



Leana Kinley <leana@ci.stevenson.wa.us>

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**FW: SCSO# 20-05838; re: Robin Trabue**

1 message

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**Adam Kick** <kick@co.skamania.wa.us>  
To: Leana Kinley <leana@ci.stevenson.wa.us>

Tue, Oct 13, 2020 at 5:07 PM

Hi Leana,

I sent the closure explanation for the GG incident below to the SCSO today. I hope this is what you were looking for. Let me know if you have additional questions.

Also, it's probably worth reiterating what you and I discussed on the phone a few weeks ago. We're prosecuting cases on behalf of the City, so we're happy to discuss our general philosophy with you, the Mayor, or the Council if this is something any of you are interested in. Most of the Council members are new enough that they probably don't remember when the City had its own court and contracted with Katy Archer as a contract city prosecutor.

(I'm less comfortable discussing specific cases in a public meeting, but I'm happy to discuss anything one on one.)

adam

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**From:** Adam Kick  
**Sent:** Tuesday, October 13, 2020 4:37 PM  
**To:** Pat Bond <patb@co.skamania.wa.us>  
**Cc:** Patrick Robinson <probinson@co.skamania.wa.us>  
**Subject:** SCSO# 20-05838; re: Robin Trabue

Hey Pat,

The City of Stevenson asked that I give them an update on the case that was investigated on 8/7/20 by Deputy Beacock and with follow-up investigation by Deputy Chris Helton on 8/12/20 regarding the allegations against Robin Trabue for yelling possibly racist slurs and assaulting customers at Granny's Gedunk Ice Cream store. The reports came to me as information/records, without a specific recommendation by law enforcement for charges. We are going to close the case without charges because there is insufficient evidence to prove beyond a reasonable doubt that a crime was committed. I'll discuss below the crimes we considered.

The police reports include witness statements from two employees (Goodrich and Seaman, who provided a written statement) of Granny Gedunk who were at the store when the incident with Mr. Trabue occurred. The initial report also includes a statement from Rondell Conn whose parents own the ice cream store. Conn was not at the store at the time of the incident but spoke to the employees soon after the incident and passed on that information to Deputy Beacock. There was some confusion regarding Conn's statement in that Deputy Beacock appeared to believe that Conn had been the witness to the event, but in fact was just relaying what she'd heard from the employees. The follow-up report from Deputy Helton included statements from two local residents (Andrew Nichols and Jim Borup) who observed all or part of

the incident. The visiting family that experienced the incident and who were the apparent objects of Trabue's harassing comments left before they could make a statement to law enforcement or identify themselves.

There was some discrepancy regarding what occurred, including the content of Trabue's statements. At least one witness believed that he said something like "go back to your country," which is arguably a common racist comment when directed at (in this case) a person of Asian heritage or other person of color. However, three of the four witnesses who were present during the incident did not interpret Trabue's statements as racist so much as objecting to the fact that this family was not local and may have brought the coronavirus to Stevenson. When Deputy Beacock questioned him, Trabue's explanation was consistent with the observations of Goodrich, Nichols, and Borup. Trabue's explanation to Beacock did appear related to a paranoia regarding the coronavirus.

For arguments sake, if the statements by Trabue were motivated by animus regarding the race and/or national origin of the family patronizing the ice cream store, the further question is whether Mr. Trabue committed any crime. We considered several possibilities. RCW 9A.36.080 elevates the seriousness of alleged assaults, property damage, and threats when motivated by the victim's "race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability." RCW 9A.38.080(1). However, mere expressions of animus are not criminal. In this case, there are no witnesses that will testify that Trabue caused physical injury, physical damage or destruction of property. RCW 9A.36.080(1)(a) or (b). You can also commit a hate crime offense under 9A.36.080(1)(c) by threat. But in order for the threat to be criminal, the victim of the threat must be placed in reasonable fear of harm to person or property. In this case, the statements from Trabue do not appear to be directly threatening the victims. In any case, even if the statements could be considered threats, it would not be possible to prove this element of that offense without the testimony of the victim. Here, two witnesses give somewhat conflicting observations about the reaction of the family. One witness said that the family was visibly upset, but another seemed to think they had "[laughed] it off." While certainly Trabue's statements could be considered derogatory and hostile, without the victims available to testify, proof beyond a reasonable doubt of this offense would not be possible.

We also considered a simple assault charge. If it were possible to show that Trabue intentionally threw the fireworks **\*at\*** individuals, rather than just out the window, then he could be charged with assault. The witnesses appear to agree that he was throwing the fireworks (or "poppers") out the window, and not directing them at any individuals. The witness statements are consistent with Mr. Trabue's own explanation for his behavior.

The final crime we considered was disorderly conduct. This crime is often used as a catch-all for generally obnoxious behavior that doesn't amount to an explicit threat, but there are really three specific ways you can commit the crime of disorderly conduct (the third of which is not relevant to this incident). The first is when a person, by use of abusive language, thereby intentionally creates a risk of assault. In this case, while Trabue's language could be described as abusive, it does not appear that Trabue was intending to create a risk of assault. His statement regarding his own motivation and the perceptions of the witnesses was that Mr. Trabue had a possibly irrational concern about the coronavirus. It's very unlikely that we could prove, given the totality of the circumstances, that Mr. Trabue was essentially trying to start a fight. The second way of committing disorderly conduct is by intentionally disrupting a lawful assembly or meeting of persons. While Trabue may have intended that his words discourage the assembly of people in front of the ice cream store, there are likely first amendment considerations that would make charging disorderly conduct in this context problematic. However, if Mr. Trabue were to engage in a pattern of such behavior, or if he were to intentionally disrupt a more formal assembly or meeting with the use of fireworks as he did here, disorderly conduct charges may be appropriate.

I spoke to Rondell Conn about our decision not to prosecute Mr. Trabue in this case and she appeared to understand the issues. We also discussed ongoing issues they've had with Mr. Trabue unrelated to the above incident. It appears that there may be some ongoing conflict between Mr. Trabue and the ice cream store. Rondell seemed frustrated by that conflict but resigned to the fact that we were unlikely to be able to prove Mr. Trabue had committed a crime.

For now, we're closing this with no action taken. If we get additional information, such as a statement from the victims of Mr. Trabue's hostile outburst, we can readdress this decision in light of that information.

Thanks,

adam