

**STATE OF MINNESOTA
COUNTY OF FILLMORE****DISTRICT COURT - CRIMINAL DIVISION
THIRD JUDICIAL DISTRICT**

State of Minnesota,

Court File No.: 23-CR-24-52

Plaintiff,

v.

**NOTICE OF MOTION
AND OMNIBUS MOTION**

Sarah Beth Petersen,

Defendant.

TO: The above-named Court and State of Minnesota, by and through counsel, Brett A. Corson, Esq., Fillmore County Attorney's Office, 101 W Fillmore Street, PO Box 466, Preston, Minnesota 55965.

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on August 16, 2024, at 9:00 a.m., or as soon thereafter as counsel may be heard, the above-named Defendant, by and through her attorneys, will bring the following motion before the Honorable Jeremy Clinefelter at the Fillmore County Courthouse in the City of Preston, State of Minnesota.

OMNIBUS MOTION

Pursuant to Minn. R. Crim. P. 11.02, the Defendant will move the Court at the Omnibus hearing as follows:

1. To issue an Order dismissing the charges in the Complaint. The Complaint alleges that Ms. Petersen falsely reported information or lied to investigating officers. Although these allegations are disputed, even if these allegations were proven to be true, the charges against Ms., Pedersen rely solely on her alleged verbal assertions, and since such assertions are not within the strictly limited categories of speech that may be criminally proscribed, the charges against Ms. Petersen must be dismissed. *See U.S. Const. amend. I. Minn. Const. art. I, § 3. See also State v. Jorgenson*, 946 N.W.2d 596, 604 (Minn. 2020) (discussing categories of speech that may be regulated though criminal statues).
2. To issue an Order that Minnesota Statute §609.495, subd. 4(a) is unconstitutional, both on its face and as applied to Ms. Petersen. *See U.S. Const. amend. I. Minn. Const. art. I, § 3; See also State v. Melchert-Dinkel*, 844 N.W.2d 13 (Minn. 2014).

3. To issue an Order that Minnesota Statute §609.495, subd. 1(a) is unconstitutional, both on its face and as applied to Ms. Peterson, including, but not limited to, the clause criminalizing “assist[ing] by word.” *See U.S. Const. amend. I. Minn. Const. art. I, § 3; See also State v. Melchert-Dinkel*, 844 N.W.2d 13 (Minn. 2014).
4. To issue an Order dismissing Counts 1-4 and 13-16 in the Complaint based on a lack of probable cause that Ms. Petersen committed a criminal violation under Minn. Stat. §609.494, subd. 4(a). *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892 (1976).
5. To issue an Order dismissing Counts 5-12 in the Complaint based on a lack of probable cause that Ms. Petersen committed a criminal violation under Minn. Stat. §609.494, subd. 1(a). *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892 (1976).
6. To issue an Order suppressing evidence of Ms. Petersen’s alleged statement to Deputy Kullot on September 25, 2023, while Ms. Petersen was confined in Deputy Kullot’s squad car because Ms. Petersen was not advised of her *Miranda* rights prior to the Deputy’s questioning and the questioning constituted custodial interrogation in violation of the Fifth Amendment to the United States Constitution and its Minnesota counterpart. *See State v. Rosse*, 478 N.W.2d 482, 486 (Minn. 1991).
7. To issue an Order suppressing evidence of the recorded conversation allegedly between Ms. Petersen and another person, which was an oral communication intercepted by Deputy Kullot through the use of an electronic, mechanical or other device, in violation of Minnesota Statutes §§626A.01, *et. seq.* *See* Minn. Stat. §§626A.04 & 626A.11 (evidence gained through or resulting from a violation of Chapter 626A is inadmissible in any proceeding).
8. To issue an Order suppressing any alleged statements made by Ms. Petersen on September 26, 2023, in response to law enforcement questioning because Ms. Petersen invoked her right to counsel following an eventual *Miranda* warning on September 25, 2023, did not reinitiate contact with law enforcement and law enforcement did not secure any waiver of her previous invocation of her right to counsel. As a result, the statement was obtained in violation of Ms. Petersen’s rights under the Fifth Amendment to the United States Constitution and its Minnesota counterpart. *See State v. Hannon*, 636 N.W.2d 796, 804 (Minn. 2001) (citing *Smith v. Illinois*, 469 U.S. 91, 94–95, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984); recognizing that, “If an accused asserts h[er] right to counsel, interrogation must cease unless the accused initiates further communication, exchanges, or conversations with the police and validly waives h[er] earlier request for the assistance of counsel.”)

9. To issue an Order that the offenses set forth in the State's "Notice of Prosecuting Attorney of Evidence and Identification Procedures Pursuant to Rule 7.02," filed on March 13, 2024, are inadmissible under Minn. R. Evid. 404, 405, 608, 609 or any other authority.
10. Ms. Petersen may amend or supplement the foregoing motions pursuant to the Minnesota Rules of Criminal Procedure.

Dated: May 15, 2024

RESTOVICH BRAUN & ASSOCIATES

/s/ Daniel A. McIntosh

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Dated: May 15, 2024

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/s/ Thomas R. Braun

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