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In Re: The Criminal Investigation of Officer Travis Serafin

May 31, 2019

STATEMENT OF FACTS

On June 16, 2017, ML died of a fentanyl overdose in Eden Prairie, Minnesota. After reviewing the decedent's phone records, officers believed Timothy Martin Holmes supplied the fentanyl that caused ML's overdose. A person who supplies narcotics to another that leads to their death is guilty of third degree murder, pursuant to Minn. Stat. § 609.195(b). Eden Prairie Police Officer Travis Serafin, a member of the Hennepin County Drug Task Force, participated in the surveillance and investigation of Holmes. On September 13th and 14th, 2017, Officer Serafin drafted a search warrant to search the person of Holmes and his residence located at 3312 4th Avenue South, Minneapolis, Minnesota.

Search warrants are composed of two separate documents: the application for the search warrant, and the search warrant. The application of a search warrant contains information about what evidence is being sought, where it is located, and probable cause to believe the evidence is in the suspected location. The search warrant is the document that gives law enforcement the ability to execute the search in a reasonable manner. The application is sworn as true before the judge and signed by the officer and the judge. The search warrant is signed by the judge.

The main issue in this case, and the potential for criminal charges, stems from the creation of two separate first pages of the search warrant application: Exhibits B and C.¹ Exhibit C's first page indicates that the evidence sought (narcotics, weapons, evidence of drug sale, etc.) would be located at the premises and on the person of Holmes. Exhibit B, on the other hand, contains a first page that indicates the evidence sought would be located at the premises and on the person of Holmes, but adds "Any vehicles associated with the premises." Notably, neither of the actual search warrants associated with Exhibit B and C differ in any way, just the first page of the application. Therefore, although there were clear alterations made to the first page of the application, it had no effect on the permissible scope of the search as authorized by the search warrant.

Officer Serafin presented the search warrant application (Exhibit C) and search warrant to Hennepin County District Court Judge Jay Quam on September 14, 2017. Judge Quam approved and signed the application and the search warrant. It is clear that Officer Serafin presented Exhibit C to Judge Quam, and not Exhibit B, because after getting it signed Officer Serafin emailed a copy of the search warrant and application to Minneapolis Police Department SWAT personnel who would assist in the search the following day, and they were given Exhibit C.²

The search warrant was executed the following day on September 15, 2017. The search included a search of the residence and an automobile associated with Holmes that was parked near the residence.

¹ Exhibits B and C were labeled as such at the evidentiary hearing held before the Honorable Judge Fred Karasov on February 23, 2018. They will therefore be referred to as Exhibits B and C throughout this memorandum to avoid confusion.

² Other information learned from this investigation corroborates that Exhibit C, not B, was presented. For instance, Officer Serafin printed Exhibit C just hours before presenting the search warrant to Judge Quam. Additionally, after executing the warrant Officer Serafin scanned the application and search warrant into police records, which included only Exhibit C.

Police reports summarizing the investigation and what was found during the search warrant were submitted to the Hennepin County Attorney's Office ("HCAO") for charges against Holmes, and he was charged with Third Degree Murder and First Degree Sale of Heroin (over 10 grams) in District Court file number 27-CR-17-23450. The initial reports sent to the HCAO included Exhibit C, but not Exhibit B.

On September 20, 2017, the Hennepin County Attorney's Office requested a copy of the search warrant that authorized the search of the automobile. On September 22, 2017, Officer Serafin entered the Eden Prairie Police Department, printed one page from a document entitled "Search Warrant Forms," and submitted Exhibit B to the HCAO.

A hearing was held on February 23, 2018, before the Honorable Fred Karasov, Hennepin County District Court Judge, at which Holmes contested the legality of the search warrant. (See Exhibit A).³ Officer Serafin initially testified that he had both Exhibits B and C in hand and signed by Judge Quam at the same time. (Exhibit A page 7). Later in the hearing, however, Officer Serafin testified that he did not recall if Exhibits B and C were presented at the same time. Officer Serafin testified that on his way downtown he realized Exhibit C did not contain sufficient language regarding searching vehicles, so he created Exhibit B and had that warrant signed. (Exhibit A pages 47-49). Officer Serafin's initial testimony is clearly false.

After the hearing on February 23rd, Judge Karasov wrote a letter to the Eden Prairie Police Chief regarding Officer Serafin's possibly false testimony. The Eden Prairie Police Department then conducted an internal investigation, including taking a statement from Officer

³ Exhibit A does not have page numbers. Your writers supplied numbers to ease the references to the transcript.

Serafin, and issued some form of discipline.⁴ Notably, during employee investigations, police officers do not have the right to remain silent. If an officer refuses to provide a statement his employment may be terminated. Therefore, the United States Supreme Court and the Minnesota Supreme Court have consistently held that an officer's statement during an internal investigation is compelled, and cannot be used against them.

On October 12, 2018, this matter was referred to your writers on a conflict basis because the HCAO knew the contents of Officer Serafin's compelled statement in the disciplinary action. The investigation into possible charges against Officer Serafin was referred to the Anoka County Sheriff's Office Criminal Investigation Division, and an investigator was assigned.

In December 2018, the Minnesota Department of Administration ordered the release of the disciplinary action against Officer Serafin to the public. (Exhibit D). The release included Officer Serafin's compelled testimony.⁵ The investigation by Anoka County was subsequently completed in March 2019.

ISSUE I

Did Officer Serafin Commit Forgery Contrary to Minn. Stat. § 609.625 or Minn. Stat. § 609.63?

Officer Serafin did not. For a forgery to be committed, genuine legal rights must be impacted. The alteration of the application does not do so. Had the search warrant been altered, a different result would occur.

⁴ Your writers have intentionally not viewed the contents of Officer Serafin's statement contained within the internal investigation, so as not to be tainted by Officer Serafin's compelled testimony.

⁵ As noted in Footnote 4, your writers are aware that the release contained the statement, but avoided exposure to the statement in order to be able to continue to potentially prosecute this case.

ISSUE II

Did Officer Serafin Commit Perjury Contrary to Minn. Stat. § 609.48.?

Officer Serafin did not. There is no doubt that Officer Serafin gave false testimony at page 7 of Exhibit A. There is also no doubt he was under oath. But, the false statement must also be material. A statement is material if it would affect decision making. (See Exhibit E) (A CRIMJIG is how a judge would instruct a jury). Here, the search of the residence was lawful based on the search warrant issued by Judge Quam. (Exhibit C). The search of the car was not authorized by Judge Quam. (Exhibit C). Since the search warrant in Exhibit B is identical to Exhibit C, the search of the automobile was unlawful, regardless of which application page 1 is attached to it. Officer Serafin's false testimony about the search warrant application was not material since it had no effect on the search warrant that was issued and executed. The untruthful testimony certainly negatively impacts the credibility of Officer Serafin in this and all other matters he has worked on.

ISSUE III

Whether the Release of the Internal Discipline File Prohibits Prosecution of Officer Serafin.

"After a defendant has shown that he or she has been compelled to give a statement, the state has the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony." *Kastigar v. United States*, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972). A similar case in Minnesota resulted in suppression of the state's evidence and dismissal of all charges. See *State v. Gault*, 551 N.W.2d 719 (Minn. Ct. App. 1996).

Here, the state would be unable to prove that no part of its case was not tainted in any way by Officer Serafin's compelled statement in his disciplinary matter. Since your writers

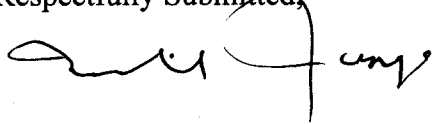
believe that the decision in *Kastigar, supra*, prevents prosecution, no referral will be made to the city attorney for possible charges of misconduct of a public officer (Minn. Stat. § 609.43) nor maliciously procuring a search warrant; misconduct in use (Minn. Stat. § 626.22).

CONCLUSION

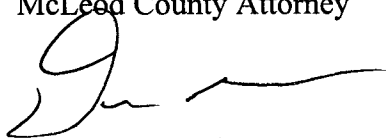
Based on the foregoing, no criminal charges will be filed. This result is distasteful for several reasons. An officer falsified an application for a search warrant and does not face criminal punishment. An officer intentionally gave false testimony and cannot be charged.

Two possible solutions exist to prevent similar results in the future. First, the Eden Prairie Police Department could have delayed discipline until the decision on criminal charges was made. Second, the Minnesota data privacy statute could be amended to keep internal disciplinary investigations private until the criminal investigation is completed.

Respectfully Submitted,



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