

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

Court File No.: 27-CR-18-6859

**MOTION TO DISMISS
PROSECUTORIAL
MISCONDUCT**

v.

Mohamed Mohamed Noor,

Defendant.

Defendant, Mohamed Noor, by and through his attorneys, hereby moves the Court to dismiss the complaint based on prosecutorial misconduct. This case has received intensive media coverage, not just locally, but nationally and internationally. Shortly after July 15, 2017, the Hennepin County Attorney has made numerous statements to both the press and the public that have risen to a level of prosecutorial misconduct that has undermined Officer Noor's fundamental right to a fair trial. Officer Noor understands the burden to establish prosecutorial misconduct is high. But, he is also mindful of the Minnesota Supreme Court's recent decision requiring that a motion related to pretrial prosecutorial conduct should be raised pretrial. See State v. Parker, 901 N.W.2d 917, 925 (Minn. 2017). In Parker the Court of Appeals and the Minnesota Supreme Court found Mike Freeman's pretrial comments "problematic"—a finding attorneys from his own office conceded—but declined to provide relief, in part because the issue was not raised before the district court. Parker, 901 N.W.2d at 925, n. 9.

Prosecutorial misconduct 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). One form of misconduct that undermines the fairness of trial is when a prosecutor makes statements to the public that threatens the fairness of potential jurors. State ex rel. Pittman v. Tahash, 170 N.W.2d 445, 448 (Minn. 1969). Mr. Freeman’s public comments meet that burden. The Hennepin County Attorney’s statements in this case are irresponsible, inexcusable and rise to a level of professional misconduct that cheats citizens out of a fair trial. He was politely warned by our Supreme Court in Parker, but now continues to abuse his position and the public trust.

As Mr. Freeman has played the high profile nature of this case to the public, Officer Noor has been denied due process. In September of 2017, Mr. Freeman told a community group, “I’m saddened by the death of this fine young woman,... It didn’t have to happen. It shouldn’t have happened.”¹ Mr. Freeman then went on to criticize the jury in the Jeronimo Yanez case, stating, “That jury was wrong.” But, Mr. Freeman was just getting started, his most prejudicial statements came at a December cocktail event hosted by a labor union. Mr. Freeman was approached by a community activist and asked why a decision to charge Officer Noor had not been made. Mr. Freeman’s response was that there was insufficient evidence to prosecute Officer Noor and that it was not his fault he did not have the evidence. “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

¹ <http://www.startribune.com/freeman-answers-questions-in-diamond-shooting/443607803/>

investigators, and they don't work for me. And they haven't done their job.”² But, Mr. Freeman did not stop by merely blaming the “investigators”, he also made it clear that even though he did not have sufficient evidence to prosecute Officer Noor, nothing would make him happier than to bring charges, “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. Thanks for listening.” Mr. Freeman's comments stray far from the fundamental protections embodied in the Constitution. His comments are not merely racially and culturally insensitive – they are full of animosity. They mock due process. They deny due process.

Mr. Freeman has never offered what new evidence led to his decision to charge Officer Noor, nor has he apologized for his “big present” comments, but he has apologized to the “investigators” in this case.³ Unfortunately, Officer Noor has not escaped the turf war Mr. Freeman has been battling with the “investigators” and the Minneapolis Police Department. Following the convening of the grand jury in January of 2018, a usually secretive process that Mr. Freeman unnecessarily publicized, he took a number of shots at the Minneapolis Police Department.⁴ Mr. Freeman was quoted as follows, “I'm a little disappointed — probably more than a little — about some of the pettiness that we're hearing from the Police

² <http://www.startribune.com/freeman-to-activists-no-evidence-to-prosecute-officer-in-justine-damond-shooting/464211313/>; <http://www.startribune.com/transcript-hennepin-county-attorney-discusses-justine-damond-case-with-activists/464228093/>

³<http://www.startribune.com/freeman-apologizes-for-bca-criticism-in-damond-case/465024993/>

⁴<http://www.startribune.com/freeman-convening-grand-jury-in-justine-damond-shooting/470932303/>

Federation”.⁵ Over the next two and half months the skirmishes continued and Mr. Freeman sent the grand jury home without having them consider whether charges were merited and instead filed a complaint on his own. He topped his publicity campaign with a nearly 30 minute press briefing on the case.⁶ The inappropriate nature of Mr. Freeman’s comments was aggravated by an overly dramatic reenactment of his perception of the events.

Lawyers are of course advocates. But, prosecutors walk a special line between being advocates for charges brought and being stewards of fairness in the process. In this case Mr. Freeman’s sensationalism does not live up to his duty to ensure fairness to Officer Noor. There is no justification for the tone of Mr. Freeman’s repeated public comment on this case. At some point courts must step in and send a clear message that this conduct will not be tolerated in a fair society that is governed by due process applied equally to all citizens.

WHEREFORE, for all the foregoing reasons, Officer Noor respectfully requests this Court dismiss the complaint on the basis that the Hennepin County Attorney’s pre-charge conduct has violated due process.

Respectfully submitted,

Dated: August 15, 2018.

s/ Thomas C. Plunkett

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⁵ <http://www.startribune.com/tension-rises-between-county-attorney-police-union-in-noor-grand-jury-investigation/475458363/>

⁶ <http://www.startribune.com/minneapolis-police-officer-mohamed-noor-turns-himself-in-on-charges-in-justine-damond-killing/477405923/>

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