

State of Minnesota

District Court

County of Dakota

First Judicial District

City of West St. Paul, Plaintiff,

**Notice of Motion and Motion to Vacate and
Reverse the Order of September 03, 2009
Refusing to Dismiss**

vs.

Citation no. 3-441797

Mary Jane Duchene, Defendant

Court file: 19WS-CR-09-15734

**TO: THE ABOVE NAMED COURT AND ATTORNEY FOR THE CITY OF WEST ST.
PAUL:**

**The order above cited is in error as a matter of law as the long form
complaint filed, and must be vacated, and reversed, on the following grounds:**

**Shows no specific accusation or charging language, distinct from a
statement of probable cause, consisting of a full statement of the essential facts
relied upon to show the existence of acts constituting a public offense or public
offenses charged or sought to be charged, contrary to Rules 2.01 and 2.03 of the
Minnesota Rules of Civil Procedure.**

**This is necessary in this matter as the statement of probable cause seems
preposterous on the face of it in that, and makes any claims or charges
impossible for any person to understand and defend against, as:**

**1) the alleged private citizen complaint was allegedly filed at a time of day
when no neighbors in close enough proximity to hear a dog at 1144 Ottawa, or
indeed complain of hearing a dog there, are home, that is to say they are all at
work; and it is notable that the WSP police and prosecutor failed to name a
legitimate complainant to overcome the apparent absence of a legitimate
complainant**

**2) the WSP police officer's report is on the face of it absurd apparently one
that is wholly one of mere assumption, at best**

**3) the WSP police officer apparently and possibly claims to be able to
identify a barking dog (allegedly at 1144 Ottawa Avenue) from a distance of over**

200 feet from 1144 Ottawa Avenue, merely by allegedly hearing a dog bark, and offers no basis of fact to demonstrate that the any dog that was allegedly barking was in fact a dog residing at 1144 Ottawa Avenue, that is to say it could have been any dog in the wider neighborhood, if there was any barking dog at all; and this makes the charge and this prosecution appear to be wholly arbitrary and frivolous

4) the WSP police officer apparently claims to identify a barking dog at 1144 Ottawa Avenue while the police officer was inside a police vehicle due to poor weather, on a rainy and windy morning, which further obscured sound, additional to the considerable distance of over 200 feet from 1144 Ottawa Avenue.

5) there is the appearance that the citation in the above entitled matter was given out of uncontrolled emotionally motivated and charged revenge and retaliation by the prosecutor, Ms. Land, as the citation was given one week after the prosecutor was overturned and criticized (by the Minnesota Supreme Court) in a somewhat notorious case involving the City of West St. Paul and Alice Kregel, and the undersigned was involved as an advocate in a public information web site on that case and issue:

See: <http://www.angelfire.com/mn3/advocate7/alice2006/alice.html> (and herein I incorporate the entire contents of that website into evidence in this matter).

6) that there has been a strong pattern of persistent frivolous prosecution, over a period (inclusive but not limited to Dakota County case file nos. T2-97-24334, wherein the same city attorney was reprimanded, and the case dismissed, to T6-06-23553, wherein defendant's vehicle was wrongly towed, case dismissed and defendant was awarded damages against the towing company by Ramsey County Small Claims court) of more than 12 years, by the WSP prosecutor, additionally for the reason that there was apparent criminal misconduct by a West St. Paul policeman, in a murder case, in which that the city is implicated, via that policeman, which compels the city to misuse it's official power, via the city attorney and police, to evade criminal and civil consequences for that, details of which are shown at:

<http://www.MurderbyDiabetes.org> (and herein I incorporate the entire contents of that website into evidence in this matter).

As to the the hearing of the motion to dismiss, THE COURT IS AND WAS WHOLLY AWARE, of the following showing insurmountable legal error by the prosecution:

That established US Supreme Court requirements as to required specificity of a criminal accusation, see. e.g. United States v. Cruikshank, 92 U.S. 542

(1876), quoted and affirmed in Russell v. United States, 369 U.S. 749 at 763-765, which in turn is cited with approval in State v. Gross, 387 N.W. 2d 182 at 189 (Minn. App. 1986).

That the right to a specific accusation including separate counts for distinct offenses charged has been incorporated by the fourteenth amendment to the United States Constitution. See: e.g. Cole v. Arkansas, 333 U.S. 196 at 201 (1942), and Faretta v. California, 442 U.S. 806 at 818(1975).

The court know or should have known that there was no justification in allowing the prosecution to continue with a frivolous prosecution of the above named defendant, and that judicial facilitation of that by setting a pre-trial hearing date, was in extreme error, as a matter of law.

October 25, 2009

Respectfully submitted:



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