

FILED
03-29-2024
CIRCUIT COURT
DANE COUNTY, WI
2024JD000001

STATE OF WISCONSIN
DANE COUNTY

CIRCUIT COURT
BRANCH 16

For Official Use:

IN RE: PETITION TO APPOINT A SPECIAL
PROSECUTOR TO COMMENCE
PROSECUTION OF RIDGLAN FARMS

Case No. 24JD0001
Case Code: 30703/30914

**RIDGLAN FARMS' OPPOSITION TO PETITION
FOR THE FILING OF A CRIMINAL COMPLAINT**

INTRODUCTION

Days after expressing “profound disappointment” that he no longer faced up to sixteen years in prison¹ for alleged felony burglary and theft in a recently dismissed criminal case, Petitioner Wayne Hsiung has reignited his years-long crusade against the actual victim in that case.

On March 7, 2024, the Dane County District Attorney’s Office moved to dismiss felony burglary and theft charges against Hsiung and two others. *See Motion (Mar. 7, 2024), Wisconsin v. Wayne H. Hsiung*, 2021CF001838. There was no shortage of evidence related to the charges; Hsiung himself admitted to entering the facility.² Rather, as the March 18, 2024 trial date approached, Ridglan Farms, the victim of Hsiung’s actions, had received multiple death threats and expressed growing “concerns for their physical safety, as well as for their business.”³ For that

¹ Jay Caspian Kang, *An Animal-Rights Activist and the Problem of Political Despair*, THE NEW YORKER (Mar. 15, 2024), available at <https://www.newyorker.com/news/fault-lines/an-animal-rights-activist-and-the-problem-of-political-despair>.

² See, e.g., ¶ 5, Ex. J, Declaration of Wayne Hansen Hsiung.

³ See Bill Lueders, *Ridglan Farms beagle ‘rescue’ case dismissed*, ISTHMUS (Mar. 8, 2024), available at <https://isthmus.com/news/news/Ridglan-Farms-beagle-rescue-case-dismissed/>.

reason, the DA’s office honored Ridglan Farms’ desire “to no longer have this case [against Hsiung, et al.] proceed to trial.” *See id.* The court dismissed the case the next day. *See Order* (Mar. 8, 2024), *id.*

Petitioners Hsiung and Dane4Dogs now urge this Court to bring criminal charges against Ridglan Farms in their Petition for the Filing of a Criminal Complaint (“Petition”). The Court should deny the relief sought and close this matter, docketed as a John Doe proceeding, for at least three reasons: (1) Ridglan Farms is statutorily exempt from prosecution for the crimes alleged; (2) even if Ridglan were not exempt, Ridglan Farms is already subject to federal and state inspections by agencies with enforcement authority, ensuring compliance with all applicable federal and state laws, making it improper for this Court to provide an extraordinary “check” on the District Attorney’s decision not to charge Ridglan with any purported crime; and (3) to the extent this matter is characterized as a John Doe proceeding, the alleged crimes are not among the statutorily enumerated offenses to which the John Doe procedure applies. Each point will be addressed in turn.

I. Ridglan Farms, as a USDA-licensed research facility, is statutorily exempt from the statutory provisions at issue.

At the outset, Petitioners ask hypothetically whether “an ordinary citizen” versus a “corporation,” if each were to have committed the acts alleged, would be in violation of Chapter 951. However, Ridglan Farms is neither an “ordinary citizen” nor an ordinary “corporation,” but instead a U.S. Department of Agriculture (USDA) Class R-licensed research facility and USDA Class A-licensed dog breeder serving educational and research institutions.⁴

⁴ See *Ridglan Farms* (last accessed Mar. 28, 2024), available at <https://www.ridglan.net/>.

Pursuant to Wis. Stat. § 951.015, Chapter 951 does not apply to “[t]eaching, research, or experimentation conducted pursuant to a protocol or procedure approved by an educational or research institution, and related incidental animal care activities, at facilities that are regulated under 7 USC 2131 to 2159 or 42 USC 289d.” *See* Wis. Stat. § 951.015. As a USDA-licensed research and breeding facility, Ridglan Farms is regulated under the Animal Welfare Act, 7 U.S.C. § 2131 *et seq.*, and required to comply with numerous protocols and procedures administered under that law in caring for its animals, whether through research conducted on-site or by the educational or research institutions it serves.⁵ Ridglan Farms is therefore statutorily exempt from the Chapter 951 provisions for the acts alleged. *See* Wis. Stat. § 951.015.

Petitioners’ own proffered exhibits reinforce the fact that Ridglan Farms is regulated under the Animal Welfare Act. *See, e.g.*, Petition, Ex. C, at 8 (Wisconsin Department of Agriculture evaluating compliance under “9 CFR, Chapter 1, subchapter A (Animal Welfare Act”); Ex. E, at 1 (USDA “routine inspection” report). As to the latter example, USDA “inspectors conduct routine, unannounced inspections of all entities licensed/registered under the Animal Welfare Act.”⁶ In addition, because Ridglan Farms’ customers include federally funded educational and research institutions, Ridglan Farms must ensure that all animals ultimately transferred to such institutions received care in compliance with the Animal Welfare Act.⁷

Accordingly, pursuant to Wis. Stat. § 951.015 Ridglan Farms is exempt from being charged under Chapter 951 for the acts alleged, and the Petition should be dismissed on that basis.

⁵ *See, e.g.*, *FAQ, Animal Welfare Act*, USDA (last accessed Mar. 25, 2024), available at <https://www.nal.usda.gov/animal-health-and-welfare/animal-welfare-act>.

⁶ *See AWA Inspection and Annual Reports*, U.S. DEP’T OF AGRIC. (last modified Apr. 25, 2023), available at <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/awa/AWA-Inspection-and-Annual-Reports>.

⁷ *See, e.g.*, *How NIH Ensures the Care of Research Animals*, NAT’L INSTS. OF HEALTH (last accessed Mar. 28, 2024), available at <https://grants.nih.gov/grants/policy/air/how-nih-ensures> (“All animals used in federally funded research are protected by laws, regulations and policies . . . The rules governing and protecting animal care include” the “Animal Welfare Act”).

II. Even if Ridglan Farms were not exempt from Chapter 951, the Court should exercise its discretion and deny the petition.

Even if Ridglan Farms were not exempt under Chapter 951, the Court should exercise its discretion under Wis. Stat. § 968.02(3) and decline to authorize the filing of a criminal complaint. Every relevant aspect of Ridglan Farms' operation is already subject to both state and federal law and administrative regulation, including USDA and the Wisconsin Department of Agriculture Trade and Consumer Protection. These agencies have authority to levy fines or initiate enforcement actions, including criminal enforcement, as appropriate. Importantly, those agencies also have the expertise to administer the laws that govern Ridglan Farms' operations, and it is telling that Ridglan Farms has never been the subject of any such enforcement action.

Before authorizing the filing of a criminal complaint under Wis. Stat. § 968.02(3), the Court must make two determinations: (1) a factual finding that the ‘district attorney refuses or is unavailable to issue a complaint’; and (2) a legal conclusion that ‘there is probable cause to believe that the person to be charged has committed an offense.’” *State ex rel. Kalal v. Circuit Court for Dane County (“Kalal”),* 2004 WI 58, ¶ 36, 271 Wis.2d 633, 652, 681 N.W.2d 110. *Kalal*, 2004 WI 58, ¶ 36 (quoting Wis. Stat. § 968.02(3)). As already explained, Ridglan Farms is statutorily exempt from Chapter 951 here. *See supra* Section I. Thus, there can be no probable cause to believe that Ridglan committed an offense. However, even if both conditions were met,⁸ the Court is still not required to authorize the filing of a complaint. Instead, § 968.02(3) “contemplates an exercise of *discretion*,” as “the judge ‘may permit’ the filing of a complaint.” *Kalal*, 2004 WI 58, ¶ 6 (quoting Wis. Stat. § 968.02(3) (emphasis added)).

⁸ Ridglan Farms takes no position here as to whether the district attorney has “refused” to issue a complaint.

“District attorneys in Wisconsin have primary responsibility and wide discretion to determine whether to commence a criminal prosecution.” *Kalal*, 2004 WI 58, ¶ 27 (citing *State v. Karpinski*, 92 Wis.2d 599, 607, 285 N.W.2d 729 (1979)). The law does not mandate “prosecution in all cases where there appears to be a violation of the law ...” *Kalal*, 2004 WI 58, ¶ 30. Furthermore, prosecutors may consider numerous factors when deciding to bring charges, including the fact that “another jurisdiction” has authority to prosecute or enforce applicable law. *Id.* ¶ 32. While Wis. Stat. § 968.02(3) was enacted to “provide[] a check upon the district attorney who fails to authorize the issuance of a complaint, when one should have been issued,” *see id.* ¶ 35 (quoting Chapter 255, Laws of 1969, Judicial Council Committee Note to Wis. Stat. § 968.02), a court must necessarily exercise its own discretion in determining whether to authorize the filing of a criminal complaint where the DA has decided not to.

The Court should properly exercise such discretion here by declining to authorize a complaint. Ridglan Farms has never been the subject of any civil or criminal enforcement action by any federal or state agency—and for good reason. While it is true that from time to time, an inspection has revealed isolated noncompliance or a recommendation for improvement, Ridglan Farms has quickly taken all appropriate action to swiftly come into compliance. To the best of their knowledge, Ridglan Farms is currently in full compliance with all federal and state regulations.

Moreover, the breadth of those “governmental regulations” is “arguably pervasive”—touching essentially every area of Ridglan Farms’ operation as both an independent research facility and as a breeding facility that sells animals to third-party research and educational institutions. *See Lesser v. Espy*, 34 F.3d 1301, 1306-07 (7th Cir. 1994). To the extent Ridglan Farms were to fail to comply with the Animal Welfare Act through its policies or procedures relating to animal welfare, which would come to light through routine or other inspections, Ridglan Farms

could risk losing its license, 7 U.S.C. § 2149(a), incur civil penalties, 7 U.S.C. § 2149(b), or face criminal penalties, 7 U.S.C. § 2149(d), under a federal cause of action. *See Lesser*, 34 F.3d at 1306-07. In other words, “another jurisdiction” already provides an adequate mechanism to ensure proper animal care, such that declining to criminally prosecute here is appropriate under the factors articulated in *Kalal*. 2004 WI 58, ¶ 32.

Not only does Ridglan Farms meet all federal and state regulatory requirements, but it strives to go above and beyond compliance. Ridglan Farms voluntarily applied for—and was awarded—accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care or “AAALAC” in 2013 and has maintained that accreditation ever since. To achieve AAALAC accreditation, an institution must satisfy all applicable laws and regulations, then meet two other sets of private-sector industry standards “which go beyond” what the government requires.⁹ In doing so, applicants must submit a detailed description of its animal care and use program, including housing and veterinary care.¹⁰ Industry evaluators review the written submissions and conduct a comprehensive, on-site assessment, which is then reviewed by an even larger council. Ridglan Farms is proud to be one of more than 1,100 organizations in over 40 countries with this accreditation.¹¹

Ridglan Farms respectfully submits that this is not a rare instance in which the Court must step in and provide a “check” on the Dane County District Attorney, who traditionally maintains “primary responsibility” to exercise prosecutorial discretion. *See Kalal*, 2004 WI 58, ¶¶ 27, 35. The multiple federal and state agencies that routinely inspect Ridglan Farms remain empowered

⁹ Accreditation Program, AAALAC INT’L (last accessed Mar. 25, 2024), available at <https://www.aaalac.org/accreditation-program/policies/>.

¹⁰ What is AAALAC Accreditation?, AAALAC INTERNATIONAL (last accessed Mar. 28, 2024), available at <https://www.aaalac.org/accreditation-program/what-is-AAALAC-accreditation/>.

¹¹ See *id.*

to initiate enforcement actions, including criminal enforcement, in the event Ridglan Farms failed to comply with applicable laws governing animal care. The Court should deny the Petition accordingly.

III. To the extent the Court is evaluating this Petition as a John Doe proceeding, the John Doe statute does not apply to Section 951 offenses.

While the text of the Petition does not explicitly mention “John Doe,” the Petition has been docketed as such a proceeding. *See* “Motion for John Doe proceeding - filed by non-DA” (Mar. 20, 2024), *In RE: 968.02(3) Complaint*, 2024JD0000001. John Doe proceedings are authorized by Wis. Stat. § 968.26, with section (1)(b) of that statute providing a long list of crimes that may be addressed in such a proceeding. *See* Wis. Stat. § 968.26(1b)(a). However, Section 951 is not among those crimes. Therefore, the acts alleged in this Petition do not fall within the purview of a John Doe proceeding.

Even if Chapter 951 were among the enumerated crimes, the purposes of John Doe proceedings would not be served here. A John Doe proceeding “serves two important purposes.” *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶ 83, 363 Wis. 2d 1, 866 N.W.2d 165 (citing *State ex rel. Reimann v. Circuit Court for Dane Cnty.*, 214 Wis.2d 605, 621, 571 N.W.2d 375 (1997)). “First, and most obvious, a John Doe proceeding is intended as an investigatory tool used to ascertain whether a crime has been committed and if so, by whom. Second, the John Doe proceeding is designed to protect innocent citizens from frivolous and groundless prosecutions.” *Id.* (citations omitted). To satisfy that initial inquiry, the judge must ascertain whether the complaint includes “objective, factual assertions sufficient to support a reasonable belief that a crime has been committed.” *In re Doe*, 2009 WI 46, ¶ 14, 317 Wis.2d 364, 766 N.W.2d 542 (quoting *Reimann*, 214 Wis.2d at 621). For the reasons already articulated, Ridglan Farms—the victim in

the prior criminal action against Petitioner Huang—is statutorily exempt here. *See supra* Section I. Enforcement would thus be meritless and with no objective grounding in Wisconsin law. Based on this, initiating a proceeding would run in clear contradiction of the second important purpose of a John Doe proceeding: “protect[ing] innocent citizens from frivolous and groundless prosecutions.” *Peterson*, 2015 WI 85, ¶ 83.

In addition, the Wisconsin Supreme Court has “long recognized the need for secrecy in John Doe proceedings.” *See id.* ¶ 88 (citing *State v. Cummings*, 199 Wis. 2d 721, 736, 546 N.W.2d 406 (1996)). Reasons for such secrecy include, in relevant part, “keeping knowledge from an unarrested defendant” and “preventing testimony which may be mistaken or untrue or irrelevant from becoming public.” *See id.* Having been publicly docketed, Ridglan Farms, the named “John Doe,” is on full notice of Petitioners’ complete arguments and documents submitted in support. Indeed, upon information and belief, Petitioners have publicly disclosed their petition. Worse yet, the general public is on full notice as well, effectively foreclosing any opportunity to adhere now to the “need for secrecy” in such proceedings. In addition, not only are the allegations irrelevant to any chargeable offense, as Ridglan Farms is statutorily exempt, but these untrue and misleading accusations that have been publicized may be damaging to Ridglan Farms’ business reputation. *See id.* Taken together, to the extent the Petition is characterized as a John Doe proceeding, it is not only procedurally flawed, but contradicts its broader purposes and should be dismissed.

CONCLUSION

Respectfully, Petitioners’ quarrel is with existing laws that allow for the use of animals in research. Petitioners are free to advocate for changes in the law that they believe are appropriate. But Ridglan Farms, which plays an important role in research designed to advance medical and

veterinary science, operates in compliance with existing laws and Petitioners should not be allowed to seek criminal enforcement against conduct that the law allows.

For the foregoing reasons, the Petition should be denied.

Respectfully submitted this 29th day of March, 2024

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