

State of Minnesota  
McLeod County

District Court  
First District

Court File Number: 43-CR-11-1155

Case Type: Crim/Traf Mandatory

### Notice of Filing of Order

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State of Minnesota vs W [REDACTED] J [REDACTED] H [REDACTED]

You are notified that an order was filed on this date.

Dated: December 30, 2011

K [REDACTED] V. M [REDACTED] /JRW  
Court Administrator  
McLeod County District Court  
830 11th Street East Suite 106 Glencoe MN  
55336  
320-864-1281

cc: W [REDACTED] J [REDACTED] H [REDACTED]  
C [REDACTED] D [REDACTED] B [REDACTED]

STATE OF MINNESOTA  
COUNTY OF MCLEOD

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
CRIMINAL DIVISION

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State of Minnesota,

Plaintiff,

**EVIDENTIARY ORDER**

vs.

W. J. H.

Court File No. 43-CR-11-1155

Defendant.

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The above-entitled matter came on for an evidentiary hearing at the McLeod County Courthouse in Glencoe, Minnesota on the 21<sup>st</sup> day of December, 2011 before the Honorable [REDACTED], Judge of District Court. The state appeared by its attorney, Mr. C. [REDACTED] B. [REDACTED] Assistant McLeod County Attorney, Glencoe, Minnesota. The defendant appeared in person and with his attorney, Mr. Ryan Garry, Minneapolis, Minnesota.

The court, having heard the evidence produced and the arguments of counsel, having reviewed the contents of its file, and being duly advised in the premises now makes the following:

**IT IS HEREBY ORDERED THAT:**

1. The defendant's motion to dismiss the charge against him for lack of probable cause is hereby granted.
2. The Memorandum set out below is hereby made a part of this Order.

Dated this 30th day of December, 2011.

  
[REDACTED]  
Judge of District Court

43-CR-11-1155

## MEMORANDUM

Testimony and exhibits produced at the December 21, 2011 evidentiary hearing and law enforcement documents submitted by the state, indicate that the following described events took place. On July 11, 2011, at approximately 9:00 p.m., McLeod County Sheriff's Deputy K [REDACTED] R [REDACTED] was on patrol in his squad car in the city of Hutchinson, Minnesota. He observed a pickup truck travelling with alcohol license plates.

R [REDACTED] continued to follow the vehicle and learned from McLeod County Dispatch that the owner had a restricted license allowing him to drive for work and other defined purposes. The driver of the pickup truck appeared to R [REDACTED] to match the description for the owner. R [REDACTED] suspected the defendant was not driving for work purposes because the vehicle was not near Winthrop, Minnesota and most farm stores in the Hutchinson area were closed at that time. Therefore, R [REDACTED] performed a traffic stop of the vehicle upon the belief that the defendant was driving in violation of the limited license.

R [REDACTED] approached the vehicle and explained the reason for the stop of the vehicle. R [REDACTED] identified the driver as the defendant, W [REDACTED] J [REDACTED] H [REDACTED]. At the time the defendant possessed a limited license which allowed him to drive for work purposes between 4:00 and 10:00 p.m. The defendant works for his uncle, Mr. R [REDACTED] K [REDACTED] on a farm near Winthrop, Minnesota.

R [REDACTED] asked the defendant why he was driving and the defendant responded that he had to get gas and return some building materials to Menards. The defendant told R [REDACTED] that the building materials were for his house.

R [REDACTED] K [REDACTED] testified that he had sent the defendant to Menards in order to buy some door knobs for a shed they were building on the farm. K [REDACTED] stated that they often worked at

night and the door knobs were needed for the farm that night in order to secure the doors of the shed. An affidavit of J. [REDACTED] F. [REDACTED] was admitted to the court as exhibit # 2. F. [REDACTED] was a passenger in the pickup truck with the defendant on July 11, 2011. F. [REDACTED] states in the affidavit that during the stop the defendant explained to R. [REDACTED] that he was driving the truck for work but he was low on gas so he stopped to fill up at a gas station. Further, F. [REDACTED] stated that the defendant was driving for work purposes when he was stopped by R. [REDACTED] on the night of July 11, 2011.

### ANALYSIS

Under *State v. Florence*, 306 Minn. 442, 457, 239 N.W.2d 892, 902 (Minn. 1976), the court must determine whether it is “fair and reasonable” to require the defendant to stand trial. The standard for probable cause is lower than the beyond-a-reasonable doubt standard necessary for a criminal conviction. *Id.* Probable cause exists if “evidence worthy of consideration . . . brings the charge . . . within reasonable probability.” *State v. Steinbuch*, 514 N.W.2d 793, 798 (Minn. 1994) (quotation omitted). Stated another way, probable cause exists when “the facts would lead a person of ordinary care and prudence to hold an honest and strong suspicion that the person under consideration is guilty of a crime.” *State v. Ortiz*, 626 N.W.2d 445, 449 (Minn. Ct. App. 2001). If the Court is satisfied that the facts in the record would preclude the granting of a motion for a directed verdict of acquittal if proved at trial, then the motion to dismiss should be denied. *Florence*, 306 Minn. at 459, 239 N.W.2d at 903.

The court may order a judgment of acquittal if the evidence is insufficient to sustain a conviction. See Minn. R. Crim. P. 26.03, Subd. 18(1)(a). A motion of acquittal must be granted when the evidence, viewed in the light most favorable to the government, is such that a

reasonably minded jury must have a reasonable doubt as to the existence of one of the essential elements of the crime charged.

In the present case, the only evidence provided by the state that the defendant committed the offense charged, was R [REDACTED]' testimony that the defendant admitted he drove to the Menards store to return building materials for his own personal use. Minnesota law provides that "[a] confession of the defendant shall not be sufficient to warrant conviction without evidence that the offense charged has been committed." Minnesota Statutes § 634.03 (2009). "[A] confession is any statement by a person in which he explicitly or implicitly admits his guilt of a crime." *State v. Vaughn*, 361 N.W.2d 54, 56 (Minn. 1985).

Consequently, in order to obtain a conviction in this case the state must provide some evidence independent of the defendant's admission, that the offense of driving in violation of a limited license was committed. The state has not demonstrated that it has any such evidence. Therefore, probable cause is lacking and the charge should be dismissed.

TEC

FILED

DEC 30 2011

COURT ADMINISTRATOR  
McLEOD COUNTY, MN