STATE OF MINNESOTA DISTRICT COURT

COUNTY OF BECKER SEVENTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

Court File No. 03-CR-21-2293

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

vs.

Daniel Richard Keranen,
Defendant.

The above-entitled matter came before the Honorable Michael D. Fritz, Judge of District Court, in the County of Becker, State of Minnesota, on the 9th day of May, 2022.

The State of Minnesota is represented by Brian McDonald, County Attorney. The Defendant, Daniel Keranen, is represented by Dane DeKrey, Attorney.

NOW THEREFORE, having duly considered the arguments of counsel, the documents and proceedings herein, together with the applicable law, this Court makes the following:

ORDER

1. The Defendant's motion to suppress evidence and dismiss all charges for lack of probable cause is hereby **GRANTED.**
2. The attached **MEMORANDUM** shall be made a part of this order.

Dated: June 23, 2022

BY THE COURT:

Michael D. Fritz
Judge of District Court

MEMORANDUM

I) Introduction and Facts

On September 18, 2020, law enforcement agencies were dispatched to the Defendant's home in response to reports of a shooting fatality. During their investigation, officers were able to determine the Victim had been shot with a Winchester 1300 12-gauge shotgun by the Defendant's son, L.K.[1] L.K. told investigators he had been "showing it off" in his bedroom when the firearm discharged causing the death of M.E. L.K. had retrieved the firearm from a wooden gun cabinet stored in his bedroom. As officers documented the scene, they were able to locate several spent shell casings on the ground throughout the property. Officers were able to locate several additional firearms stored inside the wooden gun cabinet including a 16-guage Western Field Shotgun and two rifles. In addition to the multiple firearms, officers were also able to locate a large amount of shotgun ammunition inside L.K.'s bedroom. Neither the firearms located in the gun cabinet, nor the ammunition found in L.K.'s bedroom were secured. However, the Defendant had a number of additional firearms and ammunition locked in a secured gun safe he kept in a different area of the home. Further, in his discussion with law enforcement, the Defendant displayed knowledge of the Winchester 1300 12-gauge shotgun as well as its use when discussing a skeet shooting event that L.K. had participated in approximately a year prior to the tragic incident.

The Defendant was charged with Negligent Storage of Firearms in violation of Minn Stat. § 609.666.2 on November 24, 2021.[2] The Defendant filed a motion to dismiss for lack of probable cause on March 31, 2022, alleging the State failed to show the Defendant knew the

[1] For the purposes of the Statute, L.K. was born on September 7, 2003. He was 17 at the time of the incident. Minn. Stat. § 609.666.1(b) defines a child as anyone under the age of 18.
[2] The Defendant's son, L.K., was initially charged in Court File 03-JV-20-1872. The Court found L.K. not guilty of the charge of second degree manslaughter on March 18, 2022.

firearm had been stored on his property or that the firearm was loaded at the time of storage. A contested omnibus hearing was held on May 9, 2022. No testimony was received during the hearing. The State submitted a packet into evidence containing numerous exhibits including interviews, photographs, and BCA reports which this Court has since reviewed.

II) Law and Analysis

The purpose of a probable cause hearing is to "protect a defendant unjustly or improperly charged from being compelled to stand trial." *State v. Koenig,* 666 N.W.2d 366, 372 (Minn. 2003). "Probable cause exists where 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. Trei*, 624 N.W.2d 595, 597 (Minn. Ct. App. 2001).

"[T]he test of probable cause is whether the evidence worthy of consideration brings the charge against the [defendant] within reasonable probability." *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976). In deciding whether there is probable cause to force a defendant to stand trial "the district court is not to invade the province of the jury." *Trei*, 624 N.W.2d at 598.

If the facts known to the Court would preclude the granting of a motion for a directed verdict of acquittal, probable cause exists. *Florence*, 239 N.W.2d at 902. The Court does not determine the credibility of conflicting testimony when determining the existence of probable cause. *Id.* at 903. The State must provide probable cause as to each element of the offense. In other words, "if the facts before the district court present a fact question for the jury's determination on each element of the crime charged," the charge will not be dismissed for lack of probable cause. *State v. Lopez*, 778 N.W.2d 700, 704 (Minn. 2010).

Minn. Stat. § 609.666.2 provides "a person is guilty of a gross misdemeanor who negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably

should know, that a child is likely to gain access, unless reasonable action is taken to secure the firearm against access by the child."

1) Knowledge that the firearm was loaded is an element of the offense

First, the Defendant asks the Court to interpret Minn. Stat. § 609.666 subd. 2 to include an express mens rea or knowledge requirement such that the State would need to prove probable cause the Defendant knew the firearm was loaded at the time of storage. The Court notes Minn. Stat. § 609.666 is explicit in criminalizing a defendant's actions when the defendant either negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to it. The Statute is silent as to whether the Defendant must know the firearm is loaded. In support of its motion, the Defendant cites the Supreme Court's ruling in *State v. Ndikum* 815 N.W.2d 816 (Minn. 2012) as determinative of how the Court should interpret the statute.

Generally, mens rea is the element of a crime that requires "the defendant know the facts that make his conduct illegal." *Staples v. United States,* 511 U.S. 600, 605, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994). "[T]he existence of a mens rea requirement is the rule of, rather than the exception to, the principles of Anglo–American criminal jurisprudence." *United States v. United States Gypsum Co.,* 438 U.S. 422, 436, 98 S.Ct. 2864, 57 L.Ed.2d 854 (1978). Statutes that dispense with mens rea and "do not require the defendant to know the facts that make his conduct illegal" impose strict criminal liability. *Staples,* 511 U.S. at 606, 114 S.Ct. 1793. The Supreme Court of the United States has stated that "offenses that require no mens rea generally are disfavored." *Id.* (citing *Liparota v. United States,* 471 U.S. 419, 426, 105 S.Ct. 2084, 85 L.Ed.2d 434 (1985)). Based on the strength of the common law rule requiring a mens rea element in every crime, the Supreme Court has determined that statutory silence is typically

insufficient to dispense with mens rea. When a criminal statute is silent as to a mens rea requirement, this silence "does not necessarily suggest that Congress intended to dispense with a conventional mens rea element." *Staples,* 511 U.S. at 605, 114 S.Ct. 1793. Instead, some positive indication of legislative intent is required to dispense with mens rea. *See id.* at 620, 114 S.Ct. 1793 (stating that if Congress had intended to impose strict liability, "it would have spoken more clearly to that effect").

The Supreme Court has recognized that in limited circumstances a legislature may dispense with mens rea through silence—in statutes creating "public welfare" offenses. *See Staples,* 511 U.S. at 606–07, 114 S.Ct. 1793. For such offenses, a legislature may "impose a form of strict criminal liability through statutes that do not require the defendant to know the facts that make his conduct illegal." *Id.* at 606, 114 S.Ct. 1793. When interpreting public welfare statutes, the Court "infer[s] from silence that Congress did not intend to require proof of mens rea to establish an offense." *Id.* This departure from the traditional requirement of mens rea as an element is justified because public welfare statutes regulate "potentially harmful or injurious items," including "dangerous or deleterious devices or products or obnoxious waste materials." *Id.* at 607, 114 S.Ct. 1793 (citing *United States v. Int'l Minerals & Chem. Corp.,* 402 U.S. 558, 564–65, 91 S.Ct. 1697, 29 L.Ed.2d 178 (1971)).

In Nidkum, the Supreme Court found that Minn. Stat. § 624.714, subd. 1a, concerning a person's right to carry a firearm without a permit should be read to include a knowledge element despite the Statute's silence on the matter. In *Ndikum*, the Court made its ruling on a statute that neither directly stated the Defendant had to know they were carrying a firearm nor did it allude to a knowledge requirement. Minn. Stat. § 624.714, subd. 1a. Minnesota Statute § 609.666 subd. 2 includes a knowledge requirement within the same sentence as the language the Defendant is

asking the Court to interpret by stating an individual shall not "leave a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access…" Id (emphasis added).

This knowledge requirement is also included in the jury instructions that are to be read to a jury at trial "First, the defendant negligently stored or left a loaded firearm in a location where the defendant knew or should reasonably have known that a child was likely to gain access." *See* 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 13.98 (6th ed.) (emphasis added). It would seem the legislature did not forget to include a knowledge requirement in the statute and any silence on whether the Defendant knew the firearm was loaded at the time of storage is intentional. General Mills, Inc. v. Comm'r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019).* (When the Legislature uses limiting or modifying language in one part of a statute, but omits it in another, we regard that omission as intentional and will not add those same words of limitation or modification to parts of the statute where they were not used) *General Mills, Inc. v. Comm'r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019); also see State v. Loge, 608 N.W.2d 157 (Minn. 2000).

However, when interpreting a statute that already includes a knowledge requirement elsewhere in the statute, the Supreme Court has stated the Court's analysis should not end with the statute's silence. State v. Schwartz, 957 N.W.2d 414, 420 (Minn. 2021). As a general rule, there are only two categories of criminal offenses where strict liability is accepted: (1) public welfare offenses and (2) crimes when the circumstances make it reasonable to charge the defendant with knowledge of the facts that make the conduct illegal.[3] Id at 421. For example, the

[3] The second category of strict liability criminal offenses—where it is reasonable to charge the defendant with knowledge of the facts that make the conduct illegal—occurs in the context of sexual conduct with children under the age of consent. *See, e.g.*, *State v. Morse*, 281 Minn. 378, 161 N.W.2d 699, 703 (1968) (finding that Minnesota's statutory rape offense, which was silent as to the mens rea requirement, did not require the State to prove a defendant's knowledge of the victim's age). Strict criminal liability may also be imposed in production-of-child-pornography cases when the defendant confronts the underage

United States Supreme Court has recognized the sale of contaminated food, distribution of narcotics, and the possession of an unregistered hand grenade to be public welfare offenses. *United States v. Park*, 421 U.S. 658, 95 S.Ct. 1903, 44 L.Ed.2d 489 (1975); *United States v. Balint*, 258 U.S. 250, 42 S.Ct. 301, 66 L.Ed. 604 (1922); *United States v. Freed*, 401 U.S. 601, 91 S.Ct. 1112, 28 L.Ed.2d 356 (1971).

By contrast, there are also items that, although potentially dangerous, are not so inherently dangerous that the possessor is reasonably on notice of their strict regulation. For example, in *Ndikum*, the Court reasoned that one "may legally keep guns in their homes, transport guns to work, possess guns at work, hunt with guns, and keep guns in their vehicles," the defendant could not be considered to be on notice that the possession of a gun without a permit was subject to strict regulation. *State v. Ndikum* 815 N.W.2d 822 (Minn. 2012). Further, the Court similarly avoided a finding of strict liability where a Defendant brought a knife onto school property by reasoning "great care is taken to avoid interpreting statutes as eliminating mens rea where doing so criminalizes a broad range of what would otherwise be innocent conduct." In re Welfare of C.R.M., 611 N.W.2d 802, 806 (Minn. 2000) (the "catch all" language of section 609.02, subd. 9, which provides that proof of intent with respect to the numerous criminal statutes included in chapter 609 is an element of the crime when the words "know," "intentionally," or "with intent to" are used is not a sufficiently clear expression of legislative intent to dispense with it with respect to the felony level crime charged here. If it is the Legislature's purpose to convict a student for a felony for the unknowing possession of a

victim personally. *See, e.g.*, *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 n.2, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994) (explaining that a defendant can reasonably be required to ascertain the age of a person the defendant meets in person)

knife on school property, it should say so directly and unequivocally with respect to that specific crime and not with the convenient but far less specific "if we did not say it we do not mean it.")

Again, the Court is conscious of Minn. Stat. § 609.666's silence as to whether the Defendant must know the firearm was loaded at the time of storage. However, the Court does believe Minn. Stat. § 609.666 is neither a public welfare statute nor a statute where the circumstances make it reasonable to charge the defendant with knowledge of the facts that make the conduct illegal. Indeed, the Supreme Court has concluded guns, while potentially dangerous, are not the type of dangerous items that should put an owner on notice of potential regulation. State v. Ndikum, 815 N.W.2d 816, 820 (Minn. 2012). Further, the Minnesota Supreme Court has been clear that public welfare statutes have historically been punished by "fines or short jail sentences, not imprisonment in the state penitentiary." *Staples,* 511 U.S. at 616, 114 S.Ct. 1793. Indeed, the Court found the penalties associated with the gross misdemeanor offense in Ndikum were not compatible with a finding that Minn. Stat. § 624.714.1a was a public welfare offense. State v. Ndikum, 815 N.W.2d 816, 822 (Minn. 2012) ("We consider sentences of 1 year in prison and fines of $3,000 to be severe punishments incompatible with a public welfare offense."). The statute at issue provides that anyone who is in violation Minn. Stat. § 609.666 subd. 2 is guilty of a gross misdemeanor similar to Minn. Stat. § 624.714.1a. It would stand to reason that, if the legislature intended to create a strict liability offense, it would have adjusted the severity level of, and subsequently the penalty associated with, Minn. Stat. § 609.666 subd. 2 accordingly. At this time, however, a violation of Minn. Stat. § 609.666 subd. 2 is still a gross misdemeanor offense incompatible with a public welfare offense.

Further, the Court has not been able to locate, nor have the parties provided, additional positive indication of the legislature's intent that the statute's silence as to whether the Defendant

knowingly stored a loaded firearm in a negligent manner disposed of a knowledge requirement. Given the direction laid out in Nidkum, and considering the severity level of the offense and lack of additional positive indication from the legislature as to whether the Defendant was required to know the firearm was loaded at the time of storage leads this Court to conclude a defendant must have knowledge they were storing or left a loaded firearm where a child might access it. Therefore, because a mens rea requirement is the norm rather than the exception in the face of statutory silence, it is with an abundance of caution the Court finds Minn. Stat. § 609.666 should be read to include the Defendant's knowledge the firearm was loaded at the time of storage as an element of the offense.

2) The State has Produced No Evidence the Defendant Knew the Firearm was Loaded at the Time of Storage nor that he was the One to Negligently Store the Firearm

Next, the Court must determine whether or not a sufficient factual basis has been established to bring the charge against the Defendant within reasonable probability. *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976). Viewing the evidence in a light most favorable to the State, the Court does not believe this burden has been met. In support of their motion, the State offered interviews, photographs, and BCA reports which establish that the firearm in question was stored in an unlocked wooden cabinet next to a box of ammunition inside L.K.'s bedroom. The State focuses on a conversation between the Defendant and law enforcement showing he knew of the firearm's existence because it had been used by L.K. for skeet shooting approximately one year prior to the incident. Beyond that brief conversation, there is no evidence of who actually stored or left the firearm in L.K.'s bedroom. Nor is there any evidence that the Defendant had any knowledge that the firearm was loaded.

The evidence submitted establishes the procurement, maintenance, and usage of firearms was commonplace on the Defendant's property. However, this evidence, without more, fails to

illuminate several key areas of concern for the Court. First, nowhere in the voluminous documents provided to the Court is the ownership of the firearm established. Having reviewed the materials submitted as well as the briefs of the parties, it is still unclear to this Court as to who actually owned the firearm. Without additional material establishing who purchased the firearm, whether the firearm had been transferred to someone, or even which family member most commonly used the shotgun it is impossible to determine who was responsible for the safe storage of the firearm.

The State has failed to provide evidence sufficient to establish the Defendant negligently stored the firearm in the wooden gun cabinet. It is equally likely that any member of the Defendant's family, including his wife, older son, etc, could have negligently stored that firearm in the wooden gun cabinet. The Court notes that, based on the interviews with L.K. and his friend, it would appear multiple family members stored firearms in the wooden gun cabinet. Indeed, the evidence shows L.K. removed his older brother's shotgun from the wooden gun cabinet to show it off before placing it back in the cabinet and retrieving the firearm that tragically was used to end the life of M.E. Further, the Court finds the conversation between investigators and the Defendant establishes that, in all probability, L.K. was the one who last used and stored the firearm but does not establish the person responsible for the storage of said firearm.

Finally, upon review of the materials submitted by the State, the Court does not believe it has been established that anyone, including L.K. prior to firing the shotgun, knew the firearm was actually loaded at the time of storage. However, neither the multitude of interviews with investigators, BCA reports, nor the photographs submitted to the Court establish that anyone in

Defendant's household had actual knowledge, or would have reason to know, the firearm was loaded at the time it was stored.

Therefore, while the evidence presented establishes a firearm was stored or left in an area where a child could easily access, it fails to establish that the Defendant was the one who actually stored or left the firearm. Without evidence establishing the identity of who stored or left the firearm, the charge against the Defendant lacks probable cause and should be dismiss. However, even if the Court could infer the Defendant was the one who stored or left the firearm in the wooden gun cabinet, the State has still not sufficiently established the Defendant knew it was loaded at the time of storage. As such, the Defendant's motion to dismiss for lack of probable cause is granted.

MDF