

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

ORDER

vs.

Mohamed Mohamed Noor,

Court File No. 27-CR-18-6859

Defendant.

On August 15, 2018, Mohamed Mohamed Noor, "Defendant" herein, filed a Motion to Dismiss for Lack of Probable Cause. The State responded in opposition to Defendant's motion on September 5, 2018, and Defendant subsequently replied on September 12, 2018. In conjunction with the written arguments, the parties appeared before the Court for a probable cause hearing on September 27, 2018. Thomas Plunkett and Peter Wold submitted argument and appeared on behalf of Defendant. Amy Sweasy and Patrick Lofton, Assistant Hennepin County Attorneys, submitted argument and appeared on behalf of the State of Minnesota.

Based upon all files, records, and submissions, herein,

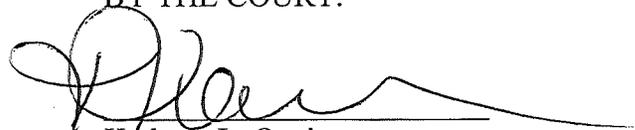
IT IS HEREBY ORDERED:

1. The Defendant's Motion to Dismiss for Lack of Probable Cause is **DENIED**.
2. Issues related to public disclosure of supporting materials will be separately considered, pursuant to the Minnesota Rules of Criminal Procedure.
3. The attached Memorandum shall be incorporated with this order.

Dated:

9/27/18

BY THE COURT:



Kathryn L. Quaintance
Judge of District Court

MEMORANDUM

After considering the evidence, the argument of counsel, and all the files, records and proceedings herein, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT & CONCLUSIONS OF LAW

A criminal complaint and supporting affidavits are required to set forth all of the essential facts and elements which constitute the charged offenses *State v. Oman*, 121 N.W.2d 616, 619 (Minn. 1963). These facts must establish “probable cause to believe that an offense has been committed and the defendant committed it.” Minn. R. Crim. P. 2.01. “Unlike proof beyond a reasonable doubt or preponderance of the evidence, probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *State v. Harris*, 589 N.W.2d 782, 790–91 (Minn. 1999) (quotation omitted). This means that probable cause is found when “evidence worthy of consideration brings the charge against the [defendant] within reasonable probability.” *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003) (quoting *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976)). Probable cause exists if “the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict of acquittal if proved at trial.” *Florence*, 239 N.W.2d at 903.

“The district court must view the issue of probable cause “in a light most favorable to the State,” and “may not assess the relative credibility or weight of conflicting evidence.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. Ct. App. 2016) (citing *State v. Knoch*, 781 N.W.2d 170, 178 (Minn. Ct. App. 2010), *review denied* (Minn. June 29, 2010); *State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. Ct. App. 1996), *review denied* (Minn. Apr. 16, 1996)). Dismissal is not appropriate when the factual record establishes “a question for jury determination on each element of the crime charged.” *State v. Lopez*, 778 N.W.2d 700, 703-03 (Minn. 2010). A probable cause hearing is not

a substitute for the discovery process mandated under the Rules of Criminal Procedure. *State v. Rud*, 359 N.W.2d 573, 578 (Minn.1984).

I. Evidence for Judicial Review

As a preliminary matter, the Court must first address the evidentiary basis for its probable cause determination. Defendant's initial brief argued probable cause within the four corners of the complaint. In response, the State enlarged the argument beyond the four corners of the complaint by alleging supplemental facts that were not supported in the record before the Court. Defendant responded to the State's motion opposing dismissal by contesting the State's facts and arguing others not contained in the record. Thus, the parties presented conflicting recitations of facts. These alleged facts were supported in documents and recordings distributed between the parties during discovery, but had not been provided to the Court. To make sense of the factual disputes, the Court directed the parties to produce all of the documents and recordings discussed in their pleadings, in order to make a probable cause determination based on its own review of items listed in the attached notes. *See generally* Minn. R. Evid. 11.03.

II. Murder in the Third Degree

Defendant is charged with one count of Murder in the Third Degree – Perpetrating Eminently Dangerous Act, pursuant to MINN. STAT. § 609.195(a). The parties do not dispute that Mohamed Noor caused the death of Justine Damond Ruszczyk on or about July 15, 2017, in Hennepin County. The probable cause dispute arises from the third element of the crime:

[T]he defendant's intentional act, which caused the death of Justine Damond Ruszczyk, was eminently dangerous to human beings and was performed without regard for human life. Such an act may not be specifically intended to cause death, and may not be specifically directed at the particular person whose death occurred, but it is committed in a reckless or wanton manner with the knowledge that someone may be killed and with a heedless disregard of that happening.

10 Minn. Prac., Jury Instr. Guides—Criminal CRIMJIG 11.38 (6th ed.)

A determination that Defendant's actions were "eminently dangerous to human beings and without regard for human life," can be argued based on evidence that Noor fired into an unlit residential alley in the late evening, where a bicyclist was present. The submissions also indicate an acknowledged potential for the presence of ordinary citizens in the immediate vicinity, either walking dogs or generally going about their business. Defendant either saw and fired at what he believed was a person, or he fired into the darkness at an unknown target. Under either scenario, the jury could find that his act was dangerous to human beings and was performed without regard for human life.

Further evidence that Defendant fired across his partner's body, from the confined passenger's seat of a police squad car, and out the driver's side window, could also be considered by the jury. A jury could determine that this conduct was reckless and wanton, and the Defendant possessed the knowledge that someone could be killed. The record does not contain evidence suggesting that Defendant's conduct was "not specifically directed at the person whose death occurred." What was in the Defendant's mind at the time of the incident can only be inferred at this point. There is, however, sufficient evidence from which the State could argue that Mohamed Noor fired off a round without knowing what—or who—was outside the police cruiser.

III. Manslaughter in the Second Degree

Defendant was also charged with one count of Manslaughter in the Second Degree – Culpable Negligence Creating Unreasonable Risk, pursuant to MINN. STAT. § 609.205(1). As previously stated, the Defendant concedes that he caused the death of Justine Damond Ruszczyk on or about July 15, 2017, in Hennepin County. The contested issue is whether the Defendant caused the death of Justine Damond Ruszczyk by culpable negligence: creating "an unreasonable risk and consciously [taking] a chance of causing death or great bodily harm." 10 Minn. Prac., Jury

Instr. Guides—Criminal CRIMJIG 11.56 (6th ed.). The jury must determine whether by shooting into a dark alley—either at a person or into the darkness—Defendant consciously created an unreasonable risk of causing death or great bodily harm. Obviously, Defendant may argue otherwise. When determining probable cause, the Court considers the facts in a light most favorable to the State. *Barker*, 888 N.W.2d 348, 353 (citations omitted).

CONCLUSION

Upon review of the complaint and the supporting evidence, the Court finds that there is probable cause to charge Mohamed Mohamed Noor with one count of Murder in the Third Degree—Perpetrating Eminently Dangerous Act, pursuant to MINN. STAT. § 609.195(a), and one count of Manslaughter in the Second Degree—Culpable Negligence Creating Unreasonable Risk, pursuant to MINN. STAT. § 609.205(1).

K.L.Q.