

STATE OF MINNESOTA
COUNTY OF HUBBARD

DISTRICT COURT
NINTH JUDICIAL DISTRICT

Court File No. 29-CR-21-830

State of Minnesota,

Plaintiff,
v.

Jeralyn Lisa Moran,

Defendant.

DEFENDANT’S MOTION TO
DISMISS ON THE GROUND
THAT THE PIPELINE WAS
NOT YET BUILT, WAS NOT
OPERATIONAL, AND WAS
NOT POSTED

MOTION TO DISMISS ON THE GROUND THAT THE PIPELINE WAS NOT YET BUILT, WAS
NOT OPERATIONAL, AND WAS NOT POSTED

Defendant, **JERALYN LISA MORAN**, by and through her attorneys, **THOMAS ANTHONY DURKIN, BERNARD E. HARCOURT**, and **TIMOTHY M PHILLIPS** respectfully submit this Motion to Dismiss on the ground that no possible crime under the Minnesota Anti-Terrorism Act, Minn. Stat. § 609.6055.2 (a) (3), could possibly have occurred because a pipeline was yet to be built, was not yet operational, and was not “Posted.”

INTRODUCTION

The State of Minnesota has charged Jeralyn Lisa Moran with one count of violating the Minnesota Anti-Terrorism Act of 2001, specifically with a violation of Minn. Stat. § 609.6055.2(a)(3) (“Trespass on Critical Public Service Facilities, Pipeline, Utility – Property Posted”).

The Charge arises out of the following alleged facts as set out in the complaint:

On or about 6/07/2021, within the County of Hubbard, State of Minnesota, the above named defendant entered or is found upon property containing a critical public service facility, utility, or

pipeline, without claim of right or consent of one who has the right to give consent to be on the property, and the person refuses to depart from the property on the demand of one who has the right to give consent or the property is posted.

Ms. Moran is being charged to have violated a statute that does not apply. The complaint alleges that Ms. Moran trespassed on a pipeline when in fact a pipeline was not yet even built and the property was not properly posted in the manner required by the statute. The statute requires the pipeline to exist, be operational, and posted. Charging Ms. Moran under the statute is impermissible for several reasons under state and federal law.

The complaint is based entirely on hearsay and fails to include all the essential facts required for the statute to apply. The Statement of Probable Cause¹ (hereafter “the Statement”) does not (and cannot) point to a single instance where Ms. Moran entered or was found on a property “containing” a “pipeline” in violation of Minn. Stat. § 609.6055.2 (a) (3). The police, financed by Enbridge Inc. (*see* Motion to Dismiss on Due Process Grounds because a Foreign Private Corporation is Financing these Prosecutions, incorporated herein), describe the location to which they were dispatched as “the Pipeline **Replacement Project**”² confirming their understanding that the pipeline did not exist, had yet to be built, and was not yet operational at the time of the alleged offence. Further, and as held by the Omnibus Order dated November 30, 2021³ (hereafter the “Omnibus Order”) in a related case concerning the same facts, the property was not “Posted.”

As discussed below, the Statement does nothing but introduce an impermissible reading of Minn. Stat. § 609.6055.2. Because the pipeline had yet to be built, be operational, or “Posted,” the State cannot establish probable cause to be successful in charging Ms. Moran (*See Section I*). If (for the sake of argument) the State were to be successful in establishing probable cause based on its impermissible

¹ Statement of Probable Cause dated 06/08/2021

² Statement - P. 2

³ Omnibus Order in re. Court File No. 29-CR-21-871, November 30, 2021 (Judge John E. DeSanto).

reading of the statute, the statute would necessarily be too vague (*See Section II*).

By enacting a vague statute, the State has failed to provide the public (including Ms. Moran) with fair warning. By failing to provide such fair warning, the State's enforcement of the statute is arbitrary and unconstitutional. The charge, therefore, cannot succeed.

All of the above turn on the definition of "pipeline" under the statute. The statute's definition of "pipeline" is plain and unambiguous. The State cannot (and should not) assume that Ms. Moran (and indeed any member of the public) would understand its excessively broad and impermissible reading of the statute. The definition (and the statute read as a whole) does not (and should not) include, as shown below, a pipeline that has not been build, will be built or replaced, or a pipeline that is not in operation, or properly posted.

The plain language of the statue provides that the pipeline must be "**used to**" (as opposed "to be", "will be", or "could be" "used to") "transport natural or synthetic gas, crude petroleum or petroleum fuels or oil or their derivatives, or hazardous liquids, to or within a distribution, refining, manufacturing, or storage facility that is located inside or outside of this state." Minn. Stat. § 609.6055, subd. 1(c). As such, it does not apply in this case.

ARGUMENT

I. THE COMPLAINT LACKS ESSENTIAL FACTS TO SUPPORT A PROBABLE CAUSE DETERMINATION THAT MS. MORAN VIOLATED 609.6055.2 (a) (3)

A complaint must consist of all the essential facts constituting the elements of the charged offense. *Minn. R. Crim. P. 2.01 (2006)*. The facts establishing probable cause to believe that an offense has been committed, and that a defendant committed it, must be set forth in writing in the complaint. *Id.* A defendant may challenge the sufficiency of the showing of probable cause by motion and the court is to receive such evidence as may be offered in support or opposition. *Minn. R. Crim. P. 11.03 (2006)*.

"The purpose of allowing a defendant to challenge probable cause at the omnibus hearing is, as stated

in *Florence*, to protect a defendant who is unjustly or improperly charged from being compelled to stand trial.” *State v. Rud*, 359 N.W.2d 573, 579 (Minn. 1984) (citing *State v. Florence*, 306 Minn. 442, 453, 239 N.W.2d 892, 900. (Minn. 1976)). Probable cause exists when “a person of ordinary care and prudence would hold an honest and strong suspicion” that the defendant is guilty. *State v. Hendricks*, 586 N.W.2d 413, 414 (Minn. App. 1998). Under *State v. Evans*, 373 N.W.2d 836, 838 (Minn. App. 1985), probable cause exists when there is more than mere suspicion that points to guilt.

Any statute that imposes criminal liability must be strictly construed in determining whether probable cause exists *State v. Larson Transfer Storage Inc.*, 246 N.W.2d 176, 182 (Minn. 1976); and any reasonable doubt must be interpreted in favor of the accused. *State v. Serstock*, 402 N.W.2d 514, 518 (Minn. 1987) and *State v. Koenig*, 666 N.W.2d 366,372 (Minn. 2003).

Dismissal of a complaint due to lack of probable cause is warranted when the evidence worthy of consideration does not bring the charge within reasonable probability. *State v. Koenig*, 666 N.W.2d 366 (Minn. 2003). If the defense presents exonerating evidence in support of its motion to dismiss for lack of probable cause, the State must show it has substantial evidence admissible at trial that would justify denial of motion for directed verdict of acquittal. *State v. Hegstrom*, 543 N.W.2d 698 (Minn. Ct. App. 1996). A motion for a directed verdict of acquittal will be granted if the evidence is insufficient to sustain a conviction for the charged offense. *Minn. R. Crim. P. 26.03, subd. 17(1)*; *In re Welfare of C.P.W.*, 601 N.W.2d 204, 207 (Minn. Ct. App. 1999).

A. *The elements of the alleged offence are not met*

Minn. Stat. § 609.6055.2 (a) (3) requires the following cumulative conditions to be satisfied: (a) a person having entered or is found upon a property without: (i) claim of right; or (ii) consent of one who has the right to give consent to be on the property; (b) the property containing a “pipeline”; and (c) the property is posted.

The statutory definition of a pipeline is set out in Minn. Stat. § 609.6055, subd. 1(c) as follows:

“Pipeline” **includes** an aboveground pipeline, a belowground pipeline housed in an underground structure, and any equipment, facility, or building located in this state that is **used to transport** natural or synthetic gas, crude petroleum or petroleum fuels or oil or their derivatives, or hazardous liquids, to or within a distribution, refining, manufacturing, or storage facility that is located inside or outside of this state. Pipeline does not include service lines. [*Emphasis added*].

When applying the cumulative conditions set out above to the statutory definition of a “pipeline”, it becomes clear that the complainant did not (and could not) sufficiently establish probable cause to prove the alleged crime committed by Ms. Moran’s. By failing to satisfy one of the cumulative conditions, the complaint necessarily fails and must be summarily dismissed.

Further, the statutory definition of “Posting” under Minn. Stat. §609.6055, subd. 3 provides that:

“For purpose of this section, a critical public service facility, utility, or pipeline is posted if there are signs that: (1) state “no trespassing” or similar terms; (2) display letters at least two inches high; (3) state that Minnesota law prohibits trespassing on the property; and (4) are posted in a conspicuous place and at intervals of 500 feet or less.”

The record does not contain evidence that the above standard of posting was complied with. Therefore, the complaint must be dismissed for lack of probable cause.

B. *Ms. Moran did not trespass on a property “containing” a “pipeline”*

To prove its complaint that Ms. Moran committed a criminal offense under Minn. Stat. § 609.6055.2 (a) (3), the State must establish that Ms. Moran entered or was found on a property containing a “pipeline” as defined in the statute. To do so, one must consider two alternative scenarios. *First*, the pipeline is unambiguously defined. *Second*, pipeline is ambiguously defined. In respect of the latter, and as set out below, even if the pipeline is ambiguously defined, the pipeline must be operational, and any doubt about that must be interpreted in favor of the defendant. Under either scenario, the complaint must be dismissed.

i. *The definition of “pipeline” under Minn. Stat. § 609.6055 is unambiguous*

The statutory definition of a “pipeline” cannot be expanded to cover projects “under construction.” It

certainly does not support a reading that a pipeline “to be built,” which at the then current time of the alleged offence “was not built,” is a “pipeline.” Put simply, the word “containing” cannot be used to refer to something that does not exist.

Given the unambiguous nature of the definition, this Court need neither look further nor engage in an exercise of statutory construction. “The object of statutory interpretation is to effectuate the intent of the legislature.” *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003) (citing Minn. Stat. § 645.16 (2002)). When “the legislature’s intent is clear from plain and unambiguous statutory language,” courts do “not engage in any further construction” and instead look “to the plain meaning of the statutory language.” *State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004).

Finally, comparable Minnesota statutes provide guidance as to how a statute concerning an object’s usage should be interpreted. By analogy, this Court should look to the meaning of “building” as defined in the burglary statute. In a series of decisions, Minnesota appellate courts have held that various structures, even some that might not fall into a dictionary definition of “building,” fell under the statutory definition of a building. A brief review makes clear that in those cases, the appellate courts ignored the dictionary definition. The courts did not stray from the statutory definition that a structure is a building only if it is “suitable for affording shelter for human beings including any appurtenant or connected structure.” For example, the Minnesota Supreme Court, held that a tool shed was not a “building,” because the trial record had not established that the tool shed was suitable for affording shelter for human beings. *State ex rel. Webber v. Tahash*, 152 N.W.2d 497, 277 Minn. 302 (Minn. 1967).

Following the reasoning in *Webber* in which the Supreme Court distinguished between structures capable of affording shelter, structures affording suitable shelter, and structures suitable for affording shelter, a court reviewing the statutory definition of “pipeline” must distinguish between, on the one hand, an object that “is used to transport” fuels and hazardous liquids and, on the other hand, objects that are

“suitable to be used,” “intended to be used,” “will be used,” “could be used,” etc. In concrete terms, an object is not a “pipeline” if it is “suitable to be used,” “intended to be used,” “will be used,” or “could be used” to transport fuels or hazardous liquids *but is not in fact used* to transport fuels or hazardous liquids.

The definition of “pipeline” is entirely dependent upon usage. This is made even more evident by looking at the words of the statutory definition. The definition of “pipeline” begins as follows: “‘Pipeline’ includes an aboveground pipeline, a belowground pipeline housed in an underground structure . . .” Minn. Stat. § 609.6055, subd. 1(c). Unless one applies conditional restrictions on the meaning of “pipeline” in the clause that forms the object of the verb “includes,” the definition is an absurd redundancy – i.e., “a pipeline is a pipeline.” The definition only makes sense if the meaning of “pipeline” in the subject of the clause is restricted. It is clear that there is such a restriction: a pipeline is not a “pipeline” *unless* the pipeline “is used to transport” designated materials to designated locations. *Id.*

Therefore, and incidentally, the Omnibus Order is wrong in looking into the dictionary definition of the phrase “to transport.” First, the phrase that should be examined is “pipeline” and as shown in this section it is unambiguous and not “subject to more than one reasonable interpretation.” Omnibus Order at p. 7. Second, even if it was, the Court selectively looked into the dictionary definition of “Transport” which is not “*on its face... ambiguous,*” *id.*, and has not looked into the dictionary definition of “is used” which is expressed in the present tense despite conceding that “the trespass statute does not define ‘is used.’” *Id.* Third, even if it was ambiguous, the Court must interpret the statute in favor of the accused. *See subsection ii* below (Any ambiguity, if there is any, must be resolved in favor of the Defendant). Fourth, following *Webber supra.*, the Court may not look into a dictionary definition but rather apply the unambiguous statutory definition of a “pipeline” which is dependent on the distinct plainly clear functions of: (a) usage (in the present tense); and (b) transporting materials.

Separately, the use of the present tense is restrictive, effectively limiting application of the offense

to an existing and then-operating pipeline that is “used to transport” natural or synthetic gas, crude petroleum or petroleum fuels or oil or their derivatives, or hazardous liquids. It does not apply to property containing under-construction pipelines or under construction pump stations which are unconnected to any pipe, or construction sites containing pipeline components.

The Minnesota Supreme Court has held that when present tense terms are used in a criminal statute, that element must be satisfied at the time of the offense. *See State v. Gosewich*, 921 N.W.2d 796, 800 (Minn. 2018) (use of the present-tense “is married” in a statute excusing culpability for sexual assault means that “whether a victim ‘is married’ should be determined at the time of the offense”); *see also State v. Mikulak*, 903 N.W.2d 600, 604 n.4 (Minn. 2017) (“use of the present tense – ‘believes’ – means that the defendant must have the mental state at the time the offense occurs”). Use of the present tense is likewise restrictive in other contexts in law. *See State v. Franklin*, 861 N.W.2d 67, 70 (Minn. 2015) (present tense term in a sentencing statute “means that the relevant time . . . is the time at which the sentence . . . is imposed”); *Motlow v. Oldetyme Distillers, Inc.*, 24 C.P.P.A. 1094, 1097 (Ct. Customs & Patent Appeals 1937) (federal law permits registration of a trademark that “is used in commerce,” a term which courts uniformly hold “requires a present use” of the mark). To establish the offense charged here, it is required that the pipeline be operational on the date of the alleged offense.

In considering this statute as a whole, as the Court is required to do, and contrary to the reasoning in the Omnibus Order, it is clear that the language is not ambiguous, nor subject to more than one interpretation. *State v. Rick*, 835 N.W.2d 478 (Minn. 2013); *State v. Bowen*, 921 N.W.2d 763 (Minn. 2019). As such, any argument requiring further interpretation through the use of the canons of construction must fail given the unambiguous nature of the statute. Therefore, the canon of construction against surplusage has no application. It is plainly clear that the words “is used” and “to transport” have distinctive meanings and are not redundant. Replacing them with the simpler phrasing of “transports” does

not negate the unambiguous reading requiring active present usage expressed by the phrase “is used” and transportation by the phrase “to transport.” As mentioned above, a pipeline is not a “pipeline” *unless* the pipeline “is used to transport” (*in the present tense*) designated materials to designated locations. To read the phrase “is used to transport” to mean “for the purpose of transferring or conveying to one place or another” is to plainly disregard the present tense restriction and is contrary to the rule in *Gosewich* holding that when a present tense is used regarding an element, such element must be satisfied at the time of the offence. Finally, and in any event, if the statute is subject to more than one interpretation (which it is not), then the Court is required to follow the argument in *subsection ii* below (Any ambiguity, if there is any, must be resolved in favor of the Defendant).

ii. Any ambiguity, if there is any, must be resolved in favor of the Defendant

Where the language of a statute is “clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” *Minn. Stat. § 645.16 (2016)*. However, even if the definition of “pipeline” under the statute is subject to more than one interpretation, or is in any way ambiguous, the Court must support an interpretation that favors the Defendant. “A rule of strict construction applies to penal statutes, and all reasonable doubt concerning legislative intent should be resolved in favor of the defendant.” *Colvin*, 645 N.W.2d at 452; *see also State v. Lopez*, 897 N.W.2d 295, 298 (Minn. App. 2017), *affirmed by State v. Lopez*, 908 N.W.2d 334 (Minn. 2018). Moreover, the “construction of criminal statute is a question of law subject to de novo review.” *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002).

Should this Court consider that “is used” may mean “suitable to be used,” “intended to be used,” “will be used,” “could be used,” or some other construction, it must take into account that a “rule of strict construction applies to penal statutes, and all reasonable doubt concerning legislative intent should be resolved in favor of the defendant.” *Colvin, supra*, 645 N.W.2d at 452.

In this instance, the resolution in favor of Ms. Moran is to construe “is used” as “is being used.” Therefore, the alleged trespass on a site where no pipeline was used to transport fuels or other hazardous liquids (or ever was used for that purpose) does not constitute conduct prohibited by Minn. Stat. § 609.6055.

Moreover, even if the Court finds that the definition of “pipeline” is ambiguous, statutory construction reveals that the pipeline must be “operational”. Further, if the legislature has intended that “pipeline” for the purpose of the statute includes pipeline under construction it could have included language so but it did not.

Courts “are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations.” *State v. Broten*, 836 N.W.2d 573, 575 (Minn. Ct. App. 2013). A statute is to “be interpreted, whenever possible, to give effect to all of its provisions, and no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *Id.*

Here, subdivision 4 of Minn. Stat. § 609.6055, when read together with the rest of the statute, makes it even clearer that trespass on a pipeline only occurs when fuels or hazardous liquids are actually being transported. This subdivision reads as follows:

An employee or other person designated by a critical public service facility, utility, or pipeline to ensure the provision of services by the critical public service facility or the safe operation of the equipment or facility of the utility or pipeline who has reasonable cause to believe that a person is violating this section may detain the person as provided in this subdivision.

Minn. Stat. § 609.6055, subd. 4.

The title of the statute, “Trespass on Critical Public Service Facility; Utility; or Pipeline” shows that there are three separate types of entity that are protected from trespass: (a) Critical Public Service Facilities; (b) Utilities; and (c) Pipelines. In accord with the title, each of these entities is defined separately. Minn. Stat. § 609.6055, subd. 1(b), 1(c). and 1(d). The statute provides that “[a]n employee or

other person designated by a . . . pipeline to ensure . . . the safe operation of the equipment or facility of the . . . pipeline” has power to detain a person believed to be trespassing on the pipeline. Minn. Stat. § 609.6055, subd. 4. In other words, the statute envisions that a trespass within the purview of the statute’s prohibition, if it occurs, will take place at a time that an employee charged “to ensure . . . safe operation . . . of the pipeline” is on duty. *Id.* That is, such a trespass will occur at a time when the “pipeline is used to transport” fuels or hazardous liquids. Reading the definition of “pipeline” in Subd. 1(b), together with the usage of “pipeline” in subdivision 4, it is clear that “pipeline” in Minn. Stat. § 609.6055 refers to an operational pipeline used to transport materials.

It is also clear that the legislature omitted any reference in the definition of a “pipeline” to a “pipeline under construction.” In *State v. Broten, supra*, the Court of Appeals considered a defendant’s argument that statutory language should be construed to require the prosecution to prove bodily harm, even though language so indicating did not appear in the statute. The Court of Appeals rejected the contention, reasoning:

Further, if the legislature had intended for a conviction under this statute to require proof of bodily harm, it could have easily included statutory language (such as, “If the punishment results in bodily harm but less than substantial bodily harm . . .”) to accomplish that objective. It did not do so.

Here, § 609.6055 is devoid of language indicating that construction sites were to be considered in the definition of “pipeline.” If the legislature had intended for a conviction under § 609.6055 to be available for trespass on a site where a pipeline is under construction, it could easily have included statutory language to accomplish that objective. Indeed, six other states – Missouri, Ohio, California, West Virginia, Mississippi, and South Dakota – passed statutory trespass restrictions on critical infrastructure facilities and pipelines and *included* construction sites for the facilities and pipelines in the proscribed

conduct.⁴ Significantly, the Minnesota legislature did not.

C. The property was not “Posted” in the manner required by Minn. Stat. §605.6055, subd. 2(a)(3)

As mentioned above, for a property to be “Posted” in the manner required by the statute the sign must: (1) state “no trespassing” or similar terms; (2) display letters at least two inches high; (3) state that Minnesota law prohibits trespassing on the property; and (4) be posted in a conspicuous place and at intervals of 500 feet or less.

Neither the complaint, nor the Statement, contain specific measurements of the letters or photographs of the signs at the time of arrest. Any evidence provided after the fact is inadmissible and must be overlooked. Further, any statement or testimony must also be overlooked as “conclusory statements” and not facts from which evidence could be derived. There are no facts on the record as to the confirm whether the letters on the signs at the time of alleged offence were at least two inches high and provide specifics as to what the sign states. *See Omnibus Order, Nov. 30, 2021.*

Taking all the above into consideration, the defendant moves to dismiss the complaint for lack of probable cause as the fact presented are insufficient to establish that the property was “Posted.”

II. THE STATUTE IS UNCONSTITUTIONAL FOR VAGUENESS

Even if after considering the above, we assume (for the sake of argument) that the Court considers the definition of “pipeline” ambiguous and is willing to consider that a pipeline under construction and/or not operational is included in such a definition, the statute so interpreted would be unconstitutional as vague and failing to give its addressees fair warning—leading to an entirely arbitrary enforcement scenario. All of the foregoing violates Ms. Moran’s (and any member of the public’s) constitutional right

⁴ MO Rev. Stat. 569.086, Trespass on a critical infrastructure facility – penalty (2021); Ohio Rev. Code 2911.21, Criminal trespass (2021); CA Pen. Sec. 554, Posted property (2021); WV Code 61-10-34, Critical Infrastructure Protection Act, prohibiting certain acts, including trespass and conspiracy to trespass against property designated a critical infrastructure facility; criminal penalties; and civil action (2021); Miss. Code & Sect. 97-25-59 (2021); SDCL 22-1-2 Definitions (2021).

to Due Process.

The requirement of fair warning in relation to criminal statutes is affirmed in many precedents. “No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.” *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). “No man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.” *United States v. Lanier*, 520 U.S. 259, 265, 117 S. Ct. 1219, 1225, 137 L. Ed. 2d 432 (1997) quoting *Bouie v. City of Columbia*, 378 U.S. 347, 351, 84 S.Ct. 1697, 1701, 12 L.Ed.2d 894 (1964)). “Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid.” *United States v. Brewer*, 139 U.S. 278, 288 (1890). “Due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope.” *United States v. Lanier*, 520 U.S. 259, 266, 117 S. Ct. 1219, 1225, 137 L. Ed. 2d 432 (1997). In addition, the “canon of strict construction of criminal statutes, or rule of lenity, ensures fair warning by so resolving ambiguity in a criminal statute as to apply it only to conduct clearly covered” *Lanier, supra*. Finally, Due Process “requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent ‘arbitrary and discriminatory enforcement.’” *Smith v. Goguen*, 415 U.S. 566, 572–73, 94 S. Ct. 1242, 1247, 39 L. Ed. 2d 605 (1974) and not doing so renders a statute void for vagueness.

Here, Ms. Moran (or any reasonable person in her place) could not have reasonably understood that they would be subject to a gross misdemeanor trespass based on the alleged facts by the State. Put simply, Ms. Moran could not have reasonably understood (and as a result was not afforded a fair warning) that a “pipeline” as defined in the statute includes no pipeline, a pipeline under construction, or not operational. The “crime” of “trespass” as contemplated in the statute and its elements were not “so explicit” that all persons “subject to [its] penalties may know what acts it is their duty to avoid.” To ensure “fair warning”

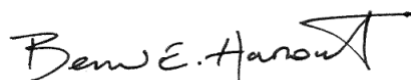
by applying the cannon of construction or the rule of lenity, the statute must be interpreted to only cover pipelines that are in operation. *Brewer* and *Lanier*, *supra*. Finally, interpreting the statute in line with the complaint is inconsistent with the requirement of having “clear guidelines” precluding “arbitrary and discriminatory enforcement” by law enforcement and trial courts. *Smith v. Goguen*, *supra*.

Based on all of the above, the statute (as applied and interpreted in the complaint) is unconstitutional for vagueness in violation of the Due Process requirement in the Fourteenth Amendment to the United States Constitution.

CONCLUSION

For the aforementioned reasons, Defendant respectfully requests that the Court dismiss the charge of Trespass on Critical Public Service Facilities, Pipeline, Utility – Property Posted, a gross misdemeanor under Minn. Stat. § 609.6055.2 (a) (3). Defendant requests that this Motion to Dismiss be set for a hearing at a future date.

Respectfully submitted,



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Dated: December 14, 2021