

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Gordon Eugene Sharp,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Court File No. 27-CR-21-20072

This matter came before the Honorable Gina M. Brandt on March 14, 2022, for a Contested Omnibus Hearing. Warsame Galaydh, Assistant Hennepin County Attorney, appeared on behalf of the State of Minnesota. Attorneys, Alexander Davis and Laura Prah appeared on behalf of the defendant, Gordon Eugene Sharp (“Defendant”), who was in custody and present. The hearing was held via zoom on the record. At the hearing, Defense submitted two exhibits to the Court:

- 1) a Trespass Notice Form from August 18, 2021, issued by a Target store located at 1300 West Lake Street, Minneapolis, MN. (Exhibit 1)
- 2) A Minneapolis Police Report related to this incident. (Exhibit 2)

In addition, Defense submitted an unpublished Minnesota Court of Appeals case, *State v. Givins*, A15-0685, 2016 WL 1396686 (Minn. App. Apr. 11, 2016), for the Court’s consideration. This matter came under advisement of the court at that time.

BACKGROUND

Defendant is charged with a single count of Burglary – 3rd Degree – Steal/Commit Felony or Gross Misdemeanor, in violation of Minn. Stat. § 609.582.3. Defendant moves this Court to dismiss the Complaint based on a lack of probable cause. Specifically, Defendant argues there is not probable cause for the second element of the offense, entrance without consent, since Mr. Sharp allegedly did not have knowledge of being trespassed from Target. Based on all the files, records, and proceedings herein, the Court now enters the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. On October 1, 2021, Minneapolis Police were dispatched to a reported theft at a Target store located at Lake Street in Minneapolis, Hennepin County.
2. According to the Minneapolis Police report submitted to the Court, once on the scene, Officers learned from a Lake Street Target employee that a known suspect had stolen several packages of socks and underwear. The stolen goods were worth around \$100.00.
3. The known suspect, Gordon Eugene Sharp, had previously been trespassed from the Lake Street Target store on August 18, 2021. A copy of the Trespass Notice form was received by this Court at Mr. Sharp's Contested Omnibus hearing. (Ex. 1). Of note, the Trespass Notice Form is not signed by the receiving party, Mr. Sharp, but instead simply states "handcuffed" on the signature line.
4. While on the scene at the Lake Street Target Store, Officers learned from the reporting party that Mr. Sharp had left the immediate area after the theft. Mr. Sharp departed

on a pink "Nice Ride" bike. Officers also received the following description of Mr. Sharp, "described as a Latino male, late 20s- early 30s, 5'06, medium build, wearing a fur bomber hat, gray t-shirt and black jeans." Officers then provided their contact information to the Target employee and departed the scene.

5. On October 4, 2021, Officer Kara Parker was assigned to investigate the October 1, 2021, Theft incident at Target. Through the course of her investigation, Officer Parker learned Mr. Sharp was subsequently arrested on another Theft charge at a different Target store in Uptown Minneapolis on October 26, 2021.
6. Upon continuing further investigation into the October 1, 2021, incident, Officer Parker garnered further information on Mr. Sharp's later behavior that same day. Lake Street Target employees reported that following the departure of the Minneapolis law enforcement officers to the initial incident on October 1st, they observed Mr. Sharp return twice that day and commit two additional reported thefts. Each theft involved multiple bottles of Tide. The total reported loss of those thefts was \$239.88.
7. In addition, it should be noted that the Minneapolis Police report indicates the thefts in this case represent only a small fraction of Mr. Sharp's incidents with Target stores. Multiple Target stores have documented at least forty-six theft incidents involving Mr. Sharp, occurring between June 15, 2021, and October 9, 2021.

CONCLUSIONS OF LAW

Mr. Sharp is charged with a single count of Burglary – 3rd Degree – Steal/Commit Felony or Gross Misdemeanor, in violation of Minn. Stat. § 609.582.3., which states:

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, either directly or as an accomplice, commits burglary in the third degree and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Defendant argues there is a lack of probable cause to support the second element of the offense, entrance without consent. Specifically, Defendant argues he did not have proper knowledge of the trespass notice issued by the Target in this case, which would have denied him entrance. Defendant argues there is a knowledge requirement in Minn. Stat. § 609.582.3. Further, without sufficient evidence that Defendant received proper notice of his status as “trespassed,” the Formal Complaint must be dismissed.

A Complaint must be supported by probable cause. *State v. Lopez*, 778 N.W.2d 700, 703 (Minn. 2010). When determining whether probable cause exists, the Court looks to whether it is more likely than not that Defendant committed the charged offense. *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976); *Lopez*, 778 N.W.2d at 703 (probable cause arises “where facts have been submitted to the district court showing a reasonable probability that the person committed the crime.”). A Complaint and supporting affidavits must establish sufficient facts and

elements to justify the charged offense. *State v. Oman*, 121 N.W. 2d 616, 619 (Minn. 1963). When examining a probable cause challenge, a district court may review the entire record, including police reports and the Complaint. *State v. Dunagan*, 521 N.W. 2d 355, 356 (Minn. 1994); Minn. R. Crim. P. 11.04 subd. 1 (c). To establish probable cause, the facts contained in the record must be sufficient to survive a motion for directed verdict at a trial. *Lopez*, 778 N.W. 2d at 704; *State v. Rud*, 359 N.W. 2d 573, 579 (Minn. 1984). The State need not prove every element of the offense beyond a reasonable doubt, factual determinations are reserved for the jury. *State v. Clark*, 134 N.W. 2d 857, 879-871 (Minn. 1965); *Florence*, 239 N.W. 2d at 896. The district court must view the evidence in the light most favorable to the State, with every inference fairly drawn from the evidence drawn in favor of the State. *State v. Peck*, 773 N.W. 2d 768, 782 (Minn. 2009).

Minnesota Statute § 609.582.3, requires a Defendant “to enter(s) a building without consent.” Defendant argues a knowledge requirement is contained in Minnesota Statute § 609.582.3. In support of this argument, Defendant provides a single unpublished Minnesota Court of Appeals opinion, *State v. Givins*, A15-0685, 16 WL 1396686 (Minn. App. Apr. 11, 2016). In *Givins*, the Court reasoned that trespass, which is a lesser included offense of burglary, requires an individual intentionally enter the building. *Id.* The Court noted “intentionally” inherently requires knowledge. Based on this logic, the Court stated, “Therefore, burglary also requires knowledge of lack of consent.” *Id.* While Defense focused on the knowledge requirement suggested by *Givins*, it is important to note, *Givins* also states “Knowledge is usually proved through circumstantial evidence.” *Id.* In *Givins*,

the court proceeds to note “we have long held that the proof of knowledge may be made by circumstantial evidence.” *Id.*

Here, Defendant argues that the trespass notice issued by Lake Street Target is insufficient to prove Defendant had knowledge of his status as trespassed. In support of this claim, Defendant points out the August 18, 2021, trespass notice was not signed by Defendant, but instead, simply states “handcuffed” on the signature line. Defendant does not point to any statute, or case, which states for a trespass notice to be valid, it must be signed by the receiving party. The police report, also received into evidence (Ex. 2), indicates Target stores have documented forty-six thefts committed by Defendant between June 15th, 2021, and October 9th, 2021. This information includes at least three instances at Lake Street Target on October 1, 2021, as well as the initial incident on August 18, 2021. Clearly, there is sufficient circumstantial evidence that Mr. Sharp had notice of his status as trespassed from Lake Street Target. The State has provided a trespass notice (Ex. 1), as well as police report (Ex. 2) showing that Mr. Sharp had multiple incidents involving Target stores. While he did not sign the trespass notice issued by Lake Street Target on August 18, 2021, this fact does not on its own warrant dismissal of the Complaint. The fact that the trespass notice (Ex. 1) reads “handcuffed” does not itself negate proof of Defendant’s knowledge of the notice. Exhibit 1 has several indicators that imply the notice was given directly to Mr. Sharp. These indicators all contribute to comprise circumstantial evidence. For example, the bottom of Exhibit 1 states “Make two (2) copies: one copy for the person receiving the notice, one copy for your records.” The State need not prove every element of the offense beyond a reasonable doubt, factual determinations are reserved for the jury.

Florence, 239 N.W. 2d at 896. Whether Mr. Sharp did in fact have knowledge of his status as trespassed is a fact issue for a jury and does not form a sufficient basis for dismissal based on lack of probable cause.

CONCLUSION

Based on the Formal Complaint, trespass notice (Ex. 1), and Minneapolis Police report (Ex. 2), and viewing this evidence in the light most favorable to the State as the standard instructs, there is sufficient evidence to establish probable cause for the charge of Burglary in the Third Degree. Therefore, Defendant's motion to dismiss is denied.¹

ORDER

1. Defendant's Motion to Dismiss is hereby **DENIED**.
2. Parties shall appear for Jury Trial on **April 11, 2022, at 9:00 a.m.**

BY THE COURT:

Dated: March 16, 2022



Gina M. Brandt
Judge of District Court

¹ It should be noted that at the Contested Omnibus hearing on March 14, 2022, Mr. Sharp attempted to raise the issue of mistaken identity. This issue appears to have been raised because Mr. Sharp is currently held in custody under the names, "Eugene Sharp" and "Eugene Sharp, Jr." However, Defense did not provide any evidence, nor provide any support for this claim. Without proof to bolster this claim, this Court will not examine any issue of mistaken identity. Therefore, that issue will not be addressed further.