

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
CRIMINAL COURT DIVISION

State of Minnesota,

Court File No: 62-CR-15-4175

Plaintiff,

vs.

**DEFENDANT'S MEMORANDUM
SUPPORTING ITS
MOTION TO EXCLUDE EVIDENCE**

The Archdiocese of Saint Paul and Minneapolis,
a Minnesota Corporation
226 Summit Avenue
Saint Paul, MN 55102,

Defendant.

INTRODUCTION

The State has charged the Archdiocese of Saint Paul and Minneapolis, a Minnesota corporation (the "Archdiocese Corporation"), with encouraging, causing, or contributing to three juveniles' (the "Victims") delinquency and need for protection or services. All six charges are based upon the Archdiocese Corporation's alleged failure to prevent a former priest, Curtis Wehmeyer ("Wehmeyer"), from sexually abusing the Victims.

In the Criminal Complaint, the State has included at least three types of irrelevant and prejudicial allegations. First, the State includes numerous allegations regarding Wehmeyer's alleged sexual orientation and homosexual behavior. Second, the State alleges that Wehmeyer has a history of substance abuse and has engaged in other bad conduct. Finally, the State alleges that the Archdiocese "historically and inconsistently dealt with child sexual abuse perpetrated by priests" by detailing the alleged misconduct of four other priests.

Accordingly, the Archdiocese Corporation moves the Court under Minn. R. Evid. 402, Minn. R. Evid. 403, and Minn. R. Evid. 404(b) to exclude evidence relating to (1) Wehmeyer's sexual orientation; (2) Wehmeyer's substance use and other bad conduct; and (3) the alleged misconduct of other priests.

ARGUMENT

I. IRRELEVANT AND UNFAIRLY PREJUDICIAL EVIDENCE SHOULD BE EXCLUDED.

To be admissible at trial, evidence must be both relevant and not likely to result in unfair prejudice or confusion, or to cause undue delay. Minn. R. Evid. 402; Minn. R. Evid. 403.

Evidence of other “crime[s], wrong[s], or act[s]”—or, *Spreigl* evidence—offered to prove an accused's propensity or disposition to commit a crime is inadmissible. Minn. R. Evid. 404(b); *see State v. Wofford*, 114 N.W.2d 267, 271 (Minn. 1962) (“The general rule in a criminal case is that evidence which in any manner shows or tends to show that the accused has committed another crime independent of that for which he is on trial is inadmissible. The reason is obvious and the rule should be rigorously enforced.” (citation and internal quotation marks omitted)); *see also* Minn. R. Evid. 404(a) (“Evidence of [an accused's] character or trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion,” except in three narrow circumstances, none of which apply here). Accordingly, unless the “bad acts” evidence is probative of some issue other than character or propensity to commit a crime, the evidence must be disallowed. *See State v. Spreigl*, 139 N.W.2d 167, 170-72 (Minn. 1965). In close cases, “the accused is to be given the benefit of the doubt, and the evidence rejected.” *Id.* at 172 (“The danger of it is that a jury may convict because, though guilt of the crime charged is not proved, it is satisfied to convict [on other grounds].” (citation and internal quotation marks omitted)).

The State bears the burden of proving the “bad acts” evidence is admissible, and that burden is high. *State v. Montgomery*, 707 N.W.2d 392, 398 (Minn. Ct. App. 2005). Such evidence may be admitted only if it demonstrates “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b). Even then, the State must (1) prove the “bad act” by “clear and convincing evidence;” (2) establish that the evidence is relevant to the State’s case; and (3) demonstrate that “the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.” *Id.* Finally, even if the State meets these burdens, the State still must “give[] notice of its intent to admit the evidence consistent with the Rules of Criminal Procedure”—which require notice in writing to defense counsel—“clearly indicating what the evidence will be offered to prove.” *Id.*; Minn. R. Crim. P. 7.02; *Spreigl*, 139 N.W.2d at 172.

A. Evidence Regarding Wehmeyer’s Sexual Orientation Is Irrelevant And Prejudicial.

In the Complaint, the State includes approximately two dozen references to irrelevant allegations concerning Wehmeyer’s sexual orientation and possible homosexual behavior. These allegations improperly suggest that the Archdiocese Corporation knew Wehmeyer was committing criminal conduct with the minor Victims because of indications of Wehmeyer’s potential sexual orientation and homosexual sexual activity. However, without a link drawn between homosexuality and child molestation, any such evidence is wholly irrelevant. Instead, the allegations invite judgment by the Court and a jury on Wehmeyer’s fitness for ministry, which is both irrelevant and prohibited by the United States Constitution and the Minnesota Constitution. Active sexual conduct with adults may be inconsistent with religious vows of celibacy, but it is irrelevant to the crimes that have been charged. The risk of prejudice is significant because the conduct could be viewed as inconsistent with religious vows and fitness

for ministry which invites an improper and unconstitutional judgment. Accordingly, the Archdiocese Corporation respectfully requests the Court to exclude any evidence regarding Wehmeyer's sexual orientation and potential sexual activity.

B. Evidence Regarding Wehmeyer's Drinking, Drug Usage, And General Bad Behavior Is Irrelevant And Prejudicial.

In a continuing attempt to make this case about Wehmeyer's bad behavior and fitness for ministry rather than the Archdiocese Corporation's alleged contribution to the Victims' abuse, delinquency, and need for services, the Complaint alleges generally improper conduct by Wehmeyer, such as Wehmeyer's alleged history of alcohol and marijuana usage. Similarly, there is no basis for the implication that because Wehmeyer had DUIs or used marijuana, the Archdiocese Corporation knew Wehmeyer would provide drugs and alcohol to the Victims. The gun allegations are even further afield as the State does not claim that Wehmeyer provided the Victims with guns or that he used a gun to aid in abusing the Victims. None of these issues make it any more or less likely that Archdiocese Corporation knew or intended that Wehmeyer sexually abuse the Victims or cause them to become delinquents or need protection or services.

The complete irrelevance of these allegations is further illustrated by the timing of some allegations. The Complaint alleges that Wehmeyer provided beer, cigarettes, pornography, and marijuana to the Victims in the summers of 2009, 2010, and 2011. (Compl. 4-5.) Wehmeyer sexually abused the Victims during the same time frame. (*Id.*) Thus, according to the Complaint, the last instance of abuse and provision of illicit materials occurred in 2011. Nevertheless, much of Wehmeyer's alleged conduct occurred after Wehmeyer abused the Victims and provided them with illicit materials. For example, the Complaint alleges that in 2012 Wehmeyer purchased a gun, was smoking marijuana and drinking alcohol to excess, and that he mistreated and verbally and emotionally abused staff and parishioners.

The allegations regarding Wehmeyer's other "bad conduct" reflect an apparent intent to imply, and for the jury to conclude, that if Wehmeyer was not fit to be a priest, the Archdiocese Corporation must bear some criminal culpability. Such a judgment is both improper and unconstitutional. Accordingly, the Archdiocese Corporation respectfully requests the Court to exclude any evidence regarding Wehmeyer's other "bad conduct," including history of alcohol and marijuana usage.

C. Evidence Regarding Other Priests And Victims Is Irrelevant And Prejudicial.

Despite explicitly limiting its six criminal charges to the Archdiocese Corporation's handling of Wehmeyer and Victim 1's, Victim 2's, and Victim 3's abuse, the State devotes nearly a quarter of its Complaint to allegations about "multiple other similar situations involving other Archdiocesan priests." (Compl. 29-38.) The State portrays these similar-situation allegations as "illustrations of how the Defendant has historically and inconsistently dealt with child sexual abuse perpetrated by its priests" (Compl. 30.) The similar-situation accusations provide extensive detail regarding the alleged misdeeds of four priests other than Wehmeyer. However, the allegations against the other priests include mistreatment of adults, dating back several decades, occurred before the offenders were ordained, while the priests worked in other dioceses, and in other states and countries, including St. Louis, Michigan, West Virginia, New Ulm, and Rome, Italy. None of the allegations involve Victim 1, Victim 2, or Victim 3. None of the allegations involve Curtis Wehmeyer.

Although the Complaint strongly implies that the Archdiocese Corporation somehow committed crimes through its handling of four other priests, the State did not include charges for such alleged crimes. The State does not allege that the other priests abused the Victims, or that the Archdiocese Corporation caused or contributed to the Victims' delinquency or need for

services through priests other than Wehmeyer. The State has not charged the Archdiocese Corporation with any crime in handling the allegations against any priest other than Wehmeyer. Nor are the allegations regarding the other priests relevant to the elements of the six charges brought in relation to the abuse of Victims 1, 2, and 3. The State's contentions constitute an improper attempt to hold the Archdiocese Corporation criminally responsible for decades' worth of alleged wrongful priest behavior that is unrelated to the charged offenses.

The allegations about "similar situations" are an attempt to have the jury use the Archdiocese Corporation's alleged prior bad acts to prove ongoing action/inaction in conformity therewith. Allowing the State to allege and litigate these issues would constitute reversible error. *See State v. Dennison*, A03-799 (Minn. Ct. App. Aug. 10, 2004) (overturning conviction for contributing to a child's need for protection or services, a violation of Minn. Stat. § 260C.425, because the State introduced improper character evidence).

These "similar situation" allegations are prejudicial because they will likely confuse and mislead the jury. The allegations suggest that the Archdiocese Corporation has long contributed to abusive conduct and can be held liable for such conduct, despite the lack of any charges relating to the "similar situations." The allegations would allow the jury to draw impermissible inferences that the Archdiocese Corporation was involved with additional, uncharged crimes, including the alleged crimes of the other four priests. *See, e.g., United States v. Hubbard*, 474 F.Supp. 64, 82 (D.D.C. 1979) (striking parts of an indictment that "may encourage the jury to draw inferences that the defendants are believed to be involved in activities not charged in the indictment"). The State portrays the allegations regarding the other four priests as merely "examples and illustrations" of the Archdiocese Corporation's and other priests' bad actions, implying that there are numerous other unidentified crimes and victims. (Compl. 30, 32-33)

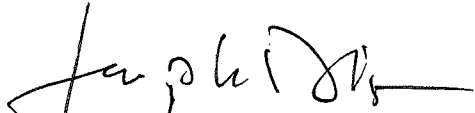
(alleging, without explaining, that “there were multiple allegations of abuse” and that a priest “was accused of abuse at least four times”). Any such evidence would be legally improper. *See United States v. Augustine Medical, Inc.*, 2004 WL 502183 (D. Minn. 2004) (“[T]he reference to widespread Medicare abuse and fraud is inflammatory and beyond the scope of the offenses stated in the Indictment . . . [t]he mention of a large scale problem prompting the creation of a special task force may cause the jury to infer Defendants’ involvement in additional, uncharged crimes . . . [a]ccordingly, this language is unduly prejudicial to Defendants, as well as being unnecessary to the jury’s understanding of the specific fraud charges.”).

Accordingly, the Archdiocese Corporation respectfully requests the Court exclude any evidence regarding misconduct by priests other Wehmeyer.

CONCLUSION

For the foregoing reasons, the Archdiocese Corporation respectfully requests that the Court exclude the foregoing categories of evidence described herein pursuant to Minn. R. Evid. 402, Minn. R. Evid. 403, and Minn. R. Evid. 404(b).

Dated: January 29, 2016



Joseph T. Dixon (#283903)
Andrew F. Johnson (#390783)
Chelsea Brennan DesAutels (#392036)
FREDRIKSON & BYRON, P.A.
200 South Sixth Street, Suite 4000
Minneapolis MN 55402-1425
Phone: (612) 492-7000
Fax: (612) 492-7077
jdixon@fredlaw.com
ajohnson@fredlaw.com
cbrennandesautels@fredlaw.com

ATTORNEYS FOR DEFENDANT