

FILED

MAR 16 2017

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF OGLE

[Handwritten signature]

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
)
Vs.)
)
MARC W. MONGAN,)
Defendant.)

Case No. 2016 CV 52/53

MOTION TO DISMISS AND OTHER RELIEF

NOW COMES the Defendant, MARC W. MONGAN, by and through his attorneys, TESS & CRULL, LLC and for his Motion to Dismiss, states as follows:

1. That on or about June 27, 2016 the Defendant, MARC W. MONGAN, was charged with the following:

- a. Watercraft Operating Under the Influence (Class A)
- b. Reckless Operation of Watercraft. (Class A)

2. That on or about December 2016, the Ogle County State's Attorney's Office convened a Grand Jury relative to the incident which brought about the charges set forth hereinabove.

3. That charges presented to the Grand Jury were as follows:

- a. Felony Operating Watercraft Under the Influence (Class 2);
- b. Aggravated Reckless Operation of a Watercraft (Class 4).

4. That said Grand Jury did not return a true bill or indictment against the Defendant, MARC W. MONGAN.

5. That the only difference between the charges brought herein as a misdemeanor and those which could have been brought by any Grand Jury as a felony involve the same set of facts with the only additional requirement of proof being a death or great bodily harm.

6. That a death or great bodily harm is acknowledged by all parties.

7. That the only probable cause issue the Grand Jury could have found would have been that of intoxication and/or recklessness.

8. That since there was no probable cause to return a true bill or indictment herein, there can be no probable cause for the misdemeanor offenses charged as set forth hereinabove.

9. That as a result of the above incident, the Defendant, MARC W. MONGAN, received a Statutory Summary Suspension of his driving privileges.

10. That based upon the finding of the Grand Jury as set forth hereinabove, there was no probable cause to compel the Defendant, MARC W. MONGAN, to submit to testing.

11. That the police officer failed to properly warn the Defendant, MARC W. MONGAN, that a refusal to submit to field test may result in the suspension of his privilege to operate a motor vehicle.

12. That the Defendant, MARC W. MONGAN, did not refuse to submit to field tests.

13. That pursuant to *People v. O'Neil*, 329 Ill. App.3d 213 (2d Dist. 2002), the ninety (90) days period to file a Petition to Rescind the Statutory Summary Suspension does not start until Defendant is given written notice from the Secretary of State of his right to file a Petition to Rescind.

14. That said written notice has never been given to the Defendant, MARC W. MONGAN, by the Secretary of State.

WHEREFORE, the Defendant, MARC W. MONGAN, prays that this Court dismiss all charges herein, rescind the Statutory Summary Suspension and for such other relief as equity requires.

Respectfully submitted this 14th day of March, 2017.

MARC W. MONGAN, Defendant

TESS & CRULL, LLC

BY: 

for DAVID D. TESS
Attorney for Defendant

Prepared by:
TESS & CRULL, LLC
Attorneys for Defendant
P.O. Box 68
Rochelle, IL 61068
(815)562-8754 – phone
(815)562-3412 – fax
lawyers@tesscrulllaw.com
marc mongan motion – 021517K