


From: Matthew Hamner mhamner@bainbridgewa.gov 
Subject: RE: Confidential Memo - Do Not Disseminate
Date: May 16, 2017 at 2:55 PM
To: Scott Weiss sweiss@bainbridgewa.gov, Jeff Horn jhorn@bainbridgewa.gov

MH

Thank you sir.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Scott Weiss <sweiss@bainbridgewa.gov>
Date: 05/16/2017 2:46 PM (GMT-08:00)
To: Matthew Hamner <mhamner@bainbridgewa.gov>, Jeff Horn <jhorn@bainbridgewa.gov>
Subject: FW: Confidential Memo - Do Not Disseminate

Just a heads up on this decline. This is the Clarence Moriwaki court order violation case. The prosecutor disagrees with the judge's authority in this case, thus the decline.... Just in case Mr. Moriwaki calls to talk about why his case was declined.



BAINBRIDGE ISLAND POLICE DEPARTMENT

Scott Weiss, Detective Sergeant

www.bainbridgewa.gov

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ORI: WA0180700

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625 Winslow Way E., Bainbridge Island, WA 98110

From: Kelly Eisenhood
Sent: Tuesday, May 16, 2017 2:15 PM
To: Scott Weiss <sweiss@bainbridgewa.gov>
Subject: FW: Confidential Memo - Do Not Disseminate

From: Lori Cram [<mailto:lcram@co.kitsap.wa.us>]
Sent: Tuesday, May 16, 2017 1:32 PM
To: Kelly Eisenhood <keisenhood@bainbridgewa.gov>; Jennifer Cooper <jcooper@bainbridgewa.gov>; Lesley Hetzler <lhetzler@bainbridgewa.gov>
Subject: Confidential Memo - Do Not Disseminate

Confidential Memo - Do Not Disseminate

May Contain Non-Disclosable Attorney Work Product (RCW 42.56.290).

Decline to Prosecute Notice

TO: Bainbridge Island PD, Email: Kelly Eisenhood, Jennifer Cooper & Lesley Hetzler
FROM: Alexander C. Takos, WSBA No. 47845, Deputy Prosecuting Attorney
REPLY TO: Adult Criminal & Administrative Divisions
DATE: May 9, 2017
Richard L. Rynearson, Iii,
217 Shepard Way
SUSPECT: Bainbridge Island, Wa 98110

Crime Classification – Gross Misdemeanor/Misdemeanor

Offense Date – April 20, 2017

YOUR REPORT NUMBER – 2017BI000417 REFERRED BY – SCOTT D. WEISS, 803

Seized personal property? None

Seized contraband? None

Rape kit? None

Seized firearm? None

Reason(s) for Decline to Prosecute

Our decline reason – Insufficient Evidence Suspect Committed Crime

The court issued the protection order in question under RCW 10.14.080, which grants broad authority to the court to issue an order *restraining* the respondent from 1) contacting the petitioner, 2) surveilling the petitioner, and 3) coming within a certain distance of the petitioner. The statute, however, does not grant broad authority to the court to order the respondent do a particular action. In addition, RCW 10.14.080(7) states: "The court in granting an ex parte civil antiharassment order, shall not prohibit the respondent from exercising constitutionally protected free speech."

First Amendment issues aside, the provision of the protection order the suspect was referred for violating does not amount to a crime. The suspect would only commit a crime if he were to violate the "restraint" provisions of the protection order. Because the provision that orders the suspect to "remove public webpages/Facebook page with Petitioner's name" is not a "restraint" -- but rather an order to act -- the suspect did not and could not commit a crime by failing to remove the posts. Still, the suspect could be subject to civil contempt of court proceedings, but given the First Amendment issues, I suspect they would be unsuccessful.

Finally, even if it somehow could be construed as a crime to not follow the provision in question, it

Finally, even if it somehow could be construed as a crime to not follow the provision in question, it would arguably be unenforceable because it is overly broad. The order is not specific as to what posts, made by whom, when, on what “webpages,” and does not give a time frame in which to remove the posts. In short, this would likely be deemed an unenforceable order because it is not narrowly tailored to address the specific harm the petitioner was complaining of.

For these reasons -- without even touching on First Amendment issues -- we would be unable to prosecute the suspect for violating the order under these specific facts.

***Note**—After speaking with the Deputy Prosecutor who made the decision to decline to prosecute, you may appeal the decline decision to Felony and Juvenile Division Chief Chad Enright, District and Municipal Division Chief Kevin Kelly, or Prosecuting Attorney Tina Robinson*

Decline letter to victim? Not applicable

Prosecutor’s File Number—17-227675-2

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