

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

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

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

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?

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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1 REPORTER'S CERTIFICATE

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

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