

1 **State of Montana**  
2 **Office of the Public Defender**  
3 300 South 2nd Street  
4 Hamilton, MT 59840  
5 Phone: 406-363-7999

**FILED**  
DEBBIE HARMON, CLERK

JAN 15 2010  
*Nicholas Miller*  
DEPUTY

6 **Attorney for Defendant**

7 **MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY**

8 STATE OF MONTANA,  
9  
10 **Plaintiff,**  
11 vs.  
12 MICHAEL EDWARD SPREADBURY,  
13 **Defendant**

CAUSE NO. DC-09-154/19  
Department No. 2  
MOTION TO DISMISS

14 COMES NOW the above-named Defendant, by and through his counsel of record Nicholas  
15 Miller, and moves for dismissal on the grounds that the State has failed to establish probable  
16 cause that Mr. Spreadbury has committed the crime of Intimidation.

17 The relevant facts when disputing the adequacy of probable cause are the facts as stated  
18 in the Motion for Leave to File Information and Affidavit in Support (DC Doc. #1) and those  
19 will be the operative facts for the purpose of this motion. As they come from a prior court filing  
20 they are not recounted here.  
21

22 **LEGAL ARGUMENT**

23 **I. PROBABLE CAUSE**

24 The State must apply to the court for leave to file an information, and that application  
25 must be by affidavit supported by evidence that show probable cause that the Defendant  
26 committed the crime charged. M.C.A. § 46-11-201 (2). The application shall be granted only  
27 where there is probable cause to believe that the defendant committed the charged offense. *Id.*  
28

1 Where no probable cause exists, the court lacks jurisdiction to try the offense. *State v. Davis*,  
2 210 Mont. 28, 30, 681 P.2d 42, 43 (1984).

3 "The sufficiency of charging documents is established by reading the information  
4 together with the affidavit in support of the motion for leave to file the information." *State v.*  
5 *Elliott*, 2002 MT 26, ¶26, 308 Mont. 227, ¶26, 43 P.3d 279, ¶26 (citation omitted). In evaluating  
6 these documents, judges "use their common sense in determining whether probable cause  
7 exists." *State v. Thompson*, 243 Mont. 28, 30; 792 P.2d 1103, 1105 (1990).

8  
9 The State need not make out a prima facie case; a mere probability that the defendant  
10 committed the offense is sufficient. *State v. Bradford*, 210 Mont. 130, 139, 683 P.2d 924, 928-  
11 929 (1984). Nonetheless, the information should be dismissed where the State has "failed to set  
12 forth any facts or circumstances to show that the alleged act . . . [is] within the statute defining  
13 the elements of the crime." *Thompson*, 243 Mont. at 33 (Affirming dismissal of Sexual  
14 Intercourse Without Consent charge because "threat" related to school graduation months later  
15 not within "threats" contemplated by statute).

16  
17 **II. INTIMIDATION**

18 A person commits the offense of intimidation when, with the purpose to cause  
19 another to perform or to omit the performance of any act, the person  
20 communicates to another, under circumstances that reasonably tend to produce a  
21 fear that it will be carried out, a threat to perform without lawful authority any of  
22 the following acts:

- 21 (a) inflict physical harm on the person threatened or any other person;
  - 22 (b) subject any person to physical confinement or restraint; or
  - 23 (c) commit any felony.
- 24 §45-5-203(1) Mont. Code Ann.

25 Notably, *threat* does not mean "threatening," rather "the threat must be a 'true threat.'"  
26 Additionally, because the statute is directed at potentially protected speech, "only serious  
27 expressions of an intention to take a hostage, murder, inflict serious injuries on persons or  
28 property, or commit a felony . . . constitute a threat punishable under the statute." *State v. Lance*,

1 222 Mont. 92, 104; 721 P.2d 1258, 1266-67 (1986) (discussing the Intimidation statute in the  
2 context of Constitutionality).

3 The term "communicate" is not defined by statute, and when evaluating such terms courts  
4 use the "plain and ordinary meaning of a word." *Orr v. State*, 2004 MT 354, ¶68; 324 Mont.  
5 391, ¶68; 106 P.3d 100, ¶68. Further, although "threat" is defined at §45-2-101 M.C.A., that  
6 definition is inapplicable where it simply overlaps (but is broader than) the defined conduct in  
7 the Intimidation statute and the more specific statute controls. *See, Annotator's Comment*, §45-  
8 5-203 M.C.A.

9  
10 **III. THE AFFIDAVIT CONTAINS NO SHOWING THAT A THREAT WAS MADE**

11 Here, there are no facts set forth in the Information or Affidavit to show that Mr.  
12 Spreadbury communicated any threat to Ms. Roddy, much less any "serious expression of an  
13 intention to . . . inflict serious injuries on" her as discussed in *Lance*.

14 The affidavit alleges Spreadbury approached Ms. Roddy, an employee of the Bitterroot  
15 Public Library and asked her to do something about what was happening to him. Spreadbury  
16 allegedly became agitated and "pumped [his fist] in the air as he talked" and that Roddy "felt  
17 threatened" by Spreadbury. Mr. Spreadbury allegedly asked her to tell a prosecutor to close a  
18 misdemeanor trespassing case, but no indication that he told or wanted her to inform or testify  
19 falsely. A witness did not hear what was said but allegedly saw Spreadbury raise and pump his  
20 "hand at Roddy." (Mot. For Leave and Affidavit, DC Doc. #1).

21  
22 The State concludes from these facts that Spreadbury "communicated to Roddy a threat  
23 of physical harm." (Information, DC Doc. #3).

24  
25 It cannot be disputed that Spreadbury is not alleged to have made any sort of verbal threat  
26 punishable by the statute. Further, the pumping of his hand, whether it be a fist or just a hand,  
27 pumped in the air, or pumped at Roddy, is so entirely ambiguous an action that it cannot be  
28 understood as a threat as defined under the statute. In other words, it does not constitute a

1 communication of a threat to inflict physical harm or in any way show that such a harm was  
2 contingent on Ms. Roddy taking or not taking any action.

3 Situations can be imagined where a nonverbal action may constitute a clear  
4 communication, and even how such a communication could indicate a threat of harm if some  
5 action is performed (or unperformed). This is not such a case, and shaking one's fist in the air,  
6 even while "agitated" fails to meet any threshold definition of "communication" or "threat"  
7 under the statute's definition of threat or the plain meaning of the other words in the statute.  
8

9 **CONCLUSION**

10 This Information and the sole charge of Intimidation should be dismissed where the State  
11 has failed to set forth facts indicating even a probability that Mr. Spreadbury communicated a  
12 threat to inflict physical harm.

13  
14 DATED this 15 day of Jan, 2010.

15  
16   
17 Nicholas Miller  
18 Attorney for Defendant

19 **CERTIFICATE OF SERVICE**

20 The undersigned certifies that a true and correct copy of the foregoing MOTION TO DISMISS  
21 was served on The Ravalli County Attorney's Office, Special Deputy Prosecutor Thompson, by  
22 first class mail and facsimile on the 15 day of Jan, 2010.

23   
24 Nicholas Miller  
25 Attorney for Defendant

Joel M. Thompson  
Special Deputy Ravalli County Attorney  
121 4th Street North  
Great Falls, MT 59401  
Telephone: (406)454-6915  
Attorney for Plaintiff

FILED  
DEBBIE HARMON, CLERK

FEB 08 2010  
*Debbie Harmon*  
DEPUTY

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

-----  
THE STATE OF MONTANA, )  
Plaintiff, ) No. DC-09-154/22  
-vs- ) Department 2  
MICHAEL EDWARD SPREADBURY, ) STATE'S RESPONSE  
Defendant. ) TO DEFENSE MOTION TO  
DISMISS  
-----

COMES NOW Joel M. Thompson, Deputy Cascade County  
Attorney, and hereby responds to the Defendant's Motion to  
Dismiss for Lack of Probable Cause.

I. SUFFICIENT PROBABLE CAUSE EXISTS FOR THE OFFENSE OF  
INIMIDATION.

The Defendant's motion is to dismiss the charge of  
Intimidation, a Felony, on the grounds that there is insufficient  
probable cause in the affidavit. However, the State need only  
recite facts sufficient to indicate a mere probability that the  
Defendant committed the offense. *State v. Ramstead*, 243 Mont.  
162, 649 P.2d 1273 (1990).

An affidavit in support of a motion to file an  
information need not make out a prima facie case that a  
defendant committed a crime. *State v. Arrington*, 260 Mont.  
1, 858 P.2d 343 (1993); *State v. Elliott*, 308 Mont. 227, 43  
P.2d 279 (2002). See also *Draper v. United States*, 358 U.S.

307, 79 S.Ct. 329 (1959) and *Brinegar v. United States*, 338 U.S. 160, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949).

The Defendant is charged with communicating a threat of physical harm to Nansu Roddy, a Hamilton City Library employee, with the purpose to cause her to perform or omit the performance of her act as a witness to a prior criminal act. The Defendant had previously been charged with criminal trespass to property, a misdemeanor, to which the victim in the instant case was a witness. A threat, as defined in 45-5-201 M.C.A., means a "menace, however communicated," to inflict physical harm, subject any person to physical confinement or restraint, or commit a criminal offense. Causing reasonable apprehension of bodily injury to another constitutes an assault. 45-5-201 M.C.A.

When interviewed, Roddy was "visibly upset and scared." *State's Affidavit*, pg 2. Under the statute providing for the offense of Intimidation when certain threats are made, in order to determine whether the threat reasonably tended to produce fear in the victim that it would be carried out, the jury must review the effect the threat had on the victim in order to consider the circumstances that would reasonably tend to produce the victim's reaction to the threat and the victim's fear that it would be carried out. *State v. McCarthy*, 324 Mont. 1, 101 P.3d 288 (2004). The statute does not require objective evidence of a threat before the victim can testify as to how the victim felt threatened.


*Id.* What matters is only that the threat is communicated in a way that the victim reasonably fears the threat will be carried out. *State v Ross*, 269 Mont. 347, 889 P.2d 161 (1995).

In this case, the victim was leaving her place of work, a location she knew the Defendant had been trespassed from previously. The Defendant pulled into the parking space next to Roddy and immediately began referencing a criminal case where he was the Defendant and she was a witness, telling her that she "needs to do something about what is happening to me." The Defendant then became more agitated and raised his fist and referenced the prosecutor on the trespass case, leaving no doubt as to what the Defendant was referring. The affidavit indicates that Roddy felt threatened by the behavior and distanced herself physically. A witness across the street became concerned for Roddy's safety so much so that he was moving to assist. It is reasonable for a trier of fact to conclude that a woman, alone, accosted by a man exhibiting erratic and threatening behavior while demanding action on his criminal case, would reasonably feel threatened by such behavior.

#### CONCLUSION

The affidavit provides sufficient showing probable cause. The State respectfully moves the Court to deny the Defendant's motion.

DATED this 5 day of February, 2010.

By:   
Joel Thompson  
Special Deputy Ravalli County Attorney

\* \* \* \* \*

CERTIFICATE OF SERVICE

I hereby swear that a true and correct copy of the foregoing RESPONSE was sent to the parties in interest at the following address:

Nick Miller  
Office of Public Defender  
300 South 2<sup>nd</sup> Street  
Hamilton, MT 59840

Service was made by:     U.S. Mail                     UPS  
    Hand Delivery                     FAX

this 5<sup>th</sup> day of February, 2010.





ORIGINAL

1 JOEL THOMPSON  
Special Deputy Ravalli County Attorney  
2 121 4<sup>th</sup> St. North, Suite A  
Great Falls, MT 59401  
3 Telephone: (406) 454-6915

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MAR 01 2010  
*Debbie Harmon*  
DEPUTY

4 Attorney for Plaintiff  
5

6 **MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY**  
7

8 STATE OF MONTANA,  
9

) Case No.: DC 09-154/26  
)

10 Plaintiff,  
)

) Dept. 2  
)

11 vs.  
)

) **1<sup>st</sup> AMENDED INFORMATION**  
)

12 MICHAEL E. SPREADBURY,  
)

13 Defendant.  
)

14 Comes now Joel M. Thompson, Special Ravalli County Deputy Attorney, as attorney  
15 for the State of Montana, having first obtained leave of Court as required by law, and  
16 accuses the Defendant of having committed the following offense(s): CHARGE I -  
17 INTIMIDATION, a Felony, in violation of §45-5-203, M.C.A., punishable by imprisonment  
18 for a term of not more than ten (10) years, and a fine not more than \$50,000 OR IN THE  
19 ALTERNATIVE, CHARGE I - DISORDERLY CONDUCT, a Misdemeanor in violation  
20 of §45-8-101, M.C.A., punishable by imprisonment in the county jail for not more than 10  
21 days, fined not more than \$100, or both;

22 The facts constituting the offenses are:

23 CHARGE I - INTIMIDATION, a Felony, in violation of §45-5-203, M.C.A.:

24 On or about November 4, 2009, the Defendant, MICHAEL SPREADBURY, with the  
25 purpose to cause Nansu Roddy to perform or to omit the performance of her acts as a witness to  
26

1 a prior criminal offense committed by the Defendant, communicated to Roddy a threat of  
2 physical harm to Roddy. The threat was communicated under circumstances that reasonably  
3 tended to produce a fear that the threat would be carried out.

4 OR IN THE ALTERNATIVE

5 CHARGE I - DISORDERLY CONDUCT, a Misdemeanor in violation of §45-8-101(1)(c),

6 M.C.A.:

7 On or about November 4, 2009, the Defendant, MICHAEL SPREADBURY, knowingly  
8 disturbed the peace by using threatening, profane, or abusive language.  
9

10  
11 A list of the possible witnesses for the State now known to the prosecution is as  
12 follows:

- 13 1. Officer Brad Weston, HPD  
14 2. Nansu Roddy  
15 3. Gavin Ricklefs  
16 4. Ken Bell, Hamilton City Attorney

17 The names, addresses and phone numbers of the witnesses will be provided by way of  
18 the investigative notes.

19 DATED this 8 day of February, 2010.

20 By   
Joel M. Thompson, Special Deputy

1 Douglas G. Harkin, District Judge  
2 Department 4  
3 Fourth Judicial District  
4 Missoula County Courthouse  
5 200 West Broadway Street  
6 Missoula, MT 59802-4292  
7 (406) 523-4774

FILED  
DEBBIE HARMON, CLERK

MAR 09 2010  
*Debbie Harmon*  
DEPUTY

8  
9 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT  
10 RAVALLI COUNTY

11 STATE OF MONTANA, )  
12 ) Douglas G. Harkin, Presiding  
13 Plaintiff, ) Cause No. DC-09-154 / 27  
14 vs. ) ORDER  
15 )  
16 MICHAEL E. SPREADBURY, )  
17 Defendant. )

18  
19 This matter comes before the Court upon Defendant's January 15, 2010  
20 motion to dismiss. The motion has been fully briefed.

21 IT IS ORDERED that Defendant's January 15, 2010 motion to dismiss is  
22 DENIED.

23 DATED this 2<sup>nd</sup> day of March, 2010.

24  
25 *Douglas G. Harkin*  
26 DOUGLAS G. HARKIN  
27 District Judge

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c: Joel Thompson  
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