

IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

STATE OF IOWA	NO. SMSM026797
v.	
PAUL ROBERT DORR, Defendant.	STATE'S RESISTANCE TO DEFENDANT'S MOTION TO DISMISS

COMES NOW, the State of Iowa, by and through Sioux County Attorney Thomas Kunstle, and hereby resists Defendant's Motion to Dismiss in its entirety.

Law

1. Prosecutors have wide latitude in determining which cases to prosecute, so long as their decisions are not discriminatory in effect or motivated by a discriminatory purpose. *State v. Skeel*, 486 N.W.2d 43, 45 (Iowa 1992).

2. Claims of selective prosecution should be judged according to ordinary equal protection standards which would require one alleging selective prosecution to show that the system leading to the Defendant's prosecution was (1) discriminatory in effect, and (2) motivated by a discriminatory purpose. *See Wayte v. United States*, 470 U.S. 598, 608 (1985). To establish a prima facie case of selective prosecution the Defendant must show both:

- a. Others similarly situated generally had not been prosecuted for conduct similar to the Defendant's, and
- b. The State's discriminatory selection was based on impermissible grounds such as race, religion, or exercise of First Amendment rights. *Wayte v. United States*, 470 U.S. 598, 605 (1985).

3. Selectivity in enforcement may be a denial of equal protection if deliberately based on an unjustifiable standard such as race, religion, or other arbitrary

classification. *State v. Apt*, 244 N.W.2d 801 (Iowa 1976) (no equal protection violation in charging a defendant with violating drug laws and not charging informant who smoked marijuana in presence of officer); *State v. Durrell*, 300 N.W.2d 134 (Iowa 1981).

Orange City Police Past Charges

4. The Defendant's claim that the Orange City "police have never *charged* anyone with a crime [related to Orange City] Library books" is dishonest and disingenuous. To support his claim, the Defendant only lists three (3) police records: Incident # 16010427, 16015460, and 17010183. However, the Defendant omitted the two most relevant records, [1] Incident # 12000036, and [2] Exhibit filed 5/30/19 at security level five.

- a. The first [1] shows then-Orange City Library employee Shirley Taylor "reported a theft at the Orange City Library. Upon further investigation [by the Orange City Police], an arrest was made..." in 2012. This information is fully incorporated herein as **Attachment #1**.
- b. The second [2] reveals a juvenile referral was issued by the Orange City Police the circumstances of which should be reviewed by the Court by reviewing the confidential exhibit. It should be noted that the police issuing a juvenile referral is the first step to bring a delinquent within the juvenile justice system. Iowa Code §§ 232.2(26), 232.28.

5. Reviewing these five incident reports, in 2 out of 5 theft incidents from the Library persons were arrested or issued a juvenile referral in Sioux County. In *State v. Durrell*, a defendant failed to prove selective prosecution after showing a prosecutor sought a mandatory minimum in only 3 out of 16 drug cases. 300 N.W.2d 134, 135 (Iowa 1981). "The statistical data submitted [in Durrell, just as it does here] falls far short of hinting that the decision to prosecute [the Defendant] was based on any such

unjustifiable standard." *Id.* at 136. Conversely, statistical data shown to be questionable was found where "out of the estimated 674,000 nonregistrants the 13 indicted had all been vocal nonregisterants." *Wayte v. United States*, 470 U.S. 598, 607 (1985). The statistics in this case bear no resemblance to *Wayte*, and are even less than those upheld in *Durrell*. Moreover, simply selecting a small pool of cases to prosecute, without showing *why*, fails to demonstrate selective prosecution. *See Durrell*, at 136.

6. While police initially began investigations in # 16010427, the incident "looked like an identity theft matter...[and the Library] was fine with closing the matter as it was also partially her [Library] staffs fault..." and in # 17010183 the police were advised by the Library "via e-mail that both issues have been resolved" so the police closed their investigation.

7. None of the Defendant's arguments rise above "frivolous" and fail to "raise a reasonable doubt" as to the prosecutor's purpose. *United States v. Catlett*, 584 F.2d 864, 866 (8th Cir. 1978).

Criminal Mischief, not Theft

8. The Defendant has further failed to identify any "similarly situated" defendants. Incident # 12000036, 16010427, 16015460, 17010183, and the juvenile referral (Exhibit filed 5/30/19 at security level five), are all theft complaints related to the Library; none are criminal mischief complaints.

9. The Defendant's charge of criminal mischief is the first of its kind originating from the Orange City Library at least since 2010. There are no records showing any

referral, investigation, charges, or prosecutorial discretion exercised in any way, related to criminal mischief and this Library. However, the undersigned is or has prosecuted the following criminal mischief cases (excluding juvenile court) during the calendar years of 2018-2019:

- a. Keaton Alan VanDerWeide, Sioux County Case No. SMSM026889;
- b. Keaton Alan VanDerWeide, Sioux County Case No. SMSM026884;
- c. Noah Roy Dekok, Sioux County Case No. AGCR016723;
- d. Eric Todd Hall, Sioux County Case No. FECR016775;
- e. Jesse Thomas VanLeeuwen, Sioux County Case No. FECR016743 (Count II);
- f. Blake Westcott Riepma, Sioux County Case No. FECR016337;
- g. Karl William Zahnow, Sioux County Case No. AGCR016384;
- h. Christopher Paul Gianopoulos, Sioux County Case No. SRCR016662;
- i. Artis Hendrene Kattenberg, Sioux County Case No. FECR016327 (Count I);
- j. Brandon Shane Collins, Sioux County Case No. SMSM026843;
- k. Ariel Lia Valdes, Sioux County Case No. AGCR016467;
- l. Eric James DeZeeuw, Sioux County Case No. AGCR016024;
- m. Joshua James McPeed, Sioux County Case No. AGCR016367;
- n. Crystal Joelyn Sanchez, Sioux County Case No. SRCR012637;
- o. Joseph Daniel Young, Sioux County Case No. AGCR016192.

The case at bar is an unremarkable, routine criminal mischief case. If the Court desires a further history of criminal mischief cases prosecuted by the undersigned, the State requests an opportunity to supplement this list.

10. Taking property with the intent to permanently deprive the owner thereof (theft) is distinctly different from intentionally destroying another's property (criminal mischief). Iowa Code §§ 714.1(1), 716.1. None of the actions contained in any of the past referenced Library incidents involved conduct similar to the Defendant's (i.e. intentionally destroying Library property) and the Defendant's reliance on past theft investigations or referrals is misplaced and inadequate.

State Court Prosecution Permissible

11. Even if the Court assumes prior theft incidents are similar to Defendant's conduct, and the Court assumes the statistics imply some selective enforcement, the Defendant failed to show the State deliberately targeted him on unjustifiable grounds. *State v. Apt*, 344 N.W. 2d 801, 804 (Iowa 1976) ("Prosecutorial discretion in law enforcement... 'is by its very nature exceedingly broad.' And 'the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation'...") (quoting *United States v. Bell*, 507 F.2d 207, 222 (1974)).

12. Some parallels can be found between *United States v. Catlett* and this case. 584 F.2d 864 (8th Cir. 1978). In *Catlett*, a Quaker publically protested the government mandate he pay federal taxes which "received widespread publicity and notoriety", and prompted federal prosecutors to convict *Catlett* notwithstanding his selective prosecution defense. *Id.* at 867. In affirming *Catlett's* conviction, the Court held "initiating an investigation and prosecution because...an announcement by a public figure falls well within the degree of prosecutorial discretion...[and] selection for prosecution based in part upon the potential deterrent effect on others serves a legitimate interest in promoting more general compliance with the tax laws." *Id.* at 868 (omitting internal citations).

13. The Defendant asserts he would not have been prosecuted had he destroyed the library books in silence, yet this has no relevance to the selective prosecution framework outlined in *Wayte*. Furthermore, courts have rejected similar challenges related to the publicity one's protest receives. *United States v. Catlett*, 584 F.2d 864,

868 (8th Cir. 1978) (“[d]efendant’s theory is [n]ot that he has been singled out for prosecution solely because he has protested the war and tax policies of the government. Rather, he objects to his prosecution only on the basis that he was selected due to the [p]ublicity his protests have received. The decision to prosecute, therefore, rests upon the amount of publicity one’s protests receive, not upon the exercise of one’s first amendment right to free speech. Such a decision is not based upon an impermissible ground but rather serves a legitimate governmental interest in promoting public compliance with the tax laws.”).

14. Defendant asserts the Library policy prohibits this charge, though there is no element requiring anything of the Library for the State to prove this case. Moreover, the State suspects the Library bypassed its 60-day certified letter policy because the Defendant informed the Library, 23 days after he checked out the books on October 29, that the books “have been damaged beyond further use.” Attachment #2.

15. Defendant’s citation to 714.5 (“In the case of *lost* library materials...”) is irrelevant to this criminal mischief prosecution under Iowa Code chapter 716.

16. Defendant asserts because there appears to be no restitution, this matter should be dismissed. That there may not be restitution is irrelevant to whether the Defendant intentionally destroyed another’s property. Restitution is simply not an element the State needs to prove.

17. The State requests the right to supplement this brief if requested by the Court.

WHEREFORE, the Defendant has failed to raise "a reasonable doubt as to the prosecutor's purpose...the criminal prosecution is presumed to have been undertaken in good faith and in a nondiscriminatory manner pursuant to a duty to bring violators to justice." *United States v. Catlett*, 584 F.2d 864 (8th Cir. 1978). The State respectfully requests the Court deny the Defendant's Motion to Dismiss for selective prosecution.

/s/ Thomas Kunstle

Thomas Kunstle ATC840001
Sioux County Attorney
210 Central Avenue SW
PO Box 168
Orange City, IA 51041
(712) 737-2457 – phone
(712) 737-4560 – fax
thomask@siouxcounty.org

Original Filed.

Copies to:
Paul Dorr

PROOF OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on this <u>17th</u> day of June, 2019.	
By:	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Email <input type="checkbox"/> Federal Express <input checked="" type="checkbox"/> EDMS
Signature <u>Jan Feller</u>	

ORANGE CITY PD

Incident Report

Incident #: 12000036	IBR Status: REPORTED
ALL OTHER LARCENY	

Location: 112 ALBANY AVE. SE ORANGE CITY IA 510	Occurred: 04/17/2012 @ 17:00 thru 04/17/2012 @ 17:00
City: ORANGE CITY IA 51041	Reported: 04/17/2012 @ 00:00
Latitude: 0.00 Longitude: 0.00	Officer 1:
Grid:	Officer 2:
Beat: Shift: Related :	Status Date: 05/03/2012
User Defined:	Status: Adult Arrest
User Defined: 201205021531	X Clearance:
	Accident:

Remarks:	Hate Bias Information:
SHIRLEY TAYLOR REPORTED A THEFT AT THE ORANGE CITY LIBRARY. UPON FURTHER INVESTIGATION, AN ARREST WAS MADE ON [REDACTED]-12.	Type:
	Target:
	Circumstance:

Offense Information	
Offense: ALL OTHER LARCENY	IBR Code: 23H ALL OTHER LARCENY
Statute: ALL OTHER LARCENY	UCR Code:
Attempt/Complete: Completed Criminal Activity	Weapon Forced Used
Location Type: SPECIALTY STORE(TV F	Alcohol:
Premises Entered:	Computers:
Forced Entry: N	Drugs:

Involved Parties	
Name: TAYLOR,FRANKLIN CARL	Involvement: Complainant
Address: [REDACTED] ORANGE CITY, IA 51041	DOB: [REDACTED] 41 years old
Phone:	SOC:
Cell:	Race: Sex: Hgt: Wgt:
	Hair: Eye: Hispanic: N
	OLN: OLS: OLY:
Name: ORANGE CITY PUBLIC LIBRARY	Involvement: Victim
Address: 112 ALBANY AVENUE SE ORANGE CITY, IA 51041	DOB: years old
Phone: (712)707-4302	SOC:
Cell:	Race: Sex: Hgt: Wgt:
	Hair: Eye: Hispanic: N
	OLN: OLS: OLY:
Name: [REDACTED]	Involvement: Offender
Address: [REDACTED]	DOB: [REDACTED]
Phone: [REDACTED]	SOC: [REDACTED]
Cell:	Race: [REDACTED] Sex: [REDACTED] Wgt: [REDACTED]
	Hair: [REDACTED] Eye: [REDACTED] Hispanic: [REDACTED]
	OLN: OLS: OLY:

From: Rescue the Perishing <rtp@iowatelecom.net>
Sent: Monday, October 29, 2018 6:06 PM
To: 'Orange City Public Library' <info@orangecitylibrary.com>
Subject: RE: Due Date Reminder for 2151500001147R

Hello to you, too;

This is a friendly reply to let you know that the four books that were due this past Saturday have been damaged beyond further use. At the same time, I have had several new 'friends' contact me via several Internet portals and state they were sending replacements for each of these four books, in my name, promptly to the library. Others informed me that they were sending the library cash, again in my name, to the library to replace those damaged while in my possession.

I have also been contacted by a city/library official Sue Kroesche by email (kroesche@orangecitycomm.net) on October 24, 2018, telling me that, "...the library now has a go fund me page that has nearly \$1,000 in it, and that money will be used to purchase even more of..." of such books. I imagine this is pleasing to your library board, especially board members Philipson and Slagers.

As these four books can be purchased from Amazon for \$59.00 plus another \$10.00 S&H, their total replacement cost should be \$70.00. I see in last night's Sioux City Journal - regarding these damaged books - it was reported that "Vazquez said a few hundred dollars' worth of donations have rolled in, as well as some books." Vazquez's statement confirms what Kroesche wrote me and also confirms the stated intentions of my new 'friends' to donate and/or replace in my name - that is, clearly well more than enough has come in to cover their replacement costs.

Let me know if your library policy requires anything more than these plentiful donations and replacements. Thank you.

Paul R. Dorr
Rescue the Perishing • Ph 712-758-3660

-----Original Message-----

From: 1053@reply.biblionix.com <1053@reply.biblionix.com>
Sent: Wednesday, October 24, 2018 12:21 AM
To: rtp@iowatelecom.net
Subject: Due Date Reminder for 2151500001147R

Hello,

This is a friendly reminder from the Orange City Public Library.

You have 4 items which will be due within 3 days.

You can easily renew most items as well as edit your notification options online at:

<https://orangecity.biblionix.com/>

Due Saturday, October 27, 2018:

1. Families, families, families!
2. Morris Micklewhite and the tangerine dress
3. This day in June
4. Two boys kissing