

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF BLUE EARTH

FIFTH JUDICIAL DISTRICT

Court File No.: 07-CR-17-3476

State of Minnesota,

Plaintiff,

vs.

**DEFENDANT’S MEMORANDUM  
ON PROBABLE CAUSE**

Isaias Alberto Ramirez,

Defendant.

---

On September 15, 2017, the State of Minnesota charged Isaias Alberto Ramirez with First-Degree Burglary—Occupied Dwelling—under Minn. Stat. § 609.582, subd. 1(a); First-Degree Burglary—Assault—under Minn. Stat. § 609.582, subd. 1(c); Fifth-Degree Assault—Fear of Imminent Bodily Harm—under Minn. Stat. § 609.224, subd. 1(1); and Fifth-Degree Assault—Inflict or Attempt Bodily Harm—under Minn. Stat. § 609.224, subd. 1(2).

On July 31, 2018, this matter came before the Court for an omnibus hearing. The State submitted *Florence* materials.

This memorandum addresses whether the State has shown probable cause: that (1) Mr. Ramirez knowingly entered the residence without consent; and that (2) Mr. Ramirez had the specific intent to cause fear of imminent bodily harm or death.

**FACTS**

On August 19, 2017, a witness reported that he saw an individual “budge” his way into a residence at 322 North Broad Street. [Exhibit 1, 911 Call; Exhibit 3, Officer Price Report]. The witness reported that he heard someone inside the residence state that the

individual could not enter.

Officer Price arrived outside the residence of 322 North Broad Street. [Exhibit 3, Police Reports]. He saw Mr. Ramirez outside the residence. Mr. Ramirez paced on the front lawn and walked to the front door. He opened the front door and attempted to enter the residence. An individual inside, Mr. Olstrom, prevented Mr. Ramirez from entering. Mr. Ramirez broke past Mr. Olstrom and entered the residence. Mr. Olstrom told Mr. Ramirez to leave his house. Mr. Olstrom unsuccessfully attempted to eject Mr. Ramirez. Mr. Ramirez shut the front door.

Officer Price entered the residence. He saw Mr. Olstrom and his wife, Ms. Rosenberg, near the staircase. Mr. Ramirez stood near the front door. Officer Price arrested him.

Mr. Ramirez told Officer Price that he just wanted to go to bed. Officer Price placed him in a squad car. Ms. Chappuis approached Officer Price and identified herself as Mr. Ramirez's girlfriend. She told Officer Price that Mr. Ramirez and she were in the entertainment district earlier. Mr. Ramirez and she had lost each other, and she had attempted to find him. She stated that Mr. Ramirez and she live at 722 North Broad Street. She also stated that Mr. Ramirez was mistaken about which address he was at.

Officer Price smelt alcohol on Mr. Ramirez. He administered a preliminary breath test. The device reported a blood-alcohol concentration of .17.

Officer Price transported Mr. Ramirez to the jail. During the drive, Mr. Ramirez requested that Officer Price please let him go into his house. [Exhibit 2, Officer Price Squad at 2:38 A.M.]. He asked Officer Price whether he had to call a roommate to let him inside.

Mr. Ramirez again stated that he just wanted to get back inside his house. He denied assaulting anyone.

Officer Casillas interviewed Mr. Olstrom at 322 North Broad Street.<sup>1</sup> [Exhibit 3, Officer Casillas Report]. Mr. Olstrom stated that Ms. Roenberg and he were sleeping when he heard banging on his front door. Mr. Olstrom answered the front door. Mr. Ramirez pushed Mr. Olstrom aside and entered the residence. Mr. Olstrom asked Mr. Ramirez to leave. After a struggle, Mr. Olstrom removed Mr. Ramirez from the residence and closed the door. Mr. Ramirez entered the residence again. Mr. Olstrom again asked that Mr. Ramirez leave. At this time, Officer Price had entered the residence.

## **ARGUMENT**

“A person may be charged with a crime only where there is probable cause to believe that the person is guilty.” *State v. Lopez*, 778 N.W.2d 700, 703 (Minn. 2010); *see also* Minn. R. Crim. P. 2.01 (stating the standards for criminal complaints). Probable cause exists when the facts show a “reasonable probability that the person committed the crime.” *Id.*

### **I. The State Has Not Shown Probable Cause that Mr. Ramirez Knowingly Entered a Dwelling Without Consent.**

Minn. Stat. § 609.582, subd. 1, prohibits entering buildings without consent. The prohibited conduct may be broken into two parts. The first part is whether the defendant: (1) entered a building without consent and with intent to commit a crime; or (2) entered a building without consent and committed a crime while in the building. The second part is whether the act in the first part occurred while: (1) the building was an occupied dwelling, (2)

---

<sup>1</sup> Officer Casillas’s squad video has poor audio quality. The content of the interview is primarily from the Officer Casillas’s report.

the burglar possessed a dangerous weapon inside in the building; or (3) the burglar assaulted a person within the building or curtilage. Minn. Stat. § 609.582, subd. 1. Every combination of first-degree burglary has an element that the defendant entered a building “without consent.”

Minn. Stat. § 609.582, subd. 1, does not explicitly state the *mens rea* for “without consent.” In *State v. Givins* (unpublished), the court of appeals addressed this issue in the context of third-degree burglary.<sup>2</sup> No. A15-0685, 2016 Minn. App. Unpub. LEXIS 332 (Apr. 11, 2016). The court of appeals reasoned as follows. *Id.* Misdemeanor trespass is a lesser-included offense of burglary. Misdemeanor trespass prohibits “intentionally . . . occup[ying] or enter[ing] the dwelling or locked or posted building of another, without claim of right or consent of the owner or the consent of one who has the right to give consent, except in an emergency situation.” Minn. Stat. § 609.605, subd. 1(b)(4). Minn. Stat. § 609.02, subd. 9(3), defines, in part, “intentionally” as “the actor must have knowledge of those facts which are necessary to make the actor’s conduct criminal and which are set forth after the word ‘intentionally.’” Thus, misdemeanor trespass requires that the actor had knowledge of the lack of consent. Because the lesser-included offense of misdemeanor trespass requires knowledge, the State must show knowledge to prove first-degree burglary.

---

<sup>2</sup> *State v. Givins* (unpublished) interpreted the third-degree burglary statute, but the language in that statute regarding “without consent” is not materially different from the first-degree burglary statute. Compare Minn. Stat. § 609.582, subd. 1 (first-degree) (“Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building . . .”) with Minn. Stat. § 609.582, subd. 3 (third-degree) (“Whoever enters a building without consent and with intent to steal or commit any felony or gross misdemeanor while in the building, or enters a building without consent and steals or commits a felony or gross misdemeanor while in the building . . .”).

Minn. Stat. § 609.02, subd. 9(2), defines “know” as “requir[ing] only that the actor believes that the specified fact exists.” A defendant’s knowledge may be inferred from the surrounding circumstances. *State v. Mauer*, 741 N.W.2d 107, 115 (Minn. 2007).

Mr. Ramirez did not believe that he lacked consent to enter a residence, which the evidence suggests he thought was his own. Mr. Ramirez told Officer Price that he just wanted to go to bed. He also asked Officer Price whether he had to call a roommate to get back inside his house. His girlfriend explained to police that Mr. Ramirez had an address similar to the residence where police found him: Mr. Ramirez lived at 722 North Broad Street and Officer Price found him at 322 North Broad Street.

Mr. Ramirez had budged his way into 322 North Broad Street. He entered the residence twice and Mr. Olstrom asked him to leave. Despite this, the evidence available shows that Mr. Ramirez was confused about where he was. And, more specifically, the evidence suggests that he believed he was at his residence.

In sum, the State has not shown a reasonable probability that Mr. Ramirez knew he was not at his residence, and instead at a residence for which he did not have permission to enter.

**II. The State Has Not Shown Probable Cause that Mr. Ramirez Had the Specific Intent to Cause Fear of Imminent Bodily Harm or Death.**

Assault-fear is defined in Minn. Stat. § 609.224, subd. 1(1). This clause prohibits committing “an act with intent to cause fear in another of immediate bodily harm or death.” Assault-fear is a specific intent crime. *State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012). The State must show that the defendant committed the act “with an additional special mental

element—specifically: an act done *with intent* to cause fear in another of immediate bodily harm or death.” *Id.* (quotation omitted). A fact-finder may consider a defendant’s voluntary intoxication in determining whether the defendant intended to cause fear of immediate bodily harm or death. *Id.*

Mr. Ramirez broke past Mr. Olstrom and pushed him to enter the residence. The evidence regarding Mr. Ramirez’s mental state suggests that he believed he was entering his home and had the purpose of going to bed. It does not show a reasonable probability that Mr. Ramirez acted with specific intent of causing fear of imminent bodily harm or death. Rather, Mr. Ramirez was moving past Mr. Olstrom to enter the residence, not to cause fear of harm. Mr. Ramirez had the specific purpose of entering what he believed was his home and retiring to bed.

In sum, the State has not shown that Mr. Ramirez acted with the specific purpose of causing fear of harm when he entered the residence or interacted with Mr. Olstrom.

### CONCLUSION

Mr. Ramirez respectfully requests that the Court dismiss Counts I, II, and III for lack of probable cause.

Dated: August 14, 2018

**KOHLMEYER HAGEN  
LAW OFFICE CHTD.**

By: /s/ Steven P. Groschen  
Steven P. Groschen, #398237  
Attorney for Defendant  
150 St. Andrews Ct., Suite 110  
Mankato, MN 56001

507-625-5000  
sgroschen@khmnlaw.com