

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

ORDER

vs.

Mohamed Mohamed Noor,

Court File No. 27-CR-18-6859

Defendant.

On August 15, 2018, Mohamed Mohamed Noor, "Defendant" herein, filed a Motion to Dismiss for Prosecutorial Misconduct. The State responded in opposition to Defendant's motion on September 5, 2018.

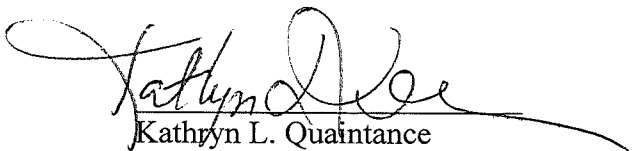
Thomas Plunkett and Peter Wold submitted argument and appeared on behalf of Defendant. Amy Sweasy and Patrick Lofton, Assistant Hennepin County Attorneys, submitted argument and appeared on behalf of the State of Minnesota.

Based upon all files, records, and submissions, herein,

IT IS HEREBY ORDERED:

1. The Defendant's Motion to Dismiss for Prosecutorial Misconduct is **DENIED**.
2. The attached Memorandum shall be incorporated with this order.

BY THE COURT:


Kathryn L. Quaintance
Judge of District Court

Dated: 9/27/18

MEMORANDUM

THEREFORE, based upon the evidence, the argument of counsel, and all the files, records and proceedings herein, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

In September 2017, the Hennepin County Attorney Mike Freeman, was quoted at a community gathering for Justine Damond Ruszczyk, saying, “I’m saddened by the death of this fine young woman...It didn’t have to happen. It shouldn’t have happened.” At the same meeting, the County Attorney publicly commented on the outcome of a 2017 Ramsey County case, stating, “That jury was wrong,” for delivering a “not guilty” verdict. At a holiday party in December 2017, the County Attorney was asked why a charging decision had not yet been made for the present case, to which he responded, “Fair question. I’ve got to have the evidence, and I don’t have it yet. And let me just say, it’s not my fault. So if it isn’t my fault, who didn’t do their jobs? It’s called investigators, and they don’t work for me. And they haven’t done their jobs.” The County Attorney went on to say, “Trust me, nobody wants it done for Christmas more than me. That’s the big present I’d like to see under the Christmas tree.” When asked why the investigation was taking so long, the County Attorney responded, “Before I charge somebody I have to have sufficient admissible evidence to prove beyond a reasonable doubt.”

CONCLUSIONS OF LAW

I. THE COUNTY ATTORNEY’S REMARKS DID NOT PRODUCE A SUBSTANTIAL LIKELIHOOD OF MATERIAL PREJUDICE FOR A PENDING JURY TRIAL.

A lawyer who is participating in the investigation of a criminal matter may not make an extrajudicial statement about that matter when the lawyer knows or reasonably should know that the statement will be disseminated publicly and will have a substantial likelihood of materially prejudicing a jury trial in a pending criminal matter. Minn. R. Prof. Conduct 3.6(a). Prosecutorial

conduct occurs when “the prosecutor’s acts ‘have the effect of materially undermining the fairness of a trial.’” *State v. Smith*, 876 N.W.2d 310, 334 (Minn. 2016). A prosecutor may not make statements to the public that threaten the fairness of potential jurors. *State ex rel. Pittman v. Tahash*, 170 N.W.2d 445, 448 (Minn. 1969). Here, the wiser course would be for the County Attorney to remain silent during an ongoing investigation. However, the defense has failed to establish a basis for prosecutorial misconduct and dismissal with regard to the County Attorney’s statements.

First, there are no legitimate grounds for concluding that the statements made by the County Attorney in September 2017 had or will have a substantial prejudicial effect on Defendant’s right to a fair trial. The County Attorney made no mention of Defendant’s name as he met with community members and expressed his condolences for the death of Justine Damond Ruszczyk. The County Attorney’s second statement, referencing a jury’s decision in a June 2017 case in Ramsey County, again makes no direct references to Defendant. Moreover, Defendant provides no evidence or rationale for how these statements produce a substantial likelihood of prejudicing the fairness of a trial.

The statements made in December 2017, while critical of the investigators, do not rise to the level of prosecutorial misconduct. Publicly describing the evidentiary requirements for filing a complaint is exactly the type of statement that Rule 3.6 of the Minnesota Rules of Professional Conduct intended to protect, not punish. This is supported by Comment 1 for Rule 3.6, which states, “[The public] also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern.” Minn. R. Prof. Conduct 3.6, comment [1]. The requirements and procedure for criminal charging is not known to the general public, and the County Attorney explaining the process is well within his duties as a public servant. While the County Attorney’s method of expressing his “Christmas wish” for additional evidence was perhaps

ill-advised, there is no indication that it has the potential to prejudice Defendant's right to a fair trial. Defendant claims this statement was racially and culturally insensitive, but does not elaborate. The Court finds no basis for dismissal of this case for prosecutorial misconduct.

K.L.Q.