

**FILED**

APR 09 2010

STATE OF MINNESOTA  
COUNTY OF RAMSEY

RAMSEY DISTRICT COURT  
DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
CRIMINAL COURT DIVISION

Court file #: 62-CR-08-10342

State of Minnesota,

Plaintiff,

v.

**ORDER**

Luce Guillen-Givins,

Defendant.

The above-entitled matter came on for a hearing on February 2, 2010, before the Honorable Teresa R. Warner, District Court Judge, 1070 Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102.

Heidi Westby, Esq. and Derek Fitch, Esq., Assistant Ramsey County Attorneys, 50 West Kellogg Blvd., Suite 315, St. Paul, MN 55102, appeared on behalf of the state.

Jordan Kushner, Esq., Suite 2446, 431 South Seventh Street, Minneapolis, MN 55415, appeared on behalf of the Defendant who was also present.

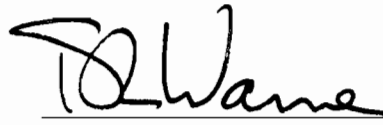
Based upon the files, records, and proceedings herein:

**IT IS HEREBY ORDERED** that:

1. Defendant, Luce Guillen-Givins' Motion to Dismiss based on discriminatory investigation and prosecution is **DENIED**;
2. The attached memorandum is incorporated herein and made part of this Order.

**It is so ordered.**

By the Court:



Teresa R. Warner  
Ramsey County District Court Judge

Date: 4-9-10

## MEMORANDUM

Defendant, Luce Guillen-Givins, is charged with Conspiracy to Commit Riot in the 2<sup>nd</sup> Degree in violation of Minn. Stat. §609.175, subd. 2(3) and §609.71, subd. 2, and Conspiracy to Commit Criminal Damage to Property in the 1<sup>st</sup> degree in violation of Minn. Stat. §609.595, subd. 1(1) and (3), and §609.175, subd. 2(3). Defendant is one of eight individuals who are alleged to have committed criminal acts as members of a group called the RNC Welcoming Committee. All eight individuals are charged with the same conspiracy offenses. On January 26, 2010, Defendant filed a Motion to Dismiss based on discriminatory investigation and prosecution. Defendant argues that Ramsey County authorities have selectively investigated and prosecuted her because of her expressed political beliefs. The State argues that Defendant has not met the threshold necessary to bring such a motion.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits intentional, discriminatory enforcement of nondiscriminatory laws. *City of Minneapolis v. Buschette*, 307 Minn. 60, 64 (1976). Although criminal prosecutions are presumed to have been undertaken in good faith and in a nondiscriminatory manner, *State v. Hyland*, 431 N.W.2d 868, 872 (Minn.App.1988), the Minnesota Supreme Court has held that a criminal defendant may raise the defense of discriminatory enforcement of criminal laws by law enforcement officials on all levels. *Buschette*, 307 Minn. at 66. The discriminatory enforcement issue is properly considered at a pretrial hearing, where the defense has the burden of proving discrimination by a clear preponderance of the evidence. *Id.* If intentional and purposeful discrimination is shown, the court may then dismiss the charge against the defendant. *Id.* at 66. In order to make a threshold showing to trigger a discriminatory enforcement hearing, a defendant must allege sufficient facts to take the question past the frivolous state. *Hyland*, 431

N.W.2d at 873. To prove a discriminatory enforcement, a defendant must establish, prima facie, that (1) while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against her, she has been singled out for prosecution, and (2) that the government's discriminatory selection of her for prosecution has been invidious or in bad faith, i.e., based upon such impermissible considerations as race, religion, or the desire to prevent her exercise of a constitutional right. *Hyland*, 431 N.W. 2d at 872-73 citing *State v. Russell*, 343 N.W.2d 36, 37 (Minn.1984). Therefore, to take a discriminatory enforcement claim beyond the frivolous state, the defendant must allege facts showing both that she was singled out for enforcement and that her selection was invidious or in bad faith. *Id.*

In support of her motion, Defendant submitted an October 2, 2007 memorandum from Inspector Tony Samec of the Special Investigations Unit/Intelligence Section to the Ramsey County Sheriff, the Commander of the Special Investigations Unit and the Director of Special Operations. The memorandum from Inspector Samec is a request for authorization to open an investigation into the activities of Defendant, Luce Guillen-Givins.

Defendant claims she was singled out for investigation and prosecution in this matter solely because she is an outspoken political activist who has made politically controversial statements. Inspector Samec's memorandum mentions various political statements made by Defendant. The memorandum also describes other open source information, articles, and activity by Defendant that associate her with the RNC Welcoming Committee. Inspector Samec's memorandum references a previously authorized request to open an investigation into the RNC Welcoming Committee based on information that revealed a reasonable suspicion that persons associated with the RNC Welcoming Committee were likely to plan, encourage,

conspire and/or engage in criminal activity in Ramsey County.

Defendant has made no assertion that other similarly situated individuals have not generally been prosecuted for the type of conduct alleged to constitute conspiracy to commit riot and conspiracy to commit criminal damage to property in this matter. The fact that Defendant is one of eight defendants charged by identical complaints with the same conspiracy offenses based on similar conduct weighs against Defendant's assertion that she has been singled out for prosecution.

Defendant has made allegations that her prosecution has been invidious and in bad faith, but she has not alleged any facts that would support such a claim. Inspector Samec's memorandum shows that an investigation into Defendant's activities was opened after Inspector Samec found evidence from numerous sources connecting Defendant to the RNC Welcoming Committee, a group that the Ramsey County Sheriff's Department had reasonable suspicion to believe was likely to plan, encourage, conspire and/or engage in criminal activity.

To take a discriminatory enforcement claim beyond the frivolous state, the defendant must allege facts showing both that she was singled out for enforcement and that her selection was invidious or in bad faith. Defendant has not alleged any facts showing that she was singled out for enforcement or that her selection was invidious or in bad faith. Defendant has not met her burden, and the Motion to Dismiss based on discriminatory investigation and prosecution is denied.

TRW