

STATE OF WISCONSIN,

MOTION TO DISMISS COMPLAINT

Plaintiff,

Case No. 2007CM003497

v.

MARLINA HOWARD,

Defendant.

PLEASE TAKE NOTICE that on the 10th day of August, 2007, at 8:30 a.m., or as soon thereafter as counsel may be heard, the above-named defendant will appear before that branch of the Milwaukee County Circuit Court presided over by the Honorable Reserve Judge, and will then and there move the court as follows:

1. To dismiss the complaint for the reason that it fails to allege sufficient facts to constitute probable cause to believe that the defendant committed an offense.

This motion is based upon the attached Memorandum of Law

Dated at Milwaukee, Wisconsin, this _____ day of _____, 2007.

LAW OFFICES OF JEFFREY W. JENSEN
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STATE OF WISCONSIN,

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS COMPLAINT

Plaintiff,

Case No. 2007CM003497

v.

MARLINA HOWARD,

Defendant.

INTRODUCTION

The defendant, Marlina Howard ("Howard") is charged with prostitution contrary to Sec. 944.30(1), STATS.¹ The criminal complaint alleges that a Milwaukee police detective was patrolling in an undercover capacity and saw Howard attempting to make eye contact with passersby. The detective pulled his car over and had a conversation with Howard. After asking whether the detective was a cop, the complaint alleges, Howard got into the car and told the detective that she wanted "sit on something or suck on something for \$50." The complaint alleges that the officer took this to mean that Howard would engage in an act of sexual intercourse for fifty dollars.

ARGUMENT

I. THE COMPLAINT FAILS TO SET FORTH SUFFICIENT FACTS, TOGETHER WITH THE REASONABLE INFERENCES, TO ALLEGE THAT HOWARD OFFERED TO COMMIT AN ACT OF SEXUAL INTERCOURSE FOR A THING OF VALUE.

When a criminal complaint is challenged as inadequate, the test of its sufficiency is whether it is minimally adequate, not in a hypertechnical, but in a common sense evaluation, in setting forth the facts necessary to establish probable cause. *State ex rel. Evanow v. Seraphim*, 40 Wis.2d 223, 226, 161 N.W.2d 369, 370 (1968). A court is allowed to make reasonable inferences arising from the facts in a complaint when testing it for

¹ That section provides: "944.30 **Prostitution**. Any person who intentionally does any of the following is guilty of a Class A misdemeanor: (1) Has or offers to have or requests to have nonmarital sexual intercourse for anything of value."

sufficiency. *State v. Becker*, 51 Wis.2d 659, 662, 188 N.W.2d 449, 451 (1971). The function of the complaint is "informative, not adjudicative." *State v. Olson*, 75 Wis.2d 575, 583, 250 N.W.2d 12, 17 (1977). The complaint must state facts sufficient to give rise to reasonable inferences that probable cause exists, but all the underlying circumstances need not appear in the complaint. *State v. Simpson*, 56 Wis.2d 27, 32, 201 N.W.2d 558 (1972). It is necessary only that the complaint state facts which would lead a reasonable man to conclude that probably a crime was committed and that the defendant named in the complaint is probably the culpable party. *State v. Haugen*, 52 Wis.2d 791, 793, 191 N.W.2d 12 (1971).

The words used by Howard do not explicitly refer to a sex act. Therefore, the question here is simple: Is it reasonable to infer that when Howard said that she wanted to sit or something or suck on something for fifty dollars that she was offering to have sex with the officer for money. The complaint alleges that the officer took this to mean sex; however, the critical issue is not what the officer took the comment to mean. The critical issue is what Howard meant by the comment. As always, we cannot delve into the mind of the defendant; rather, the court must determine her intent by the surrounding words and deeds.

There are simply no surrounding circumstances alleged in the complaint that would permit the court to infer that Howard meant to offer to have a sexual act in exchange for money. The words do not expressly refer to sex. Moreover, the word "something" is not a word that in common slang refers to the sexual act or a sex organ (as opposed to "trick").

Thus, the criminal complaint fails to allege sufficient facts to establish probable cause to believe that Howard committed the crime of prostitution.

CONCLUSION

For these reasons the court should dismiss the complaint.

Dated at Milwaukee, Wisconsin, this _____ day of _____, 2007.

LAW OFFICES OF JEFFREY W. JENSEN
Attorneys for the Defendant

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