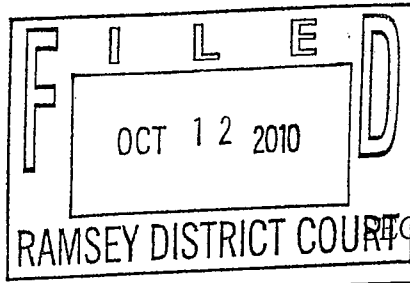


STATE OF MINNESOTA
COUNTY OF RAMSEY



DISTRICT COURT

SECOND JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

File No. 62-CR-10-1464

v.

DANIEL DRLJIC,

Defendant.

This matter came on for an Omnibus Hearing before the Honorable Gail Chang Bohr on July 27, 2010. **Richard J. Dusterhoft, Assistant Ramsey County Attorney,** represented the State of Minnesota. **Jill Clark, Attorney at Law,** represented co-defendants Daniel Drljic and Tamika L. Suttles who were present before the Court. This order also pertains to Defendant Tamika L. Suttles, File No. 62-CR-10-1465 and will be filed accordingly. Defendants' motions are as follows:

1. Motion to dismiss under *State v. Florence* due to "exonerating evidence and the lack of probable cause;"
2. Motion to dismiss for *Brady* violations; and
3. Motion to dismiss for lack of probable cause due to a lack of neutral investigation.

The Court heard testimony from Sergeant Tyrone Strickland, co-defendants Tamika Suttles and Daniel Drljic. Also submitted was a video of the events that took place in the liquor store, police reports, transcripts of interviews of Sergeant Strickland

taped by Tamika Suttles and Jill Clark, and a transcript of the plea of co-defendant Jermaine English taken before the Honorable Joanne Smith on June 30, 2010.

At the close of hearing, the Court allowed for written arguments to be submitted. The record closed on August 16, 2010. Attorney Jill Clark objected to the State's submission of police reports attached to its written arguments.

Based upon the testimony, arguments of Counsel, written submissions, and all of the records and proceedings herein, the Court makes the following:

ORDER

1. Defendants' motion to dismiss under *State v. Florence* for lack of probable cause is **DENIED**.
2. There are no *Brady* violations and Defendant's motion is **DENIED**.
3. Motion to dismiss for lack of probable cause due to a lack of neutral investigation is **DENIED**.
4. Defendant's motion to re-open the Omnibus Hearing is **DENIED**.
5. The attached Memorandum of Law is incorporated herein.

Dated: October 12, 2010

BY THE COURT:



Gail Chang Bohr
Judge of District Court

MEMORANDUM OF LAW

Saint Paul Police Officer Sergeant Strickland testified that he was assigned as an investigator to investigate a burglary which took place in the early morning on December 6, 2009 at University and Raymond in the city of St. Paul, Ramsey County. His investigation included reviewing the reports of police officers at the scene, reviewing a videotape taken inside the liquor store, interviews with the victims, witnesses, and the three individuals arrested at the scene, Daniel Drljic, Tamika Suttles, and Jermaine English.

On December 6, 2009 at or about 4:00 in the morning, an alarm in a liquor store located at 2389 University Avenue West went off. The building at that address contains a liquor store, an art studio and gallery, a coffee shop, other offices and businesses and apartments above the stores. A Saint Paul Police squad car responded to the alarm.

The squad car pulled up to the parking lot in the rear which is not visible from the street. The police found Tamika Suttles standing next to her vehicle. Her car was the only one in the lot without frost on the windows. She told the officers that her car had broken down and that she needed to go "pee." She was patted down and officers found neoprene gloves and a roll of duct tape in her pockets. The officers noted that the bolt on the back door to the art studio was locked but that the door frame was broken and appeared to have been forced. An individual, Thomas Nolan, who lived in an apartment upstairs in the building across the alley, called down to the police and stated that he had seen Suttles and another individual carrying a large bag and a long metal object from the rear of the building to her car.

Officers then saw an African American male emerge from the building. He saw the officers and ran back into the building. Co-defendants Drljic and English, who were inside the liquor store, contacted Defendant Suttles' cell phone. They wanted the police to know they wanted to come out and had no weapons. Police arrested Drljic and English inside the liquor store.

Police determined that the burglars entered the building through a door in the art gallery. Several items were missing from the art gallery and cash was taken from the coffee shop. Several cases of liquor were stacked up outside the liquor store and obviously had been moved from inside the liquor store. The alarm that was triggered and alerted the police was inside the liquor store. The surveillance system in the liquor store recorded video images of the upstairs of the liquor store only. The video shows co-defendants English and Drljic in the upstairs of the liquor store for several minutes. Both had masks over their faces.

On reviewing the video surveillance system, an employee of the liquor store noticed that the co-defendants had placed something on a shelf while they were in the liquor store. The employee searched the shelf and found Drljic's identification card and a flashlight.

Burglary tools were recovered from Defendant Suttles' vehicle along with tools that were stolen from the art studio. In addition, Defendant Suttles had \$16,000 in cash in her purse when she was arrested. Sergeant Strickland testified that he later returned the money to her because he could not prove that it was stolen.

When interviewed by Sergeant Strickland on December 7, 2009, Defendant Suttles' story changed about why she was there. She admitted that the car had not broken

down but she was picking up a few friends from that location. She also said she did not know what they were doing, but they promised her money if she gave them a ride.

Defendant Suttles claimed that she was called by Drljic and English, and when she drove to the location, a white male came out and put something in her trunk. Inside the duffle bag which was recovered from the trunk of her car were pry bars, crow bars, a bolt cutter, and three glass-metal punches.

Sergeant Strickland interviewed co-defendant Drljic who said that he went to help Defendant English move some items from the basement. Defendant Drljic said he walked from Tamika Suttles' home to where English was located. He said that he saw that the door had been pried and he knew there was a burglary in process. He said he put on a mask, provided by Defendant English, to cover his face in order to hide from the cameras. He also stated that he saw the liquor stacked up and saw a hole in the wall before entering the basement of the liquor store and going upstairs where he was videotaped.

On December 7, 2009, Defendant English refused to be interviewed by Sergeant Strickland at the Law Enforcement Center. He was released. On December 15, 2009, he came to the Western District police station in the company of Suttles and Drljic. When they went in to get Sergeant Strickland, however, English left and was brought back by a squad car. English refused to have the interview recorded. He said he wanted to tell Sergeant Strickland what really happened. He said it was basically his idea and he was taking responsibility. English claimed that he went to collect money from a man named "Joe" who lived in the building and owed him money for drugs. English claimed he brought Drljic as "muscle" because Drljic was bigger than English. Because "Joe" did

not have the money, he would instead pay English with items from a storage locker in the basement. English said that when he saw the liquor, he thought he could use them to party before he had to go to jail on another matter. Because there was too much to carry, he said he called Suttles for a ride.

Sergeant Strickland testified that he did not believe English. His version of events did not square with Drljic's version nor did it square with the physical evidence, the way that the building was entered and the businesses entered, nor did it square with the video. English later pled guilty on June 30, 2010 in front of Judge Joanne Smith. In his straight plea to the Court, he admitted that what he told Sergeant Strickland on December 15, 2009 was a lie. He admitted that he was directed by Suttles and Drljic to take responsibility so they could receive their money, the \$16,000, back. In truth, he admitted that he knew it was a burglary and that it was planned by Suttles and Drljic.

Sergeant Strickland testified that given English's information regarding "Joe" that he did go back to the building and went through the list of people who lived there. Based on the description of "Joe," as a white male in his twenties, he did not find anyone who fit that description or who had that name.

Sergeant Strickland spoke with Thomas Nolan, the person who had called down to the police. He denied that Thomas Nolan was an informant for the police department and stated that Thomas Nolan did not fit the description of "Joe" that was provided by the Defendants.

Subsequent to the break-in and prior to the case being charged, the owner of the building, Joseph Brown, sent a letter to the Ramsey County Attorney and the police

department. He inquired why the case had not been charged, given the information they had.

Sergeant Strickland did his follow-up investigation. He believed that based on his investigation there was enough information to bring burglary charges against these three individuals.

DISCUSSION

Defendants argue that the State lacks probable cause and allege *Brady* violations. Defendants' third argument, that there was not a neutral investigation, is really a claim of lack of probable cause, goes to the issue of credibility and is an issue for the fact finder at trial. The remaining issues are:

- I. Whether there is probable cause to require Defendants to stand trial.
- II. Whether there are *Brady* violations as claimed by the Defendants.

LEGAL ANALYSIS

Whether there is probable cause to require Defendants to stand trial

Probable cause exists when the totality of the circumstances demonstrates that a prudent person would believe that the arrestee has committed or was committing a crime. *Kuehl v. Burtis*, 173 F.3d 646, 650 (8th Cir. 1999). Probable cause determinations are to be based on the entire record, including reliable hearsay. *State v. Ortiz*, 626 N.W.2d 445, 451, n.1 (Minn. App. 2001). "It is only if the defense presents exonerating evidence that the court must assess, from a record that may include inadmissible evidence, that the prosecutor possesses substantial evidence admissible at trial and sufficient to withstand a motion for a directed verdict of acquittal. *Id.* (citing *State v. Rud*, 359 N.W.2d 573, 579 (Minn. 1984)). The court in making the probable cause determination "must determine

whether, given the facts disclosed by the record, it is fair and reasonable to require the defendant to stand trial. *Id.* (citing *State v. Florence*, 239 N.W. 2d 892, 902 (1976)).

Defendants are charged with burglary in the third degree.

Burglary in the 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, either directly or as an accomplice, commits burglary in the third degree . . .

Minn. Stat. 609.582, subd. 3.

The alarm that alerted the police was in the liquor store indicating that the defendants were in the store prior to the arrival of the police on the scene. The police arrived on the scene at 4:18 hours in response to a burglary in progress. A video clearly places Drljic and English in the liquor store. Both Drljic and English were wearing masks. Drljic's identification card was also found in the liquor store on a shelf behind some of the merchandise. The ID card was discovered after the liquor store clerk viewed the video and noticed that Drljic and English had moved some items of merchandise on a shelf and had placed something behind the merchandise.

The officers observed several tool marks on the doorframe of the building. The bolt was in a locked position but the doorframe was broken and appeared to have been forced. Drljic admitted that when he got to the door and saw chips on the edge of the door that it indicated to him that there was a burglary in progress. Moreover, English told him to cover his face because of the cameras.

Tamika Suttles was in the parking lot when the police arrived. She was standing outside the driver's side door of the vehicle and claimed that her vehicle had broken down and she had just parked it there. The officers could see both pockets of her outer coat were bulging and she was patted down for weapons. The pat-down search showed

that she had a roll of duct tape and a pair of neoprene gloves. She tried to divert attention by stating that she needed "to pee."

A male was observed by officers in the window of one of the top floor apartments in the alley directly across from the building. This individual, Thomas Nolan, stated that just prior to the officers' arrival he saw two people dressed all in black walk from the rear of the building carrying a large bag and a long metal object to the car with license plate MLU 367, the car that Suttles was driving. One of these individuals was identified as Suttles and the other one he observed walked back inside the building.

Suttles changed her story. Her car had not broken down as she claimed. Instead, she was there to pick up a few friends. She had no explanation for having a roll of duct tape and a pair of neoprene gloves in her pocket. Suttles was arrested for burglary and her vehicle was searched incidental to a tow. In the trunk was a large bag with a few tools inside. Also in the trunk were several computer parts and other miscellaneous items, including a four-foot aluminum ruler and a three-foot aluminum T-square. Officers recovered her purse and several pairs of gloves inside the vehicle, along with miscellaneous tools. There was also a purse with a plastic bag and a large amount of cash, \$16,000.

When the officers surveyed the building, it appeared that defendants had gained access to the liquor store through the unsecured door and that they gained access to other businesses in the building through the east and west basement walls of the building. Officers observed at the rear door a pile of random items: several liquor bottles, a package of muffins, and a tall plastic organizer. In the basement, it appeared that the suspects had assembled a large amount of boxes of liquor that they were preparing to

bring upstairs and outside. In the art studio, it appeared that the cash register was broken and the till was on the floor across the room. Several of the drawers and shelves were rummaged through and items were scattered all over the ground. There was a black flashlight on the counter. Several pairs of gloves were in the store, as well as a headstrap flashlight and a black coat that was tucked in between two boxes.

Several items that were recovered from the trunk of Suttles' car were identified by Peter Brown, one of the owners of the art gallery, and he stated that those items belonged to his father and were taken on the night of the burglary.

Sergeant Strickland noted that the case was not immediately charged by the County Attorney because he, Strickland, had not completed his investigation. In the period of time that he was doing his investigation, some of the property that was seized, like the printer and computer parts and a drill, were released to Peter Brown, the son of Joseph Brown, who owned the art studio. Some items were never recovered, including \$150 in cash and a computer.

Sergeant Strickland testified that he returned \$16,000 cash to Tamika Suttles because he could not prove it was stolen and he had no right to keep it.

English's version to Sergeant Strickland trying to exonerate Drljic and Suttles is not credible. He first left the station having been brought there by Drljic and Suttles. He refused to have the conversation recorded, and he recanted when he pled guilty and gave his testimony under oath. He admitted that his statement to Strickland was a lie that was fabricated by Drljic and Suttles. In his plea, English admitted his role in the burglary and never mentioned "Joe" or any other person that was involved. He squarely placed the blame on Suttles and Drljic.

Probable cause exists when the facts would lead a person of ordinary care and prudence to hold an honest and strong suspicion that the person under consideration is guilty of a crime. *State v. Ortiz*, 626 N.W.2d 445, 449 (Minn. App. 1999), *review denied* (Minn. June 27, 2001).

Based on the testimony and record before it, the Court finds that there is probable cause that Drljic and Suttles committed the crime of burglary. There is no exonerating evidence to overcome probable cause. Given the facts disclosed by the record, it is fair and reasonable to require Defendants Drljic and Suttles to stand trial. *See State v. Florence, supra.*

Whether there were *Brady* violations as alleged by the Defendants.

Under *Brady v. Maryland*, suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment irrespective of the good or bad faith of the prosecution. *Brady v. Maryland*, 373 U.S. 83, 87 (1962). Furthermore, the government's constitutional duty to preserve evidence is subject to a standard of materiality. *State v. Schmid*, 487 N.W.2d 539, 541 (Minn. App. 1992). "Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense." *California v. Trombetta*, 467 U.S. 479, 488 (1984).

To support their claim that the State suppressed, destroyed, or failed to produce evidence which was exonerating, Defendants Suttles and Drljic advance several theories, namely:

- 1) That the State has not produced "Joe." Suttles and Driljic advance several theories about "Joe": that he is the "Jason Priestley looking" person "with the white girl flipping out on the phone" who put stuff in Suttles' car, that he is the individual who owed English money, and he is also the individual who called down to police in the parking lot.
- 2) That Sergeant Strickland was influenced to stop investigating other suspects because of a letter written by one of the victims to the County Attorney and the Police Commander.
- 3) That Sergeant Strickland did not keep his notes from the December 15, 2009 interview with English.
- 4) That the police had not viewed the footage from street cameras that would show other cars on the street that night.

Defendants Suttles and Driljic's claims of *Brady* violations fail.

- 1) In Sergeant Strickland's investigation, he did not find anyone who matched the description of "Joe" who lived in the building. Sergeant Strickland talked with Thomas Nolan on January 15, 2010 and again prior to the Omnibus hearing. They spoke by phone. Nolan's story was consistent. He heard a noise outside. He looked out and saw a car pull in. There was a black male and a black female who got out of the car and disappeared around the corner. Ten to fifteen minutes later, they came back carrying items which they put in the car. The female stayed in the car while the other person went back into the building. After that, Nolan said that the squad car showed up and Nolan called out to them that there were other persons in the building. At that point, the officer told him to call 9-1-1.

When queried by defense attorney, Sergeant Strickland testified that he did not have evidence in any way to support a search warrant for Thomas Nolan's apartment. Sergeant Strickland did not look for a 9-1-1 call because the initial call came from the alarm company; there was no need to follow up with a 911 call.

- 2) Sergeant Strickland had not seen the letter until the day of this hearing. Sergeant Strickland noted that he was asked what was going on with the case and he said that he had to do follow-up. Sergeant Strickland understood that the victims were upset that the case was not charged. Sergeant Strickland testified that at the time, he still needed to do more investigation; for example, he had not yet viewed the videotape. When asked why he returned the cash to Ms. Suttles, Sergeant Strickland said he could not prove it was stolen and he had no right to keep it so he gave it back to her. The fact that he released the car and \$16,000 cash to Suttles does not indicate exoneration.
- 3) Sergeant Strickland testified that he does not keep notes from every interview and did not keep his interview notes with English. This was the December 15, 2009 interview that was initiated by English when he was brought to the station by Drljic and Suttles. Sergeant Strickland testified that even with the information from the interview, English's version did not square with Drljic's version of what happened that night nor did it square with the physical evidence in the way the building was entered and businesses were entered. Sergeant Strickland testified that based on what he knew in his investigation, he did not believe English's new version of events. English later recanted when he pled.

4) Defendants do not point to any exculpatory evidence that could be gathered from street cameras particularly since the cameras do not even point to the parking lot. There is no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case. *Trombetta* at 488 (citing *Moore v. Illinois*, 408 U.S. 786, 795 (1972)). Defendants can point to no material evidence that could exonerate Defendants that was suppressed. In spite of Defendants' attempts to imply that Thomas Nolan, the witness in this case, was somehow the person responsible for the burglary, there are no facts or evidence to support such a theory. The fact that the case was not charged immediately does not point to any exculpatory evidence.

Indeed, the video clearly shows the two suspects Drljic and English in the liquor store. The lights were on in about half of the store and Drljic was wearing a mask to conceal his face from the cameras. Nobody else was videotaped in the store.

Based on the testimony and the evidence, the Court finds there was no exculpatory evidence that was not disclosed or preserved in violation of *Brady*.

CONCLUSION

Based on the entire record, including reliable hearsay, this Court finds that there is probable cause to support the charge and it is fair and reasonable to require Defendants Suttles and Drljic to stand trial.

The motion to dismiss under *State v. Florence* is DENIED.

Defendants have not proven that there was any exculpatory information or evidence that was not disclosed or preserved. The *Brady* violation motion is DENIED.

This matter will be set for trial on November 8, 2010 at 9:00 a.m.

G.C.B.