

STATE OF MINNESOTA
COUNTY OF CLAY

SEVENTH JUDICIAL DISTRICT
IN DISTRICT COURT
CRIMINAL DIVISION

STATE OF MINNESOTA,
Plaintiff,

Memorandum in Response to Defendant's
Motion to Dismiss for Lack of Probable Cause

vs-

ANDREW TYLER SEELEY,
Defendant.

District Court File No. 14-CR-17-4658

TO: Honorable Michelle Lawson, District Court Judge; and
Mara Rausch, Attorney for the Defendant

Introduction

On December 21, 2017 the defendant in the above captioned matter was charged with 11 counts of Possession of Child Pornography in violation of MSA 617.247. On July 3, 2018, the defendant filed a motion to dismiss the complaint for lack of probable cause. On March 5, 2021 a hearing was held via ZOOM where the State pursuant to *Florence* submitted Exhibits 1, 2, and 3 consisting of various investigative reports and audio recordings and the Defense submitted Exhibits 4 and 5 consisting of an expert's affidavit and a report/recording of B.M. The parties rested on these filings and a briefing schedule was provided.

Facts

Fmr. Det. Krebsbach with the Moorhead Police Department was notified by the North Dakota Bureau Criminal Investigation (BCI) of an investigation that had uncovered an IP address in Moorhead, Minnesota that was suspected of viewing and downloading child pornography. In furtherance of that investigation, a search warrant was executed on the residence where the defendant resides. When the detectives told the defendant why they were

there and what they were looking for, the defendant started to have a panic attack and had a bowel movement.

Located during that search were a number of computers, hard drives, and other devices capable of electronic storage. Pursuant to the warrant, the items seized were searched by Special Agent Jesse Smith of the BCI who is trained in computer forensics. Based on that search, SA Smith provided a report of several items of child pornography with files dated March 9, 2017, March 19, 2017 and March 20, 2017. The information was sent to the National Center for Missing and Exploited Children (NCMEC) and a report indicated that there were 9 “hashes” related to an identified child and 29 recognized hash values. The Defendant was subsequently arrested for possession of child pornography.

Law & Argument

“[T]he test of probable cause is whether the evidence is worthy of consideration... brings the charge against the prisoner within reasonable probability.” *Florence*, 239 N.W.2d at 896. “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. 1991) (quotation omitted). Under Minn. R. Crim. P. 11.04, the Court assesses probable cause “based on the complaint or the entire record including reliable hearsay in whole or in part.”

In the exhibits provided by the State, the evidence shows the investigation started when an IP address of the defendant’s girlfriend, MM, was linked to a peer to peer network that was engaged in viewing and downloading child pornography. The IP address was seen on the Bit Torrent network from November 11, 2016 to April 20, 2017. It was determined that the defendant was living with MM at her address in Moorhead. The User information of the items

seized were identified to belong to “Drew.” MM confirmed that the defendant had been living at the residence since June of 2014 in order to help care for her child. MM confirmed she has no idea what a Peer to Peer program was nor did she use them. MM further advised that she only uses the computer for gaming or online shopping. MM also confirmed that the Wi-Fi is password protected and no one other than she and the defendant have that password.

The defense has submitted an opinion of an expert that had someone from his company review the files and the expert submitted an affidavit based on what this unknown person told him. The opinion of the defense expert differs from that of SA Smith’s opinion on whether the defendant knowingly possessed child pornography. This is the basis of the defense’s motion to dismiss – differing opinions of two separate experts. Which expert to believe is a factual issue for a jury to decide. It is not a proper for the court to determine a factual issue under the guise of a probable cause challenge.

Conclusion

There is sufficient evidence in Exhibits 1, 2 and 3 to establish the defendant knowingly possessed child pornography. The differing opinions of two experts is an issue for a jury to decide. The State respectfully requests the court deny the defendant’s motion to dismiss.

CLAY COUNTY ATTORNEY'S OFFICE

Dated: April 23, 2021

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