

STATE OF MINNESOTA
COUNTY OF MILLE LACS

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Court File No.: CR-06-1025

State of Minnesota,

Plaintiff,

vs.

J. [REDACTED] C. [REDACTED] G. [REDACTED]

Defendant.

**MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS FELONY
FLEEING CHARGE PURSUANT TO
MINN.R.CRIM.P. 11.03**

TO: THE ABOVE-NAMED COURT; THE HONORABLE S. [REDACTED] R. [REDACTED], JUDGE
OF DISTRICT COURT; AND T. [REDACTED] C. F. [REDACTED]-L. [REDACTED], ASSISTANT COUNTY
ATTORNEY.

MOTION

PLEASE TAKE NOTICE that on November 17, 2006 at 9:00 a.m., at the contested omnibus hearing in the above-mentioned matter, or as soon as this matter can be heard, J. [REDACTED] C. [REDACTED] G. [REDACTED], by and through his attorney Ryan P. Garry, will move this court pursuant to Rule 11.03 of the Minnesota Rules of Criminal Procedure, for an order dismissing Count I, *Fleeing a Police Officer*, in violation of Minn. Stat. § 609.487, Subd. 3, because there is an insufficient showing of probable cause to believe that the defendant committed the offense charged in the complaint. Defendant reserves the right to call the witnesses listed in the *Notice of Motion and Motion to Dismiss* as well as present the evidence disclosed in said *Motion*.

MEMORANDUM

- I. **THERE IS AN INSUFFICIENT SHOWING OF PROBABLE CAUSE TO BELIEVE THAT DEFENDANT COMMITTED COUNT I, FLEEING A PEACE OFFICER.**

In *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892 (1976), the Supreme Court discussed the type of evidence that may be presented and considered on a motion to dismiss the

complaint for lack of probable cause. Minn.R.Crim.P. 11.03, Comments. In determining whether to dismiss a complaint under Rule 11.03 for lack of probable cause, the trial court is not simply reassessing whether or not probable cause existed to warrant the arrest. *Id.* Rather, under *Florence* the trial court must determine based upon the facts disclosed by the record whether it is fair and reasonable to require the defendant to stand trial. *Id.* A probable cause motion requires a judge to determine whether it is more probable than not that a crime was committed and that the defendant committed the crime. *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976). When the defense brings a motion challenging probable cause, it will be granted unless the prosecution submits substantial evidence, admissible at trial, such that this evidence would justify denying a directed verdict of acquittal. *Florence*, 269 N.W.2d at 903. A defendant has a right to call witnesses at a pretrial hearing to attack probable cause for the crimes alleged in order to “protect a defendant who is unjustly or improperly charged from being compelled to stand trial.” *Florence*, 306 Minn. 442, 454, 239 N.W.2d 892, 900 (Minn.1976). An evidentiary hearing must be held *in every case* where the defendant produces witnesses who, if believed, would exonerate the defendant. *Florence*, 306 Minn. at 457-58, 239 N.W.2d at 902.

The most common way of determining whether probable cause exists is to submit probable cause on the face of the complaint. Typically, a judge determines whether probable cause exists based only upon a reading of the complaint, without any additional information. While police reports and transcriptions of witness statements are hearsay and would not be allowed in as evidence at a trial, the reports and statements are permitted for a probable cause determination because they are “reliable hearsay”, which is permissible at a probable cause hearing. *See* Minn.R.Crim.P. 18.06, subd. 1.¹

¹ A copy of the criminal complaint and police reports are enclosed herewith for the purposes of this hearing.

Minn.Stat. § 609.487, Subd. 1 defines “flee” for the purposes of fleeing a police officer in a motor vehicle. “The term “flee” means to increase speed, extinguish motor vehicle headlights or taillights, refuse to stop the vehicle, or use other means *with intent to attempt to elude* a peace officer following a signal given by any peace officer to the driver of a motor vehicle.” (Emphasis added). The Webster Dictionary definition of “elude” states, “to slip away from, avoid capture by, dodge away from.”

In this case, Officer J. B. [REDACTED] of the Princeton Police department was advised by Mille Lacs County dispatch that the Defendant was driving a 1985 Cadillac most likely heading back to town on Highway 95. Defendant was driving his vehicle near 1st Avenue in the city of Princeton, Minnesota when Officer B. [REDACTED] passed Defendant’s vehicle. At that point, Officer B. [REDACTED] observed the driver to be Defendant, who was known to the officer from previous contacts. Officer B. [REDACTED] noted no erratic driving conduct or any driving conduct whatsoever supporting an inference that Defendant was committing a crime or traffic violation. Officer B. [REDACTED] activated his emergency lights to initiate a traffic stop. Officer B. [REDACTED] V. [REDACTED], who was driving his own personal vehicle, assisted in Officer B. [REDACTED] by following behind his squad car. Defendant’s vehicle began to slow down at which time the driver activated his emergency flashers and began to stick his hand out the window waving. *Police Report, page 4.* Officer B. [REDACTED] then activated his siren and continued to follow the vehicle at approximately 30 miles per hour. Officer B. [REDACTED] stated, “The driver continued at a slow rate with his flashers on, periodically waving out the window at other motorists.” Defendant then continued west on 1st Street, made a right turn on 11th Avenue South, a left turn onto 3rd Street, and then pulled into a residence at 906 3rd Street South. *Id.* At this time, as the officers exited their vehicles, Defendant “also exited his vehicle, threw his hands in the air and said, ‘I give up.’” *Police Report, page 6.*

In this case, it is crucial that the court examine Defendant's conduct in operating his motor vehicle, as put forth in the complaint and police reports, to determine whether or not probable cause exists to support the charge. The Defendant is charged with Count I, *Fleeing a Police Officer* in violation of Minn. Stat. § 609.50, Subd. 3. As described above, Minn.Stat. § 609.487, Subd. 1 sets out what the term "flee" means: "to increase speed, extinguish motor vehicle headlights or taillights, refuse to stop the vehicle, or use other means *with intent to attempt to elude* a peace officer following a signal given by any peace officer to the driver of a motor vehicle." The facts as set forth in the criminal complaint and the police reports cannot meet the elements of this offense. Defendant did not increase his speed but rather decreased his speed; he did not extinguish his motor vehicle headlights but rather turned on his emergency flashers. Defendant is expected to testify that he had no intent whatsoever in eluding the police officer, but rather wanted to stop his vehicle in a place where there would be witnesses available to confirm the officer's conduct. Finally, there is no evidence in either the criminal complaint or the police reports indicating that Defendant intended to elude officers (i.e., slip away from, avoid capture by, dodge away from), but rather, that the moment he exited his vehicle, he threw his hands in the air and said, "I give up."

The District Court's role at the probable cause stage is to determine whether probable cause exists and not to judge the credibility of the witnesses. The Defendant's conduct indicates that he had no intention of fleeing the police officer's in this case. He slowed his vehicle down, waived at the officers to acknowledge their presence, and activated his emergency flashers. In addition, the Defendant is expected to testify that he had absolutely no intention of fleeing a peace officer but rather was wanting to pull his vehicle over in a residential area rather than on an area where there would be no witnesses to confirm the officer's activity. Defendant's actions

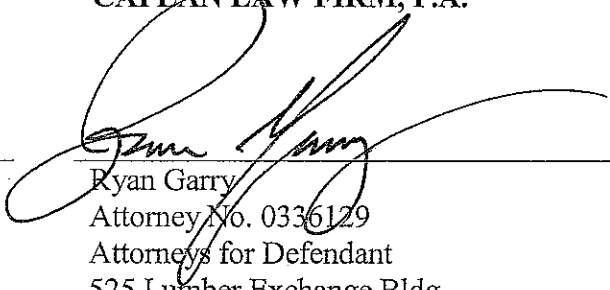
negate intent, which under Minn.Stat. § 609.487 is an element to the offense. The testimony of Defendant, if believed, would exonerate Defendant of the Felony Fleeing charge.

CONCLUSION

It is not more probable than not that Defendant committed *Fleeing a Police Officer* in violation of Minn. Stat. § 609.50, Subd. 3; but rather, it is more probable that Defendant did not commit this crime. Consequently, it is not fair and reasonable to require the Defendant to stand trial on Count I, and the motion to dismiss Count I, *Felony Fleeing a Police Officer*, for lack of probable cause should be granted.

CAPLAN LAW FIRM, P.A.

Dated: November 15, 2006



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