

STATE OF WISCONSIN

CIRCUIT COURT
Branch 4

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

Case No. 02 CF 2453

02 CF 2455

v.

SCOTT R. JENSEN and
SHERRY L. SCHULTZ

Defendants.

**MOTION TO DISMISS
RE: SELECTIVE PROSECUTION**

TO: Brian W. Blanchard
Dane County District Attorney
215 S. Hamilton Street, 3rd Floor
Madison, WI 53703

The accused Scott R. Jensen, by his attorney, Stephen J. Meyer, and the accused Sherry L. Schultz, by her attorney, Stephen L. Morgan, hereby move the Court for an order dismissing the Information filed against them on the basis that both Mr. Jensen and Ms. Schultz are being selectively prosecuted in violation of their rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and Article I, §§ 1, 3, 6, 7, 8, and 11 of the Wisconsin Constitution.

The parameters for bringing and prevailing on a selective prosecution motion have been clearly set forth in *State v. Kramer*, 2001 WI 132, 248 Wis. 2d 1009, 637 N.W. 2d 35, where the Court stated:

An allegation that the defendant was selectively prosecuted is judged under ordinary equal protection standards." (Citation

omitted.) A defendant has the initial burden to present a prima facie showing of discriminatory prosecution before he or she is entitled to an evidentiary hearing on the claim. (Citation omitted.) If the defendant succeeds, the burden then shifts to the State to show that the charging decision reflects a valid exercise of prosecutorial discretion. (Citation omitted.) *Kramer* at ¶ 15.

In order to establish the requisite prima facie showing, a defendant must show (a) that he or she has been singled out for prosecution while others similarly situated have not, and (b) that the decision to prosecute was based upon an impermissible consideration. *Kramer*, at ¶ 18.

This Motion is based on newly discovered evidence that had not been provided by the prosecutors. (See attached Meyer Affidavit, ¶ 2.) The grounds in support of this Motion are as follows:

1. The Defendants Were Singled Out for Prosecution as Republican Leaders of the Assembly.
 - The four defendants charged in the Complaint filed in this case on October 18, 2002 included the top three Republican leaders in the Assembly plus a key aide. At the time of the initial charges, Mr. Jensen held the top post in the Assembly as Speaker, Mr. Foti held the number two position as Majority Leader and Ms. Ladwig was Assistant Majority Leader. Ms. Schultz was an aide to the Majority Leader. (Complaint, pp. 4,7)
 - The corresponding set of top Democratic leaders in the Assembly including Minority Leader Shirley Krug, Mark Pocan and Jeffrey Plale (the co-chairs of the Assembly Democratic Campaign Committee) and key aides were known by the prosecution in October of 2002 to have engaged in exactly the same type of alleged illegal activity during the same time period as was charged against the Assembly Republicans. (Meyer Affidavit, ¶¶ 3-9; and see Meyer Affidavit Appendix and Summary).
 - The criminal Complaint was filed on October 18, 2002 when there were only 18 days before the November 5, 2002 general election. Two of the three Republican leaders charged in the Complaint were involved in contested elections. The filing of the criminal Complaint followed an investigation that had begun at least fifteen (15) months earlier and included a John Doe proceeding that was commenced by an affidavit filed July 25, 2001. (Meyer Affidavit, ¶ 11)

- No Democratic leader or other representative from the Assembly has been charged with a crime. Additionally, no employees from the Assembly Democratic Caucus, including the Executive Director of the Caucus, were charged with a crime. Additionally, Raghu Devaguptapu¹ was not charged with a crime for his conduct while employed by the Assembly Democratic Caucus despite doing the same or similar alleged illegal activity as Ms. Schultz. (Meyer Affidavit, ¶11)

2. The Prosecutors' Decision Was Based on Impermissible Considerations.

- The prosecutors selected the Republican leadership in the Assembly for criminal prosecution while intentionally ignoring the same or similar conduct by the Democratic leadership in the Assembly.
- One of the prosecutors, Dane County District Attorney Blanchard, was a member of the Democratic party and was engaged in a contested election to be held on November 5, 2002 against a Republican opponent for the post of district attorney. (Meyer Affidavit, ¶10)
- The other prosecutor, the Wisconsin Department of Justice, was headed by then Attorney General James Doyle, a Democrat, who at that time was engaged in a contested race against a Republican for governor. (Meyer Affidavit, ¶10)
- Prior to the prosecutors making the decision to file charges on October 18, 2002, both Brian Blanchard and James Doyle received campaign contributions for their contested campaigns from or through the Democratic Party of Wisconsin ("DPW"). The DPW had received large contributions from the Assembly Democratic Campaign Committee in August, September and October, 2002. Mr. Blanchard received \$2,000.00 on August 31, 2002 that had been contributed by the DPW to the local party organization known as the Democratic Party of Dane County. Mr. Doyle received hundreds of thousands of dollars from the DPW on various occasions on 2002. (Meyer Affidavit, ¶9)
- The fact that the Democratic prosecutors decided to file criminal charges against Assembly Republican leaders and staff, but not against Assembly Democratic leaders and staff, strongly implies that the decisions and charges were political in nature. This implication is further strengthened by the fact that the charges were filed only 18 days before contested elections and after the prosecutors had conducted a secret investigation of more than fifteen (15) months.

¹Devaguptapu was charged with civil forfeitures relative to his conduct after he left the ADC and worked for Senator Brian Burke.

RELIEF SOUGHT

The moving parties request a hearing to be held under the rational of *Kramer, supra*, to require the State of Wisconsin to show that the decision to initiate the criminal prosecution against the Republican leadership of the Assembly constitutes a valid exercise of prosecutorial discretion even though the prosecutors possessed the same type of evidence of alleged wrongdoing by the Democratic leadership in the Assembly. Further, the moving parties request that the Court require the State of Wisconsin to make further disclosure of all evidence concerning an investigation of the Assembly Democratic Caucus, including but not limited to all reports involving the investigation of any Assembly Democrats together with all related John Doe testimony.

This Motion is supported by the attached Affidavit of Stephen Meyer.

Respectfully submitted this 31st day of January, 2006.

MEYER LAW OFFICE
Attorney for Scott R. Jensen

By: 

Stephen J. Meyer
State Bar No. 1011807
10 East Doty Street, Suite 507
Madison, WI 53703-3397

MURPHY DESMOND, SC
Attorney for Sherry L. Schultz

By: 

Stephen L. Morgan
State Bar No. 1015099
2 East Mifflin Street, Suite 800
P.O. Box 2038
Madison, WI 53701-2038