

FEB 06 2007

STATE OF MINNESOTA
COUNTY OF MILLE LACS

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

CASE TYPE: CRIMINAL

State of Minnesota,
plaintiff,

Case File No. CR-06-██████████

v.

J██████████ C██████████ G██████████,
defendant.

FILED 2/6/07
Mille Lacs County
District Court
BY Carrie

ORDER

The above-captioned matter came before S██████████ P. R██████████, District Court Judge, for a contested omnibus hearing on November 17, 2006. T██████████ L██████████ F██████████, Assistant Mille Lacs County Attorney, appeared on behalf of the State. Defendant was represented by Ryan P. Garry from the Caplan Law Firm. Defendant submitted a pre-hearing brief on November 15, 2006.

Defendant raised the following issues at the November 17, 2006 omnibus hearing: (1) the legality of the stop; (2) if the stop was unlawful, then whether there is probable cause to charge defendant with the four counts in the complaint; and (3) irrespective of how the Court rules on the stop issue, whether there are sufficient facts to support the charge of fleeing a police officer.

STATEMENT OF FACTS

On the afternoon of April 13, 2006, Mille Lacs County Dispatch informed Princeton Police Officer J██████████ B██████████ that defendant had possibly been involved in an assault earlier that afternoon at a Greenbush Township residence, which defendant had just left. Two deputies from the Mille Lacs County Sheriff's Office were currently at the

residence conducting a preliminary investigation. Dispatch informed B [REDACTED] that defendant was driving a 1985 maroon Cadillac, the vehicle's license number, and the likely route that defendant was traveling. From prior encounters, B [REDACTED] was familiar with defendant.

Moments later, B [REDACTED] located defendant's vehicle. B [REDACTED] activated his squad car's emergency lights in an attempt to effect a traffic stop. Defendant at that point slowed down. Defendant also stuck his hand out the window and waved. B [REDACTED] activated his siren, but defendant continued to drive at a slow pace, apparently waving at other motorists. This continued for about ten blocks, until defendant pulled his car into a residential driveway.

CONCLUSIONS OF LAW

The Stop of Defendant's Vehicle:

Defendant first challenges the legality of the stop. "A law enforcement officer may lawfully stop a motor vehicle if there exists a particularized, objective basis for suspecting the driver of illegal conduct." *Yoraway v. Commissioner of Public Safety*, 669 N.W.2d 622, 626 (Minn.App. 2003) (citing *State v. Hielmstad*, 535 N.W.2d 663, 664 (Minn.App. 1995)). Here, the officer had reason to believe that defendant had recently been involved in possible criminal behavior, an assault. Defendant had just left the residence where the assault had allegedly occurred. Law enforcement officials were at the residence conducting an investigation. Because an on-going investigation was already in progress, because the victim clearly identified defendant as her assailant, and since only a short period of time elapsed between the alleged assault and the stop, the officer had a lawful basis to stop defendant's vehicle.

Inasmuch as the stop was lawful, probable cause exists to charge defendant with the charges of obstructing the legal process, driving without a valid driver's license, and disorderly conduct. The issue of whether there is probable cause to charge defendant with fleeing a police officer is addressed below.

Probable Cause:

“In all probable cause motions under Minn.R.Crim.P. 11.03, given the facts disclosed by the record, the judge must decide if it is fair and reasonable to require the defendant to stand trial.” *State v. Diedrich*, 410 N.W.2d 20, 22 (Minn.App. 1987) (citing *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976)). “A standard for granting a Rule 11.03 motion is whether ‘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.’” *Id.* (quoting *State v. Florence* at 903). “The standard for granting a directed verdict requires ‘the determination of whether, as a matter of law, the evidence is sufficient to present a fact question for the jury’s consideration.’” *Id.* (quoting *Paradise City of Minneapolis*, 297 N.W.2d 152, 155 (Minn. 1980)). “In determining probable cause, the district court may consider evidence in a form that is not necessarily admissible at trial.” *State v. Ortiz*, 626 N.W.2d 445, 451 n.1 (Minn.App. 2001).

Defendant is charged with fleeing a police officer in a motor vehicle, a violation of Minn.Stat. § 609.487, Subd. 3. The term “flee” is defined by subdivision 1 of that statute to include the following evasive measures: “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**...” [emphasis added]. That definition requires something more than a failure to stop, which is the non-compliance with a lawful

directive. The statutory definition requires that the motorist actually intends to elude the officer, which is typically done to avoid arrest. The facts here suggest that defendant lacked the requisite intent.

Defendant led the officer on a slow-speed chase for approximately ten city blocks, occasionally sticking his hand out the car window to wave to others. While defendant clearly refused to stop when directed to do so, he at no time increased the speed of his vehicle, extinguished his vehicle's lights, or engaged in any other type of evasive action. There is simply no evidence that he intended to avoid arrest, at least while he was in his car. Defendant's conduct, though inexcusable, would therefore not fall within the statutory definition of Minn.Stat. § 609.487. For that reason, probable cause is lacking, and the charge of fleeing a peace officer must be dismissed. Defendant's conduct, however, would fall within the obstructing the legal process statute, Minn.Stat. § 609.50, or possibly failure to yield to an emergency vehicle, Minn.Stat. § 169.20, Subd. 5 (b).

Defendant must stand trial on the remaining charges in the complaint.

ORDER

1. Defendant's motion to suppress is **DENIED**.
2. Defendant's motion to dismiss count one of the complaint is **GRANTED**.
3. Defendant's motion to dismiss counts two, three, and four of the complaint is **DENIED**.

Dated: February 5, 2007



S. P. R.
District Court Judge