

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR THE CITY OF PORTSMOUTH

COMMONWEALTH OF VIRGINIA,
Plaintiff,

v.

L. Louise Lucas
Defendant.

No. GC20002909-00
GC20002910-00

Re: Def. Mot. 03

2020 SEP -3 PM 4: 28

RECEIVED & FILED
GENERAL DISTRICT COURT
PORTSMOUTH, VIRGINIA

TESTER
KYLE YERGEN, CLERK

MOTION TO DISMISS WITH PREJUDICE

Comes now the accused, by counsel, respectfully moving this Honorable Court for an order dismissing this matter as derivative of an illegal and unsanctioned police action under the Code of Virginia. In support, the Defendant relies on the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Sections 8 and 11 of the Virginia Constitution, and Code of Virginia §§ 52-8.1 and 52-8.2.

In support of this motion, counsel states:

1. The accused stands charge with two felonies, a violation of Code of Virginia § 137, a Class 6 felony, which provides for a penalty of up to five years in the Virginia Department of Corrections, and a violation of Code of Virginia § 18.2-22, a Class 5 felony, which also provides for a penalty of up to five years in the Virginia Department of Corrections.

2. Sergeant K. T. McGee of the Portsmouth Police Department Property Crimes Unit swore out these warrants before the Honorable Mandy Owens, District 3 Chief Magistrate, on August 17, 2020.

3. At a press conference announcing the issuance of the warrants that same day, the Chief of the Portsmouth Police Department, Angela Greene, stated:

“As a result of Mr. Green’s life-threatening injury from the activities of that evening, I asked the Virginia State Police to investigate the accident.”

“During the State Police department’s active investigation of the injury, requests were made for state and federal assistance to conduct an independent investigation of all events and circumstances that led up to and including the significant injury sustained by Mr. Green. Understandably, these requests fell outside of the scope of investigation for those law enforcement entities. Furthermore, when a discussion with the commonwealth attorney regarding a special grand jury and special prosecutor did not yield any action, it was the duty of the Portsmouth police department to begin a thorough and comprehensive investigation into this incident.”

“Since the conclusion of the State Police department’s accident investigation on July 22nd, a team of detectives and supervisors began to compile all written, video, and audio evidence surrounding the circumstances that led to the felonious destruction of the monument and ultimately the life-threatening injury to Mr. Green.”

“As a result of the investigative team’s findings, it was determined that several individuals conspired and organized to destroy the monument, as well as summonsed hundreds of people to join in the felonious acts, which not only resulted in hundreds of thousands of dollars in damage to the monument, but also permanent injury to an individual.”

“As your chief of police, I take seriously my public and my officers trust that I will ensure all the laws of the state and our Constitution are upheld and that I would not place any citizen or officer in undue danger. You have placed faith and trust in me to take appropriate law enforcement actions when necessary and today I want to thank my citizens and my officers for having this unwavering trust and patience in me, which led us to completing this comprehensive investigation. As a result of our efforts in this matter, we have identified and secured arrest warrants of numerous individuals who conspired, organized, and participated in a felonious acts on June 10th. This investigation yielded the same results of holding individuals who commit crimes in our city accountable but was done in a safe manner so that my officers and no other members of the public were harmed.”

“Therefore, on today’s date, felony warrants for conspiracy to commit a felony and felony injuring to a monument in excess of \$1,000 have been obtained for the following individuals:

Senator L. Louise Lucas.¹³

¹ Video of the majority of Chief Greene’s press conference, as well as a full transcript, is available at <https://www.wavy.com/news/local-news/portsmouth-holding-briefing-about-confederate-monument-incident-several-warrants-secured/> (last visited August 29, 2020).

4. The accused is a member of the Senate of Virginia representing the Eighteenth District and has done so since 1992. See <https://apps.senate.virginia.gov/Senator/memberpage.php?id=S19> (last visited August 29, 2020). Additionally, the accused is the president pro tempore of the Senate and serves on or is chair of multiple committees. *Id.* The accused was additionally scheduled to begin a special session of the General Assembly focused in part on police reform the day after these warrants were taken out.

5. Code of Virginia § 52-8.2 states in relevant part:

No investigation of an elected official of the Commonwealth or any political subdivision to determine whether a criminal violation has occurred, is occurring or is about to occur under the provision of § 52-8.1 shall be initiated, undertaken or continued except upon the request of the Governor, Attorney General or a grand jury.

Va. Code § 52-8.2.

6. As Chief Greene stated at the August 17, 2020 press conference, the Portsmouth Police Department undertook the investigation that culminated in the warrants in this case against a sitting senator completely independently of the Virginia State Police or any grand jury. Furthermore, based on information and belief, there was no request from the Governor or the Attorney General to initiate or continue any investigation.

7. As this investigation was not conducted pursuant to a grant of jurisdiction from the Code of Virginia, the two felony warrants should never have been issued and should now be quashed. Clearly the intent of the legislature in passing Virginia Code § 52-8.2 was not only to prevent unauthorized investigations, but also to foreclose the possibility of prosecution unless the statutorily authorized procedures are followed.

8. Va. Code § 52-8.2 was intended to prevent exactly the type of abuse that has

racial bias, the highest ranking African-American legislator in the Senate of Virginia was charged with two felonies by an aggrieved local police force based on alleged conduct which occurred months prior. The Portsmouth police took this action without any permission or approval from the Virginia State Police, the elected Commonwealth's Attorney for Portsmouth, the Governor or the Attorney General of Virginia. Permitting any rogue local law enforcement agency to investigate an elected official without oversight would create a system whereby localities could attempt to intimidate and influence state officials at will.

WHEREFORE, for the foregoing reasons and any others that may appear to this Honorable Court after a hearing, the accused respectfully requests that this Honorable Court issue an order dismissing this matter with prejudice.

Respectfully submitted,

By  Of Counsel

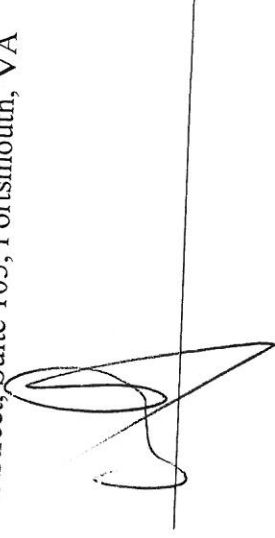
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ATTORNEYS FOR THE DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of September, 2020 a true copy of the foregoing Motion was mailed to the Office of the Commonwealth's Attorney for the City of Portsmouth, Portsmouth Judicial Center, 1345 Court Street, Suite 105, Portsmouth, VA 23704.

A handwritten signature in black ink, appearing to be 'C. A.', is written over a horizontal line.