

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
CRIMINAL COURT DIVISION

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State of Minnesota,

Court File No: 62-CR-15-4175

Plaintiff,

vs.

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

**DEFENDANT'S REPLY  
MEMORANDUM SUPPORTING  
ITS MOTIONS TO STRIKE  
PREJUDICIAL SURPLUSAGE AND  
EXCLUDE EVIDENCE**

Defendant.

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**INTRODUCTION**

The State has included at least three types of irrelevant and improperly prejudicial allegations in its Criminal Complaint. First, the State alleges that Wehmeyer's sexual orientation and activities that suggested he might be a homosexual should have been understood by the Archdiocese Corporation as a "red flag" or "warning" that Wehmeyer would sexually abuse children. Second, the State alleges that Wehmeyer's history of substance abuse and other bad conduct should have been understood by the Archdiocese Corporation as a "red flag" or "warning" that Wehmeyer would sexually abuse children. Finally, the State alleges that the Archdiocese Corporation "historically and inconsistently dealt with child sexual abuse perpetrated by priests" by detailing the alleged misconduct of four other priests.

The Archdiocese Corporation moved the Court to strike these irrelevant and prejudicial allegations from the Complaint pursuant to Minnesota Rule of Criminal Procedure 17.04. The

Archdiocese Corporation also respectfully requests an Order precluding the State from using such evidence at trial pursuant to Minnesota Rules of Evidence 402, 403, and 404(b).

### ARGUMENT

#### **I. ALLEGATIONS REGARDING WEHMEYER'S SEXUAL ORIENTATION, DRINKING, DRUG USAGE, AND GENERAL BAD BEHAVIOR ARE IRRELEVANT AND PREJUDICIAL.**

Without addressing a single specific allegation at issue, the State contends that every challenged accusation in the Complaint, and corresponding evidence to be introduced at trial, is relevant for one of the following purposes:

- “why the Archdiocese ignored repeated *warning signs* for years”
- “*warning signs* included Wehmeyer engaging in conduct as other offending priests known to the Archdiocese; his involvement with Archbishop Nienstedt beyond what is *typical* for priests”
- “show Archdiocese corporate values, priorities, patterns and behavior, and motivations that encouraged, caused, or contributed to the need for services for, or the delinquency of the victims”
- “Most importantly, . . . the complained of language goes to answer at least two questions of ultimate importance to decide this case: “Why did this happen?” and “How did this happen?”
- to show “scheme, conduct and long-standing practice of the Archdiocese”
- and finally “to show the essential elements of the crime”

(State’s Response at 3-4.)

These justifications do not withstand scrutiny. The State does not explain how Wehmeyer’s sexual orientation was a “warning sign” or how it helps answer “how” or “why” he sexually abused three children. Homosexuality is not an “essential element of the crime” or relevant evidence. To be relevant, the State must contend that the Archdiocese Corporation’s knowledge that Wehmeyer might be homosexual is a “red flag” or “warning sign” that Wehmeyer was likely to provide drugs to children or sexually abuse them. The State also asserts

that the Archdiocese Corporation's knowledge that Wehmeyer might be homosexual also establishes the Archdiocese Corporation's "corporate values, priorities, patterns and behavior" or how that is relevant to the charged offense. The State has utterly failed to explain how knowledge of Wehmeyer's sexual orientation is in anyway relevant to the crimes they have charged.

Instead, it is a blatant effort to have the Court and the trier of fact pass judgment on Wehmeyer's fitness for ministry and the Archdiocese Corporation's purported decision to ordain and retain Wehmeyer. *See* Response to Defendant's Motion to Dismiss, at 19-20 (stating the Archdiocese Corporation is liable because it "permitted Wehmeyer to be put into and left in a position [as a priest] to sexually abuse children"). This is, of course, unconstitutional and highly improper.

The State's "justifications" are equally inapplicable to allegations regarding Wehmeyer's drinking, drug usage, and general bad behavior. The fact that Wehmeyer owned a gun, smoked marijuana, or had a DUI conviction does not explain "how" or "why" the Victims were abused or why the Archdiocese Corporation should be criminally liable for that abuse. These allegations do not "show the essential elements of the crime," relate to any involvement with Archbishop Nienstedt, or implicate "Archdiocese corporate values, priorities, patterns and behavior, and motivations." Nor does the State explain how these allegations constitute warning signs that Wehmeyer would sexually abuse the Victims. Indeed, many of which occurred after the abuse. (If these types of rather commonplace conduct really did constitute "red flags" for sexual abuse of minors, there would be broad ramifications for all types of organizations.) Instead, they reflect an improper effort to have the Court and trier of fact make canonical judgements regarding Wehmeyer's fitness for ministry.

Acting as a gatekeeper, the Court should strike irrelevant and prejudicial allegations identified in the Motion concerning Wehmeyer's sexual orientation and possible homosexual behavior and preclude any such evidence from being admitted at trial. The Court should also prevent the State from making allegations and offering evidence regarding Wehmeyer's gun ownership, or his marijuana and alcohol usage. As the State's spurious and half-hearted justifications highlight, these allegations lack any relationship with the charged offenses and are included simply to inflame the trier of fact and require judgments prohibited by the United States Constitution and the Minnesota Constitution.

The risk of unfair prejudice—including an improper and unconstitutional conviction—could not be higher. In light of the State's failure to meaningfully justify its allegations or make any attempt to satisfy applicable legal requirements for using such evidence, the Court should strike all of the allegations detailed in the Archdiocese Corporation's moving brief and exclude evidence relating to those allegations at trial.

## **II. ALLEGATIONS ABOUT OTHER PRIESTS AND VICTIMS ARE INFLAMMATORY AND IMPROPER.**

The State now admits that nearly a quarter of its Complaint is *Spreigl* evidence it intends to offer at trial, and is otherwise unrelated to the charged offenses. (State's Response at 4). Nevertheless, the State has not yet proven that this information is relevant, or that it is otherwise entitled to use this information. *See State v. Shannon*, 583 N.W.2d 579, 583 (Minn. 1998) (State must prove: (1) clear and convincing evidence that defendant participated in alleged conduct; (2) evidence is relevant and material; and (3) the probative value outweighs any potential prejudicial effect). Unless and until the State proves that the allegations regarding other priests are relevant, they should be stricken from the Complaint. *See United States v. Figueroa*, 900

F.2d 1211, 1218 (8th Cir. 1990) (surplusage may be stricken if language is irrelevant, inflammatory, or prejudicial).<sup>1</sup>

The State's request to delay striking the offending portions of the Complaint is also improper. *Compare* (State Brief at 4) (“ . . . the State respectfully suggests [the] decision be deferred . . .”), *with United States v. Verra*, 203 F. Supp. 87, 90 (S.D.N.Y. 1962) (rejecting prosecution's plea to delay ruling on motion to strike surplusage because the allegations—concerning a prior conviction—would inject unfair prejudice into proceeding). Allowing the allegations to remain in the Complaint until the State meets its *Spreigl* burden is highly prejudicial. The Complaint, which is publicly available and has been widely covered by the media, has the potential to taint the jury pool by suggesting that the Archdiocese Corporation has long contributed to abusive conduct and that it can be held liable for such conduct, despite the lack of any charges relating to the “similar situations.” The State is effectively using allegations of the prior bad acts of third parties, claims that have not been proven, to frame the public's perception of its case and the Archdiocese Corporation. Allowing the State to rely on these allegations of prior bad acts would constitute reversible error. *State v. Dennison*, A03-799 (Minn. Ct. App. Aug. 10, 2004) (overturning conviction for contributing to a child's need for protection or services due to use of prejudicial character evidence).

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<sup>1</sup> Indeed, the State's late *Spreigl* notice clearly demonstrates that the State intends to offer evidence regarding other priests in an attempt to smear the Archdiocese Corporation, rather than for any relevant purpose. The State claims it will offer this evidence, in part, to prove “intent” and “knowledge,” yet simultaneously argues that the charged crimes do not require intent or knowledge. *Compare* Notice by Prosecuting Attorney of Other Crime, Wrong, Or Act Pursuant to Rule 7.02 (“ . . . Plaintiff may offer at trial under any exception to the general exclusionary rule, evidence of the below-listed other crime, wrong, or act: [listing allegations regarding other priests] for the purpose(s) of intent knowledge or absence of mistake or accident.”), *with* Response to Defendant's Motion to Dismiss, at 46-47 (arguing that jury instructions do not require intent or knowledge).

The Archdiocese Corporation respectfully requests the Court strike allegations regarding misconduct by priests other Wehmeyer from the Complaint.

**CONCLUSION**

For the foregoing reasons, the Archdiocese Corporation respectfully requests that the allegations detailed in its moving brief be stricken from the Complaint and that the State be precluded from offering evidence related to these allegations at trial.

Dated: April 4, 2016



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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**