

1 STATE OF MINNESOTA DISTRICT COURT  
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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4 State of Minnesota,  
5 Plaintiff,

6 vs. File: 62-CR-10-430

7 Jamison Robert Arend,  
8 Defendant.

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10 The above-entitled matter was heard  
11 before Judith M. Tilsen, Judge of District  
12 Court, at the Ramsey County Courthouse,  
13 15 Kellogg Boulevard, St. Paul, Minnesota,  
14 on the 24th day of March, 2010.

15 Appearances:

16 Joseph Amos, CSA - Assistant Ramsey  
17 County Attorney, appeared on behalf of the  
18 State.

19 Bruce Wenger, Assistant Ramsey County  
20 Public Defender, appeared on behalf of  
21 Mr. Arend.

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Appearances.

3 MR. WENGER: For the record, Your  
4 Honor, Bruce Wenger, W-e-n-g-e-r, present in  
5 court with Mr. Jamison.

6 MR. AMOS: Joseph Amos for the  
7 State.

8 COURT: Last name is Arend.

9 MR. WENGER: I apologize to the  
10 court and my client.

11 DEFENDANT: It's okay. I'm used  
12 to it.

13 THE COURT: All right. Any  
14 additions or corrections to the PSI from  
15 defense?

16 MR. WENGER: No, Your Honor.

17 THE COURT: Additions or  
18 corrections from the State?

19 MR. AMOS: No, Your Honor.

20 THE COURT: Recommendations from  
21 the State?

22 MR. AMOS: Your Honor, the State

23 is recommending that the court follow the  
24 plea agreement. He pled guilty to Count  
25 II. Today the State is dismissing Count I.

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1 This also calls for a 45-day cap and  
2 restitution, which at this time is unknown.  
3 Probation is requesting a DNA order as well  
4 as two no contact orders that cover both of  
5 the victims in this case.

6 THE COURT: Thank you.

7 MR. WENGER: Your Honor, there is  
8 significant mitigation that doesn't rise to  
9 a defense. My client was concerned when  
10 there were two individuals in his bedroom  
11 and these individuals had been told by my  
12 client not to go into his bedroom. My  
13 client was surprised and concerned when he  
14 found them in his bedroom, a place where he  
15 should feel safety and privacy. My client  
16 acted inappropriately when he threatened the  
17 individuals, but it is mitigation as to  
18 where they were located.

19 Your Honor, my client has served two  
20 days in custody in this matter. He will be

21 serving up to five years probation on this  
22 matter. My client has a clean record. He  
23 has no criminal history score. He has no  
24 prior felonies. He has no prior  
25 misdemeanors. Your Honor, I ask that you

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1 give him two days credit for the two days  
2 that he's already served.

3 I will specifically ask the Court not to  
4 authorize UAs in this matter. I  
5 specifically ask the court not to require a  
6 Rule 25 in this matter. I ask the Court not  
7 to consider it a violation of probation if  
8 there is an indication of marijuana use.  
9 There shouldn't be one because there  
10 arguably won't be UAs, but if there is one  
11 that slips through, that marijuana would not  
12 be a violation of his probation.

13 THE COURT: I think I need you to  
14 place on the record, and I know we've had  
15 off the record discussions, but a few of the  
16 reasons for that request.

17 DEFENDANT: I would appreciate

18           that.

19                       MR. WENGER: Thank you,  
20           Your Honor. My client is a Rastafarian. He  
21           has indicated to me that he's a licensed  
22           minister in the Rastafarian movement. The  
23           Rastafarian movement uses cannabis in their  
24           religious ceremonies. If my client uses  
25           marijuana in his -- as part of his religion

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1           it is possible and likely that he will have  
2           a positive urinalysis for marijuana or THC.  
3           I have concerns that by having my client  
4           tested for marijuana that that would be a  
5           potential probation violation and that  
6           potential probation violation in this matter  
7           could put my client into prison for only  
8           following the religious practices that my  
9           client is very deeply involved with. That  
10          is the reason for the request.

11                      THE COURT: Just for the record,  
12           the State is not stipulating to those facts,  
13           is that correct?

14                      MR. AMOS: The State is not, Your  
15           Honor. The reason the State is leaving that

16 condition up to the court is because this  
17 was a person crime, specifically, the State  
18 is concerned with the Victims. There was no  
19 indication that use of controlled substances  
20 played any role in the events and for that  
21 reason we leave that to the discretion of  
22 the court.

23 THE COURT: Thank you.

24 DEFENDANT: May I say something?

25 THE COURT: You better talk to

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1 your lawyer before you say something.  
2 Okay? The answer is you have a right to,  
3 but you may want to take the advice of your  
4 attorney. That is okay too.

5 DEFENDANT: I'll refrain.

6 THE COURT: I'm going to go along  
7 with the plea agreement in this matter in  
8 that I'm staying imposition of this sentence  
9 for a period of five years. You will be  
10 placed on probation for a maximum period of  
11 five years. If you cooperate with probation  
12 in all respects probation could, and often

13 does, make a recommendation that you get off  
14 probation earlier, but there is no promise.  
15 Do you understand that?

16 DEFENDANT: Yeah.

17 THE COURT: I understand there was  
18 a 40 day cap on time to serve and I  
19 understand that you've already served two  
20 days of that time. I do think it makes  
21 sense, given the nature of the charge, the  
22 terroristic threats and the lack of remorse  
23 exhibited in the PSI, that I'm going to  
24 order that you serve an additional -- that  
25 you serve 30 days with credit for two. I

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1 don't think you totally are taking  
2 responsibility.

3 DEFENDANT: I --

4 THE COURT: It's my turn.

5 MR. WENGER: Don't say anything.

6 THE COURT: I remember your  
7 factual basis when you pled guilty. I  
8 remember how you sort of pled guilty until  
9 we pushed you and I read the PSI and I don't  
10 think you're taking responsibility. You get



11 to listen.

12 DEFENDANT: I'm listening. I'm  
13 listening.

14 THE COURT: I don't think you're  
15 taking full responsibility for your  
16 behavior. Your behavior is actually your  
17 behavior to take responsibility for. I am  
18 ordering reasonable out of pocket  
19 restitution. I don't have a restitution  
20 amount at this time and I'm giving probation  
21 60 days to come up with a restitution  
22 amount. I am signing two no contact orders  
23 with both of the victims in this matter. I  
24 am signing a DNA order, as is required by  
25 statute, I believe.

1 Although it is not stipulated to, the  
2 defense has proven a colorable claim of  
3 religious right to ceremonial use of  
4 cannibus, otherwise known as marijuana.  
5 Ceremonial use is intermittent use, but  
6 because of our chemistry and how we do UAs,  
7 it would seem to me that even with limited



8 ceremonial use that a UA would come up dirty  
9 on a regular basis. I'm specifically not  
10 ordering that Mr. Arend abstain from the use  
11 of marijuana and I'm specifically not  
12 authorizing UAs to defendant for marijuana.  
13 If probation is concerned about use of other  
14 illegal substances, probation may then  
15 perform UAs for other illegal substances,  
16 but there is no evidence in the PSI of any  
17 other substance use or abuse and, secondly,  
18 there is no evidence of the involvement of  
19 any controlled substance in the commission  
20 of this crime and that is -- for those  
21 reasons I've just stated why I'm not  
22 ordering the abstention order that I often  
23 do.

24 Since Mr. Arend has some skills in the  
25 drywall business and it looks like he's able

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1 to be employed, I'm ordering a \$100 fine in  
2 this matter plus appropriate fees. Did you  
3 mean to ask --

4 MR. WENGER: We ask that you waive  
5 the public defender fee. My client is

6 unemployed at this time, is indigent. He  
7 qualifies for the services of the public  
8 defender and a public defender fee would be  
9 a hardship.

10 THE COURT: The public defender  
11 fee is waived. I am ordering no same or  
12 similar. Let me tell you something else,  
13 Mr. Arend, I usually order remain  
14 law-abiding in all respects. What I'm  
15 ordering for you is that you have no  
16 threatening behavior to anyone. That  
17 includes misdemeanor charges. I'm not going  
18 to order you to remain law-abiding because  
19 in the State of Minnesota the colorable  
20 claim that you have of being a Rastafarian  
21 and using marijuana as part of your  
22 ceremonies is not actually legal and if I  
23 ordered that you remain law-abiding knowing  
24 that you do something that is not legal in  
25 the State of Minnesota, I think I would be

1 setting you up. So, what I am ordering is  
2 that you have no same or similar and this is

3           how I define that: No threatening or  
4           assaultive behavior to anyone and no threats  
5           of any kind. Is that clear to you?

6                         DEFENDANT: Very.

7                         THE COURT: I don't think it will  
8           be an issue. I have ordered 30 days to  
9           serve. I am willing to give your client up  
10          to two weeks to turn himself in,  
11          Mr. Wenger.

12                        MR. WENGER: We ask for two weeks.

13                        DEFENDANT: There's just a couple  
14          of questions I have.

15                        MR. WENGER: I've answered his  
16          questions.

17                        THE COURT: April 7th is two weeks  
18          from today, if my reading of the calendar is  
19          right. I think it is. That is at nine  
20          o'clock at the workhouse. You'll get some  
21          paperwork to allow you to turn yourself in.

22                        MR. WENGER: Your Honor, we  
23          specifically request that the court not  
24          order a Rule 25 in this case. Did the Court  
25          do that?

1 THE COURT: I didn't order it, but  
2 let me say I'm specifically not ordering a  
3 Rule 25. You are going to come up, after a  
4 Rule 25, that you need treatment and there  
5 is no way to do a Rule 25 and exclude some  
6 of the things that are illegal, so because  
7 the use of any illegal substances was not  
8 specifically part of this crime, I'm not  
9 ordering a CD evaluation.

10 MR. WENGER: Your Honor, at this  
11 time we ask that Count I be dismissed.

12 THE COURT: Count I will be  
13 dismissed.

14 MR. AMOS: Your Honor,  
15 notwithstanding the not ordering the Rule 25  
16 and abstention, is he subject to the usual  
17 conditions of probation?

18 THE COURT: Yes. I believe I said  
19 that, and if I didn't I'll say it now.  
20 Probation needs to know how to reach you.  
21 You need to communicate with them. You are  
22 on probation. Is that clear?

23 DEFENDANT: Absolutely.

24 MR. AMOS: At this time,  
25 Your Honor, the State is providing both

1 copies of the no contact orders to defense  
2 counsel.

3 MR. WENGER: Defense handed the no  
4 contact orders of the victims to my client.

5 DEFENDANT: I know this guy and I  
6 don't know who this is.

7 MR. WENGER: Stay away from them.

8 THE COURT: Don't seek them out  
9 and you should be fine. Anything further?

10 MR. WENGER: Nothing further,  
11 Your Honor.

12 DEFENDANT: Thanks.

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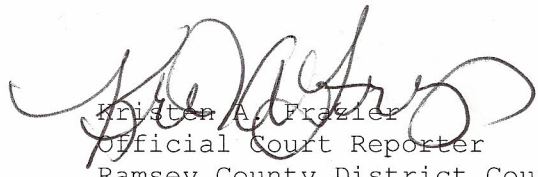
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## REPORTER'S CERTIFICATE

I, Kristen A. Frazier, Official Court  
Reporter in and for the County of Ramsey,  
State of Minnesota, hereby certify that the  
preceding transcript constitutes a true and  
complete transcription of my stenographic  
notes taken at the time and place herein  
before set forth.



Kristen A. Frazier  
Official Court Reporter  
Ramsey County District Court  
25 West 7th Street  
St. Paul, Minnesota 55102  
651-266-5170