

STATE OF MINNESOTA
COUNTY OF DAKOTA

IN DISTRICT COURT
FIRST JUDICIAL DISTRICT

The City of West St. Paul,

Plaintiff

vs.

Mary Jane Duchene,

Defendant

NOTICE OF MOTION
AND MOTION

No. T2-97-24334

TO THE WEST ST. PAUL CITY ATTORNEY, GREETING:

You will please take notice that, on September 22, 1997, at 9:00 A. M., or as soon thereafter as a hearing can be held, before such judge as may be assigned, or at such other time as may be established by order of the court, the defendant through her counsel will make the following motion, to wit: That the complaint filed on April 14, 1997, be dismissed. So moved,

Because the said complaint contains no accusation or charging language, distinct from the statement of probable cause, consisting of a statement of the essential facts 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 Criminal Procedure;

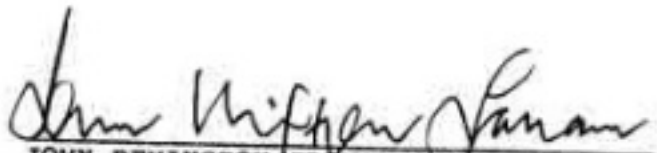
Because the said complaint contains no proper citation of any statute, ordinance, rule, or regulation which the defendant is alleged to have violated, contrary to Rules 2.03 and 17.02 of the Minnesota Rules of Criminal Procedure; and

Because the said complaint fails to set forth an accusation in separate counts for separate offenses charged or sought to be charged, contrary to Rule 17.02 of the Minnesota Rules of Criminal Procedure.

As to required specificity of a criminal accusation, see, e. g., United States v. Cruikshank, 92 U. S. 542 at 558 (1876), quoted and reaffirmed in Russell v. United States, 369 U. S. 749 at 763-765 (1962), which in turn is cited with approval in State v. Grose, 387 N. W. 2d 182 at 189 (Minn. App. 1986).

As to the prohibition of duplicity in a criminal accusation (i. e., charging more than one offense in one accusation without separate counts for each offense charged), see, e. g., Creel v. United States, 21 F. 2d 690 (8 Cir. 1927), and Bratton v. United States, 73 F. 2d 795 (10 Cir. 1934). Cf. State v. Belfry, 353 N. W. 2d 224 at 226-227 (Minn. App. 1984).

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 (1948), and Faretta v. California, 442 U. S. 806 at 818 (1975).



JOHN REMINGTON GRAHAM (X3564X)
3840 Ballantrae Road #10
Eagan, Minnesota 55122
Telephone: 612-454-4537

Counsel for the defendant