

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

**ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS**

vs.

Mohamed Mohamed Noor,

Court File No. 27-CR-18-6859

Defendant.

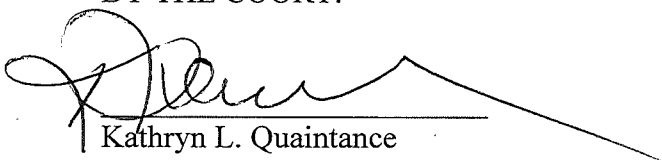
On September 4, 2018, Mohamed Mohamed Noor, "Defendant" herein, filed a motion to suppress psychological records from the Minneapolis Police Department. The State responded in opposition to Defendant's motion on September 5, 2018. In conjunction with the written arguments, the parties appeared before the Court for an evidentiary 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 Suppress psychological records from the Minneapolis Police Department is **DENIED**.
2. The attached Memorandum shall be incorporated with this order.

BY THE COURT:


Kathryn L. Quaintance
Judge of District Court

Dated: 9/27/18

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

The Fourth Amendment of the United States Constitution guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. This is a personal right, and an individual must invoke its protections. *Minnesota v. Carter*, 525 U.S. 83, 88, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998). A defendant “has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.” *State v. Griffin*, 834 N.W.2d 688, 696 (Minn. 2013) (quoting *Rakas v. Illinois*, 439 U.S. 128, 143-44 (1978)). An individual cannot assert Fourth Amendment protections vicariously through third parties. *Alderman v. United States*, 349 U.S. 165, 174 (1969).

Defendant’s basis for suppression is not a constitutional defect in the search warrants, but rather the physician-patient privilege. A physician-patient privilege regarding the disclosure of information exists when: (1) a physician-patient relationship exists; (2) the information retained by the physician is contemplated by the statute; (3) the physician acquired the information by attending to the patient; (3) the information was necessary for the physician to act within a professional capacity. *State v. Staat*, 192 N.W.2d 192, 196 (Minn. 1971). The physician-patient relationship can be waived by the patient. *State v. Blom*, 682 N.W.2d 578, 617 (Minn. 2004).

Here, Defendant argues that the psychological records from his employment with the Minneapolis Police Department (MPD) should be suppressed, as they are protected by the physician-patient privilege. The State argues that the records are neither confidential nor privileged, and that Defendant was informed of this immediately before participating in the

psychological interview. The State supports this by referencing the first page of Dr. Gratzner's psychological report of Defendant, which was kept in Noor's MPD personnel file, which reads:

STATEMENT OF CONFIDENTIALITY:

Mr. Noor was informed that the interview would not be confidential and that information obtained would be used in preparation of this report. With that understanding he agreed to proceed to the interview.

(See State's Response at 2). This demonstrates that the MPD psychological records on Defendant are neither privileged, nor confidential.

These records pertain to Dr. Thomas Gratzner, an M.D. Psychiatrist working within the scope of his professional field. However, Defendant did not see Dr. Gratzner for medical or psychiatric treatment. Dr. Gratzner's role was to assess Defendant's psychological fitness to serve within the context of the MPD employment application. Defendant proceeded with the psychological interview after expressly acknowledging that any information he provided would not be confidential. Dr. Gratzner and other MPD employees shared information and opinions regarding the psychological testing. It is clear from the documents and reports from the psychologists that Mr. Noor was advised that the documents were not confidential and would be used in the employment process. As such, there is no basis for suppression and the motion is denied.

K.L.Q.