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Filed in Fourth Judicial District Court
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Hennepin County, MN

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

MNCIS No.: [redacted]

State of Minnesota,

Plaintiff,

vs.

[redacted]

Defendant.

ORDER

TO: [redacted] ASSISTANT HENNEPIN COUNTY ATTORNEY; Elliott John Nickell, ATTORNEY FOR DEFENDANT; AND [redacted] DEFENDANT.

This matter came before the Court for a *Rasmussen* hearing on October 10, 2016 by way of several motions of the Defendant to suppress. The parties subsequently submitted memoranda, and then supplemented those writings with arguments on November 3, 2016. These proceedings addressed the following issues:

1. Defendant's Motion to Suppress the results of the of the search of a locked room off the common area of a multiple unit apartment building.

2. Defendant's Motion to Suppress a statement he made contemporaneous to his arrest: "I didn't point a gun at anyone."

3. Defendant's Motion to Suppress a statement he made after his arrest, in response to police questions, to the effect of 'I dumped the gun in a dumpster.'

4. Defendant's Motion to Preclude the testimony of his wife, [redacted]

During the *Rasmussen* hearing the Court received testimony from Minneapolis Police Officer [redacted] and the Defendant, as well as several exhibits: photographs labeled Exhibits 1A – 1S; Minneapolis Police reports labeled Exhibit 2; and squad car video labeled Exhibit 3.

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FACTS

Minneapolis Police Officer [redacted] was on duty on May 15, 2016, around 1:48 (AM) in the morning when police received a 911 call from a [redacted] residing at an apartment building located at [redacted] LaSalle Avenue, Minneapolis, Minnesota. Ms. [redacted] stated in her call that her husband, [redacted] had a gun and was threatening her.

Upon arrival, Officer [redacted] and several other Minneapolis Police officers, were unable to gain access to the apartment building because it was a secured building that required residents to grant non-residents access. They tried ringing several apartments, including the 911 caller's, in an attempt to gain access to the building. Only after having dispatch call the Ms. [redacted] back, did she appear and let the officers in.

Officer [redacted] testified that Ms. [redacted] was upset, and informed officers that her husband, [redacted] had a gun on him and was inside their apartment with two other occupants. Officer [redacted] went to the back door of the apartment building to let in other officers when she observed the Defendant open the door to the stairs leading up from the building's basement to the back door. Officer [redacted] ordered the Defendant to the ground at gunpoint, and moved to take him into custody. As Officer [redacted] searched the Defendant he abruptly stated, "I didn't point a gun at anyone." Officers then handcuffed the Defendant and proceeded to ask him questions about the location of the gun, which officers did not find on the Defendant's person. Defendant responded to the police questioning with the claim that he had discarded the gun in the apartment building dumpster; officers did not locate any weapon there.

Officers also searched the basement of the apartment building which contained a locked area, within which, there are individually locked storage units that residents may sign

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11/18/2016 11:47:24 AM
Hennepin County, MN

up to rent; Defendant's apartment is also on the basement level. Defendant testified that he rents two of the storage locker units. The Defendant further stated that not all renters in the apartment building have storage units in the locked area, and that only those that seek out and rent these units have access to the locked area. The Defendant stated that his wife, Ms. [redacted] did not have a key to the locked area.

Officers gained access to the locked area via a key the origin of which is an issue of some contention. Officer [redacted] testified that she did not recall where they got the key to the locked area: the State suggests that the key was obtained from the Defendant's wife on the same key ring as one for the family vehicle, to which Ms. [redacted] had just previously provided the officers access;[1] conversely, the Defendant testified that officers took the key to the locked area from his person during arrest.

Inside the locked area, but outside any individually locked unit, the officers discovered both a firearm and a lone bullet. Defendant was subsequently charged with Possessing a Pistol in a Public Place without a Permit.

ANALYSIS

I

It is undisputed that to gain access to the area where police found the gun in this case, they had to get through a locked door. Further, this was not simply a locked door leading to public hallways, where one would expect to see neighboring residents and their guests, the landlord and his agents, and others having legitimate reasons to be on the premises. Such an area would undoubtedly be a common area, to which the Defendant would not have a

[1] Exhibit 1 is a photograph that does indeed depict a key in the lock of one of one of the individually locked storage units on the same key ring with a car key and keyless entry remote for a car.

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reasonable expectation of privacy. *See State v. Luhm*, 880 N.W.2d 606, 613 (Minn. App. 2016) (Stating that:

> "... in light of the supreme court's opinion in *Milton* and the federal caselaw ... we conclude that *Luhm did not have a legitimate or reasonable expectation of privacy in the common areas of the secured, multi-unit condominium building* so as to challenge the officers' warrantless entry into the building")

(Emphasis added). However, the area in question here was not a common area: Defendant testified that only storage unit renters had access to the locked room, and that he received only a single key for accessing the area notwithstanding there being multiple residents residing in his apartment or that he rented multiple storage units within the locked area. While it would be commonplace to see strangers in the shared hallways and stairways leading to the various apartments in the building, the same is not true for the the locked area containing the storage units. There is a reason the room was locked, the storage unit tenants expect privacy. The purpose of the area generally, storing personal effects in a fixed place, similar to a residence, supports Defendant's claim of privacy in it. *See State v. Carter*, 697 N.W.2d 199, 209 (Minn. 2005) (Stating "that the privacy interest in an area outside a fixed structure such as a storage unit is greater than that outside a mobile but temporarily stopped automobile"). Considering these circumstances, the Court is convinced that Defendant had an expectation of privacy in the locked area leading to the individual storage units.

Since the Defendant had some reasonable expectation of privacy in the locked area, police needed an exception to the warrant requirement to enter the locked area. The State asserts that exigency permitted their warrantless entry, specifically the need to secure the unaccounted for gun that Ms. [redacted] reported was in the Defendant's possession. However, the Defendant had been taken into police custody, and there was no one inside the locked

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11/18/2016 11:47:24 AM
Hennepin County, MN

area, the Court sees no reason why police could not "have secured the [room] while obtaining a search warrant." *State v. Fisher*, 588 N.W.2d 515 (1999). That is, there is not sufficient exigency to overcome the warrant requirement where a gun is in a locked area where police had no reason to believe others could access.

Alternatively, the State alleges that Ms. [redacted] the Defendant's wife, gave consent to search the locked area. Their theory is that because Ms. [redacted] let police into the apartment building, and allowed them to search the apartment she shared with the Defendant, and their family vehicle, she must have also implicitly given consent to search the Defendant's storage units. While it is plausible that Ms. [redacted] provided the officers with the key to the locked area on the same key ring as the family's car, the Court is not convinced that this would be a sufficient showing of consent to search any place the keys may unlock. *See State v. Mitchell*, 172 N.W.2d 66, 69 (Minn. 1969) (noting that " [w]hen a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given[;] this burden cannot be discharged by showing no more than acquiescence ..."). The Defendant testified that Ms. [redacted] was not on the lease for the two storage units he rented, nor did she personally possess a key to the locked area leading to the storage units.

In conclusion, the police illegally searched the locked area, the gun found as a result of that search is inadmissible.

II

Next we address the statement the Defendant made as police took him into custody. "[W]henever a person in custody is subject to interrogation, the person must be advised of certain constitutional rights, and failure to advise a defendant of those rights makes any

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11/18/2016 11:47:24 AM
Hennepin County, MN

statement obtained inadmissible." *In re Welfare of K.L.C.*, A11-1070, 2012 WL 118414, at *4 (Minn. App. Jan. 17, 2012) (citing *Miranda v. Arizona*, 384 U.S. 436 (1966). However, interrogation, under *Miranda*, refers only to express questioning or words or actions on the part of police, other than those normally attendant to arrest and custody, that police should know are reasonably likely to elicit an incriminating response from the defendant. *See Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). It is clear that when a defendant makes a spontaneous statement without prompting, that statement is admissible even absent a *Miranda* warning. *See, e.g., Jankord v. State*, 186 N.W.2d 530, 533 (Minn. 1971) (Rejecting the "[defendant]'s claim that his statements ... were constitutionally inadmissible" because "the statements were spontaneous [during handcuffing] and not in response to interrogation"). *See also K.L.C.*, A11-1070, 2012 WL 118414, at *5 (Minn. App. Jan. 17, 2012) (The Minnesota Court of Appeals found "that the defendant's statements about possessing a gun were spontaneous and voluntary"). Further, the *K.L.C.* Court stated that "[s]pontaneous and unsolicited statements are not the product of custodial interrogation[,]" and that under the totality-of-the circumstances, the State met its burden of proving that the defendant's statement was voluntary because the recorded showed that the defendant blurted out the statements in response to a question about where his mother worked. *Id.*

Similarly here, the Defendant blurted out a statement –I didn't point a gun at anyone– that suggested he had recently possessed a gun. Officer [redacted] testified that officers had not yet asked the Defendant any questions as they handcuffed him. Therefore, the Court finds that the Defendant's statement during handcuffing was spontaneous and voluntary, and thus admissible.

Filed in Fourth Judicial District Court
11/18/2016 11:47:24 AM
Hennepin County, MN

III

Conversely, the second statement that the Defendant seeks to suppress was not spontaneous. [W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized[;]" the proscribed *Miranda* warnings, or equally effective "[p]rocedural safeguards must be employed to protect the privilege." *Miranda*, 384 U.S. at 478–79. While there are exceptions to the Fifth Amendment protection, the Court is not convinced that the necessary circumstances for the exception are present here. *See New York v. Quarles*, 467 U.S. 649, 651–52, 657 (1984). In *Quarles*, the U.S. Supreme Court held that where a crime victim reported to police that her assailant had just entered a specific supermarket carrying a gun, the police apprehending the suspect at that same supermarket "were confronted with the immediate necessity of ascertaining the whereabouts of a gun which they had every reason to believe the suspect had just removed from his empty holster and discarded in the supermarket." *Id.* Further, "that the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination." *Cf. State v. Hendrickson*, 584 N.W.2d 774, 778 (1998), "conclud[ing] that [a] police officers' questioning of [a defendant] about the location of [a reported] gun was not reasonably prompted by an immediate threat to public safety[;] [t]herefore, [that defendant] was entitled to a *Miranda* warning before being questioned about the location of the stolen gun." Specifically, the *Hendrickson* Court stated that the "[e]ight hours [between the time the defendant was reported having the gun and his apprehension] was ample time for [him] to deliberately put the gun somewhere or give it to someone." *Id.* at 777. "Consequently, the

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11/18/2016 11:47:24 AM
Hennepin County, MN

fact that Hendrickson was not carrying the gun when he was apprehended did not give the police reason to believe that the gun had been discarded in a public place where it posed an immediate public danger." *Id.* at 777-78.

Here, just as in *Hendrickson*, the police did not have any more reason to believe that the reported gun was in a public place than they did to believe it was in a private place. The evidence and testimony do not conclusively suggest that the Defendant likely abandoned the gun in a public place just prior to his arrest; it was equally likely that the gun never actually left the apartment, was returned to the apartment, or was locked in one of his two storage units. Therefore, this Court finds that the circumstances present in this case do not meet the "narrow exception" to the *Miranda* rule, and the Defendant's pre-*Miranda* statement in response to questioning about the location of the gun must be suppressed. *See Quarles*, 467 U.S. at 658.

IV

Finally, we address Defendant's Motion to Suppress the testimony of his wife, [redacted] Minn.Stat. § 595.02, Subd. 1(a) generally prevents one spouse from testifying against the other without consent. However, this privilege is only implicated when the spouse is testifying under oath in a judicial proceeding. *State v. Schifsky*, 243 Minn. 533, 540, 69 N.W.2d 89, 94 (Minn.1955). When a third party testifies to statements made by a defendant's spouse, as is likely here, the privilege does not operate to bar the testimony. *Id. See also State v. Simonson*, C7-89-2114, 1990 WL 136498, at *1 (Minn. App. Sept. 25, 1990) (Holding that "once [the defendant's wife] was an unavailable witness, [by virtue of the marital privilege,] the trial court properly ruled the statements she made to police were admissible under [an] exception to the hearsay rule").

Filed in Fourth Judicial District Court
11/18/2016 11:47:24 AM
Hennepin County, MN

Accordingly, the marital privilege prevents Ms. [redacted] from explicitly testifying before this court against the Defendant, but the marital privilege does not extend to her statements to police. That is because the privilege operates only to protect spouses against each other, and does not prevent a third-party witness from testifying as to their communication. *Schifsky*, 69 N.W.2d at 94.

IT IS HEREBY ORDERED

1. Defendant's Motion to Suppress the results of the search of a locked room off the common area of the apartment building, which housed several individual storage units is GRANTED because it was not a common area, and therefore the police should have secured a warrant before entering it.

2. Defendant's Motion to Suppress the results of a statement made by Defendant as he was being arrested: "I didn't point the gun at anyone," is DENIED because it was not in response to any police questioning.

3. Defendant's Motion to Suppress a statement made after his arrest to the effect of 'I dumped the gun in the dumpster,' is GRANTED because there was no compelling evidence that the Defendant had discarded the gun in a public place.

4. Defendant's Motion to Preclude the testimony of Defendant's wife, [redacted] is GRANTED to the extent that Ms. [redacted] may not testify during trial. However, the marital privilege does not cover Ms. Bernal's statements made during her 911 call, and to the officers responding to the emergency situation. Note that this Order does not contemplate the admissibility of such statements under the usual rules of evidence.

BY THE COURT:

DATE: November 18, 2016

[redacted]
Judge of District Court