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11/3/2017 12:26 PM
Wright County, MN

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF WRIGHT **TENTH JUDICIAL DISTRICT**

STATE OF MINNESOTA,

Plaintiff,

-vs-

LAURA LYNN BULTMAN,

Defendant.

STATE'S MEMORANDUM OF LAW OPPOSING DEFENDANT'S SECOND MOTION FOR DISMISSAL

District Court File No.: 86-CR-17-499
County Attorney File No.: 17-61759

INTRODUCTION

The above-captioned case came on for Pretrial Hearing on October 3, 2017. Assistant Wright County Attorney Shane E. Simonds appeared on behalf of the State. Paul Engh, Attorney at Law, appeared on behalf of Defendant Laura Bultman. Ryan Garry, Attorney at Law, appeared on behalf of Ronald Owens, a co-defendant of Defendant Bultman. Defendant Owens submitted a Notice of Motions and Motions for Discovery and Dismissal of the Complaint. Counsel for Defendant Bultman indicated that Defendant Bultman was joining in Defendant Owens' Motions. The parties were given until November 3, 2017 to submit simultaneous memoranda of law.

FACTUAL BACKGROUND

The State relies on the facts alleged in the Complaint as well as the exhibits referenced in the State's prior memorandum of law.

ISSUE

Whether there is probable cause to support the charges given that the concentrated cannabis oils were not recovered and are unavailable for testing, through no fault of the State.

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ARGUMENT

PROBABLE CAUSE EXISTS TO SUPPORT THE CHARGES

A. Rules of Law Regarding Probable Cause.

The purpose of dismissing a charge for lack of probable cause "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) (internal quotations and citation omitted).[1] Thus, the court must determine whether there is probable cause "to believe that an offense has been committed and that the defendant committed it." Minn. R. Crim. P. 11.04, subd. 1(a) (2011). Probable cause exists if the evidence "brings the charge against the [defendant] within reasonable probability." *Koenig*, 666 N.W. 2d at 372 (internal citations and quotations omitted). Probable cause is lacking if, assuming that the facts in the record will be proven at trial, the court could grant a motion for a directed verdict of acquittal. *State v. Lopez*, 778 N.W.2d 700, 703-04 (Minn. 2010). A motion for directed verdict of acquittal cannot be granted if there is "a fact question for the jury's determination on each element of the crime charged . . . ." *Lopez*, 778 N.W. 2d at 704 (internal quotation and citation omitted).[2]

In assessing probable cause, "the trial court is not to invade the province of the jury." *State v. Trei*, 624 N.W. 2d 595, 598 (Minn. Ct. App. 2001). Thus, the court is not to "asses[s] the relative credibility or weight of" conflicting evidence because those tasks are typically "left to the jury." *State v. Hegstrom*, 543 N.W. 2d 698, 702 (Minn. Ct. App. 1996).[3] When the defendant attacks the credibility of the state's evidence, the court "will deny" the motion to dismiss unless it finds that the state's evidence on a necessary element

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[1] *See also State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976) (holding that the purpose of a motion to dismiss for lack of probable cause is to determine whether it is "fair and reasonable to require the defendant to stand trial.")

[2] *See also State v. Trei*, 624 N.W. 2d 595, 598 (Minn. Ct. App. 2001) (holding that a motion for directed verdict of acquittal must be denied if, "as a matter of law, the evidence is sufficient to present a fact question for the jury's consideration."); *see also State v. Diedrich*, 410 N.W.2d 20, 22 (Minn. Ct. App. 1987) (quoting *Paradise v. City of Minneapolis*, 297 N.W. 2d 152, 155 (Minn. 1980)) (holding that the standard for granting a directed verdict is "whether, as a matter of law, the evidence is sufficient to present a fact question for the jury's consideration.") (internal quotation marks omitted.)

[3] *See also State v. Tscheu*, 758 N.W. 2d 849, 858 (Minn. 2008) (holding that "[q]uestions of which witnesses or conflicting evidence to believe are for the jury even in cases built entirely on circumstantial evidence. . . .")

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has been rendered "inherently incredible" meaning "seemingly impossible under the circumstances." *State v. Florence,* 239 N.W. 2d 892, 903-04 903 n.24 (Minn. 1976). Additionally, the court views the evidence and all resulting inferences in the light most favorable to the state. *State v. Peck*, 773 N.W. 2d 768, 771 n.1 (Minn. 2009); *see also Trei,* 624 N.W. 2d at 598. Cases involving identification of controlled substances do not have prescribed minimum evidentiary requirements. *State v. Vail*, 274 N.W.2d 127, 134 (Minn. 1979). Rather, the sufficiency of the evidence is examined on a case-by-case basis. *Vail*, 274 N.W.2d at 134.

B. The Evidence is Sufficient to Show that Defendants Owens and Bultman Transported Concentrated Cannabis Oils.

The evidence, especially when viewed in the light most favorable to the State, demonstrates that the transported liquids were concentrated cannabis oils. Caselaw supports this conclusion. In *State v. Olhausen*, a jury concluded that respondent possessed and tried to sell methamphetamine, despite the fact that the methamphetamine was never located or tested. *State v. Olhausen*, 681 N.W.2d, 21, 29 (Minn. 2004). The Minnesota Supreme Court upheld the jury's verdict.

The Court in *Olhausen* found that the circumstantial evidence of the attempted sale and the possession of a controlled substance was compelling. *Olhausen*, 681 N.W.2d at 28. The Court noted that while the respondent disposed of the methamphetamine, there was sufficient circumstantial evidence showing that the substance was methamphetamine. *Olhausen*, 681 N.W.2d at 28-29. That evidence included the following: (1) numerous statements of respondent and his coconspirator about the contents and weight of the package; (2) law enforcement viewed the package of methamphetamine and identified it as genuine methamphetamine; and (3) respondent fled the scene, showing consciousness of guilt and providing a good reason why the state could not obtain, and test, the methamphetamine. *Olhausen*, 681N.W.2d at 28-29.

1. <u>Facts of the instant case that provide probable cause to show that the liquids transported by Defendant Owens and Defendant Bultman were concentrated cannabis oils</u>.

In light of the facts of this case and the facts and holding in *Olhausen*, there is probable cause regarding the identity of the substance as concentrated cannabis oils. There was a motive for the defendants

Filed in Tenth Judicial District Court
11/3/2017 12:26 PM
Wright County, MN

to take concentrated cannabis oils. Vireo Health in New York was facing a supply shortfall. This implicated the financial health of Minnesota Medical Solutions (MMS), as the companies were financially connected. Additionally, defendants Owens and Bultman were investors in MMS.

Like *Olhausen*, there were a multitude of statements between the conspirators, as well as other evidence, showing that the liquids were concentrated cannabis oils. The defendants summoned Daniel Pella (Pella) to a meeting at the Otsego grow facility. Defendant Bultman directed Pella to identify THC oils in jars that would "rescue New York." Pella identified these jars of THC oils. Defendant Bultman stated that she would drive the jars of THC solutions to the New York facility using MMS's armored vehicle. Defendant Bultman stated that she would make the inventory disappear.

During an inspection of MMS, Defendant Bultman provided an incomplete inventory transfer list that excluded Defendant Bultman's "outbound" entries for cannabis oils. A complete inventory list showed that there was no destination, nor vender, listed for any of the five outbound transfers by Defendant Bultman on December 16, 2015. Law enforcement learned that only technicians and the Chief Scientific Officer should have been making entries in BioTrack. Defendant Bultman was not a technician and not the Chief Scientific Officer. It was "odd" that Defendant Bultman made a BioTrack entry as well as a transfer to the dispensary (referring to the December 10, 2015 outbound entry by Defendant Bultman).

There were 5.6 kilograms of concentrated oils related to those outbound entries, which would have been contained in six separate containers or vials. None of those oils were at the grow facility in Otsego. Those 5.6 kilograms of concentrated oils would be sufficient to supply the four Vireo Health dispensaries in New York. A manufacturing technician, John Purdes, was at the New York facility the week before Christmas in 2015 and was aware of concentrated oils at the New York facility. Purdes observed that the jars containing the concentrated oils were labeled in the same manner as the jars in Minnesota were labeled.

Senior Special Agent (SSA) Nance interviewed Defendant Owens. Defendant Owens told SSA Nance that he had 5.6 kilograms of concentrated oils destroyed at a waste facility. However, SSA Nance concluded that the statements and documents from Defendant Owens regarding destruction of the

Filed in Tenth Judicial District Court
11/3/2017 12:26 PM
Wright County, MN

concentrated oils were concocted to cover up the actual destination of those oils. This conclusion was reinforced by the fact that there would be no reason to destroy 5.6 kilograms of concentrated oils. Those oils could be reprocessed and reformulated, saving MMS considerable costs.

Law enforcement obtained a laboratory report from the Wadsworth Center, which did medical marijuana testing in New York. The Wadsworth report included seven samples that were submitted by Defendant Bultman on December 17, 2015. Five of the seven samples were identified as cannabis extract and coconut oil. The analysis from the Wadsworth report indicated that the five oil samples were for "Vireo Red," which was the type of product that was needed for the New York dispensary. The Wadsworth report also showed that the five oil samples came from five separate solutions or containers.

A string of emails between Defendant Bultman and Robert Shimpa, another MMS employee, were located. The emails were written on December 8, 2015 and included the following exchanges:

10:37 a.m. from Defendant Bultman to Defendant Shimpa:
i will send you lab report of the reds
i am calling them the Christmas reds
i left them in Biotrack for now, so that we can pull the info we need

10:43 a.m. from Defendant Shimpa to Defendant Bultman:
Nice name! I was trying to figure out a way to describe the red discretely.

11:10 a.m. from Defendant Shimpa to Defendant Bultman:
…Just talked with [Pella] regarding the xmas red and the potency. I heard second hand through Cory, so wanted to hear first hand from you so I don't state something incorrectly.

11:10 a.m. from Defendant Bultman to Defendant Shimpa:
i am not so happy
all that crap was sitting in vault
untested d/t laziness
and of all the jars we transported, only ONE of them is actually red
if i wasn't so tired and sick i would kill someone

11:12 a.m. from Defendant Shimpa to Defendant Bultman:
I would too. Would you have time to take with [Pella] directly? I want to make sure he hears it directly from you. I have a lot of other concentrated oils in the vault and I am concerned that we don't know our potencies…
Could you send me the bar code? I don't know which reds you have.

11:43 a.m. from Defendant Bultman to Defendant Shimpa:
exactly

Filed in Tenth Judicial District Court
11/3/2017 12:26 PM
Wright County, MN

we are working in [the] dark
just talked to Kyle about it
i believe he is calling [Pella] soon

These emails occurred shortly after Defendant Owens and Defendant Bultman drove MMS's armored vehicle to New York. Defendant Bultman's email shows that she made "outbound" entries in BioTrack (on December 10 and December 16, 2015) after taking the concentrated oils to New York. Defendant Bultman made these outbound entries in order to retrieve information on the oils while she was at the Vireo facility in New York.

On September 8, 2016, SSA Nance learned that MMS employees had mislabeled some of the jars of concentrated oils at the grow facility in Otsego. Some of the jars were mislabeled as "red" when the jars contained concentrated oils that were "green." This information was consistent with Defendant Bultman's emails to Defendant Shimpa indicating, "only ONE of [the jars of concentrated oils] is actually red," and expressing her displeasure about the situation.

A string of emails between MMS employees Vang and Corrigan, written on December 6, 2015, was located on Defendant Bultman's computer. In one of the emails, Vang wrote, "…Laura [Bultman] is here today with Christmas presents from MN. We might start formulations this week. So far so good." Vang was in New York at the time Vang wrote the email.

SSA Nance compared a BioTrack inventory to a spreadsheet that was generated by Vang on December 8, 2015. The first four digits associated with the six "outbound" concentrated oil solutions listed by Defendant Bultman in BioTrack matched the first four digits of each oil solution listed on Vang's spreadsheet. The names associated with each oil solution on Vang's spreadsheet were very similar to the names of the concentrated oils from Defendant Bultman's "outbound" entries. Vang's spreadsheet also showed that only one of the concentrated oil solutions was considered a "red," which was consistent with Defendant Bultman's email to Defendant Shimpa indicating only one "red" was transported to New York.

2. *Olhausen*, in conjunction with the facts of this case, shows that there is sufficient probable cause to identify the liquids as concentrated cannabis oils.

Filed in Tenth Judicial District Court
11/3/2017 12:26 PM
Wright County, MN

Given these facts, there is even more circumstantial evidence than in *Olhausen* to show that the liquids transported by Defendants Owens and Bultman were concentrated cannabis oils. Of course, the obvious question is what other substance than concentrated cannabis oils would it be? The answer is obvious. Defendants Owens and Bultman would not drive any liquids other than concentrated cannabis oils from Minnesota to New York. The only liquids that defendants would have any reason to transport would be concentrated cannabis oils.

The evidence that exists to prove the liquids were concentrated cannabis oils is voluminous and clear. Moreover, just as evidence of flight shows consciousness of guilt, evidence of a cover up also shows consciousness of guilt. This case involves efforts to hide the transportation of the oils and to subsequently cover up the behavior. Certainly, a jury has the right to consider these arguments in light of the facts. Thus, the holding in *Olhausen*, rather than *Vail* and *Robinson*, applies.

There is sufficient probable cause to show that the liquids transported by the defendants were concentrated cannabis oils. It is fair and just for defendants to stand trial. Therefore Defendant's Motion should be denied.

CONCLUSION

Based on the relevant statutes, prior caselaw, and facts of this case, there is probable cause to show that Defendant Owens and Defendant Bultman diverted concentrated cannabis oils in violation of Minn. Stat. § 152.33, subd. 1. Therefore, the State respectfully requests that Defendant's Motion be denied.

Dated: November 3, 2017

Respectfully submitted,

/s/ Shane E. Simonds

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