law under which he is being prosecuted is allegedly vague or that the prosecution is assertedly a sham, corrupt, or without evidentiary basis does not, standing alone, satisfy the requirements of § 1443(1).”

Id. at 219.

Applying Rachel and Johnson here, the Court finds that Defendant cannot remove this action under § 1443(1), because she has not shown, (or even alleged), that she is being prosecuted in violation of a specific statute barring racial discrimination. Defendant has not identified any specific facts or circumstances showing that she has been discriminated against, during the course of her criminal case, based on her race and in violation of some particular anti-racial-discrimination law. Therefore, Defendant has not shown that this case is removable to federal court under § 1443(1). See State of Minnesota v. Jenkins, 145 Fed.Appx. 564 (8<sup>th</sup> Cir. 2005) (unpublished opinion) (district court properly remanded Minnesota state criminal action to the state court, because defendant “failed to show sufficient grounds to support his invocation of section 1443”) (citing Rachel and City of Greenwood v. Peacock, 384 U.S. 808 (1966)); see also Stearns County v. Hoeschen, Civil No. 06-3348 (RHK/RLE) (D.Minn. 2006), 2006 WL 2735493 at \*3 (remanding Minnesota state criminal case, because removing defendant had “not alleged that the requested removal is necessary to vindicate any Federal right guaranteeing racial equality”); Carlton County v. Caprice, Crim. No. 09-249 (PJS) (D.Minn. 2009), 2009 WL 2989784 at \*1 (removing defendant’s claims that he was being denied his constitutional rights under First, Fourth, Fifth, Eighth, Ninth, Tenth and Fourteenth

Amendments “do not provide a basis for removal under § 1443(1)”).

Defendant will, of course, retain the entire array of protections afforded by federal law and the United States Constitution during the course of her state criminal case. However, the Minnesota state courts, (including, if necessary, the state appellate courts), are fully capable of ensuring that Defendant receives all of those protections. See United States ex rel. Sullivan, 588 F.2d at 580 (“[w]e are confident that [the defendant’s] constitutional claims will receive careful consideration in the state courts”); Doe v. Berry, 967 F.2d 1255, 1258 (8<sup>th</sup> Cir. 1992) (“[t]he issues involved in these cases can be decided in the state courts, which have equal responsibility for ruling on federal constitutional issues”), cert. denied, 507 U.S. 911 (1993). If Defendant is convicted in this case, and if she continues to believe, after exhausting her state appeal rights, that the state courts have not upheld her federally protected rights, she may seek relief in the United States Supreme Court by filing a petition for writ of certiorari. Id. However, Defendant cannot remove this case to federal court pursuant to § 1443(1), simply because she believes the state trial court is not adequately protecting her federal constitutional rights.

#### IV. CONCLUSION

For the reasons discussed above, the Court finds that the present action is not removable to federal court pursuant to § 1443(1). Therefore, Defendant’s Notice of Removal will be vacated, and this case will be summarily remanded to the state district court for Dakota County, Minnesota. Finally, because this case is not removable, Defendant’s pending IFP application will be denied as moot.

Based upon the foregoing, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

1. Defendant's Notice of Removal, (Docket No. 1), is VACATED;
2. Defendant's application for leave to proceed in forma pauperis, (Docket Nos. 2 and 3), is DENIED as moot; and
3. This case is REMANDED to the state district court for Dakota County, Minnesota.

Dated: February 19, 2010

s/Ann D. Montgomery

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ANN D. MONTGOMERY  
United States District Court Judge