

Filed in District Court  
State of Minnesota  
Dated 2/16/22

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SHERBURNE

TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

**ORDER DISMISSING  
COUNT I FOR LACK OF  
PROBABLE CAUSE**

██████████,

Defendant.

Court File No. ██████████

On December 20, 2021, the above-entitled matter came on for a Contested Omnibus hearing before District Court Judge ██████████ at the Sherburne County Government Center in Elk River, Minnesota.

**APPEARANCES:**

Sherburne County Assistant Attorney Leah Emmans appeared on behalf of the State.

Attorney Charles Ramsay appeared on behalf of Defendant ██████████, who also appeared.

Evidence reviewed by the Court:

1. Exhibit #1: General Court-Martial Order No. 39 (May 18, 2011) (redacted), General Court-Martial Order No. 41 (June 4, 2013) (redacted), and documents related thereto.

District Court File No. ██████████ is the associated Implied Consent case.

**NOW, THEREFORE**, after reviewing the file and exhibits, the arguments of counsel, the sworn testimony, and the applicable law, the Court herewith makes the following:

**FINDINGS OF FACT**

1. The facts in this case are largely undisputed.
2. On June 26, 2021, Defendant ██████████ was pulled over for speeding by an Elk River Police Department officer in Elk River, Sherburne County, Minnesota.
3. After smelling the odor of alcoholic beverage on Defendant ██████████ breath and administering a field sobriety test and preliminary breath test, law

enforcement placed Defendant [REDACTED] under arrest and transported him to the Elk River Police Department.

4. There, law enforcement measured Defendant [REDACTED] blood alcohol concentration using a DataMaster Test (DMT) machine. The machine measured his blood alcohol concentration to be 0.10 g/210L, over the legal limit in Minnesota.<sup>1</sup>
5. On June 28, 2021, Defendant [REDACTED] was charged under Minnesota Statutes § 169A.24.1(3)(iv) with First-Degree Driving While Impaired (DWI), a felony punishable by up to seven (7) years imprisonment and/or \$14,000 fine. This was an enhanced charge, based on Defendant [REDACTED] criminal history.
6. Under Minnesota's DWI statute, Minn. Stat. § 169A.20, one can be charged with a Fourth-Degree misdemeanor, Third-Degree gross misdemeanor, Second-Degree gross misdemeanor, or First-Degree felony, depending on whether certain other factors are present, including certain prior convictions.<sup>2</sup>
7. Citing Minn. Stat. § 169A.24, subd. 1(3)(iv), the State enhanced its charge of Defendant [REDACTED] to a First-Degree felony because of his prior 2011 United States Air Force court-martial conviction for driving under the influence resulting in the death of another.
8. The relevant text of Minn. Stat. § 169A.24, subd. 1 provides as follows:
 

“Subdivision 1. Degree described. A person who violates section 169A.20 (driving while impaired) is guilty of first-degree driving while impaired if the person ... (3) has previously been convicted of a felony under:

...

(iii) ... [Minnesota Statutes 2006, section] 609.2113, subdivision 1, clauses (2) to (6), subdivision 2 ... ; or

(iv) a statute from this state or another state in conformity with any provision listed in item (i), (ii), or (iii).”
9. Defendant [REDACTED] 2011 court-martial conviction was under Uniform Code of Military Justice, article 111,<sup>3</sup> which then provided, in relevant part:

<sup>1</sup> In its September 27, 2021 Order in associated Court File No. 71-CV-21-724, this Court examined the circumstances of Defendant [REDACTED] arrest and testing and ruled the DMT test result admissible evidence.

<sup>2</sup> See Minn. Stat. § 169A.27, § 169A.226, § 169A.25, and § 169A.24, respectively.

<sup>3</sup> 10 U.S.C.A. § 911, Art. 111 was effective November 24, 2003 to December 31, 2018. “Drunken or reckless operation of a vehicle” is now Art. 113, and the current Art. 111 addresses leaving the scene of vehicle accidents.

“Art. 111. Drunken or reckless operation of a vehicle, aircraft, or vessel.

(a) Any person subject to this chapter who-

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (b),

shall be punished as a court-martial may direct.”<sup>4</sup>

10. On December 8, 2021, at the Rule 8 Initial Appearance, Defendant [REDACTED] noticed his intent to challenge probable cause for the felony enhancement, arguing the State's enhancement is not permitted under Minn. Stat. § 169A.24.

## CONCLUSIONS OF LAW

### Probable Cause.

A challenge to probable cause supporting a criminal charge requires assessment of whether it is fair and reasonable to require the defendant to stand trial by determining whether “the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict of acquittal if proved at trial.” *State v. Florence*, 239 N.W.2d 892, 903 (Minn. 1976). A motion to dismiss for lack of probable cause is properly denied when the evidence, viewed in a light most favorable to the State, is sufficient to sustain a

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For purposes of this case, the Court's discussion of “Art. 111” refers to the version of the article in effect at the time of Defendant [REDACTED] military adjudication and under which he was convicted.

<sup>4</sup>“Injury to a victim can be included as an aggravating element of drunk driving, used to increase the maximum authorized punishment. It is not a statutory element. See Articles 56 and 111, UCMJ, 10 U.S.C. §§ 856, 911; Manual for Courts-Martial, United States, Part IV, ¶¶ 35b and 35c (2008 ed.)” *United States v. [REDACTED]* No. [REDACTED], at \*3 (A.F. Ct. Crim. App. [REDACTED]).

conviction. *See State v. Knoch*, 781 N.W.2d 170, 178 (Minn. Ct. App. 2010). The purpose of a probable cause hearing is “to protect a defendant unjustly or improperly charged from being compelled to stand trial.” *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003) (internal quotations omitted).

Defendant [REDACTED] probable cause challenge consists of two arguments. First, Defendant [REDACTED] argues he has not previously been convicted under “a statute from this state or another state,” as required for enhancement under Minn. Stat. § 169A.24, but rather under military law. Second, he argues the military law and the state law in question do not require proof of the same elements and thus are not “in conformity” with one another as required for enhancement under Minn. Stat. § 169A.24. Either argument, if successful, would be sufficient to dismiss the felony enhancement for lack of probable cause. Because the first argument succeeds, the Court need not address the second at this time.

**I. Defendant [REDACTED] previous felony was not under “a statute from this state or another state,” and thus it cannot be used for enhancement under Minn. Stat. § 169A.24, subd. 1(3)(iv).**

The State argues Defendant [REDACTED] conviction under the Uniform Code of Military Justice (UCMJ) can be used to enhance the 2021 DWI, notwithstanding the language of Minnesota’s DWI enhancement statute. The Court must interpret Minn. Stat. § 169A.24, subd. 1(3)(iv) in order to determine legislative intent. Courts must always begin construing a statute by giving its words their “plain and ordinary meaning.” *State v. Peck*, 773 N.W.2d 768 (Minn. 2009); *State v. Henderson*, 907 N.W.2d 623 (Minn. 2018). Plain and unambiguous language should not be further construed. *State v. Anderson*, 683 N.W.2d

818 (Minn. 2004); *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). Thus, the threshold issue in the analysis is whether the statute's language is ambiguous. *Peck*, 773 N.W.2d at 772. If not, then “construction is neither necessary nor permitted.” *Id.*; *See also State v. Caldwell*, 803 N.W.2d 373, 382 (Minn. 2011). A statute or word or phrase is “ambiguous” if it is subject to “more than one reasonable interpretation.” *State v. Schmid*, 859 N.W.2d 816 (Minn. 2015). A court must not “supply that which the legislature purposely omits or inadvertently overlooks.” *Martinco v. Hastings*, 122 N.W.2d 631 (1963); *State v. Anderson* 865 N.W.2d 712, 718 (Minn. Ct. App. 2015).

Here, the State’s felony enhancement depends on the DWI enhancement statute, Minn. Stat. § 169A.24, subd. 1(3)(iv). This statute permits enhancement of a DWI offense if a defendant’s criminal history includes a conviction under “a statute from this state or another state in conformity with any provision listed in item (i), (ii), or (iii).” Defendant ██████ 2011 conviction was in a military court, under military law as established in the UCMJ. Because military law is not state law, the plain language of Minnesota’s DWI enhancement statute does not recognize military convictions as a valid basis for DWI enhancement.

The DWI enhancement statute unambiguously itemizes those types of prior convictions supporting enhancement. *State v. Smith*, 899 N.W.2d 120 (Minn. 2017). In *Smith*, the Supreme Court recognized, “the Legislature could have added a broader residual clause to the [DWI enhancement] statute, something it has done in a number of other statutes” and cited the residual clause found in Minn. Stat. § 617.247, subd. 9 (2016), which reads: “...or

any similar statute of the United States, this state, or any other state.” *Id.* at 124. Similarly, as Defendant ██████ argues, the Legislature could have permitted enhancement based on convictions from “another jurisdiction,” “anywhere in the United States,” or “any court of competent jurisdiction.” By enumerating the types of prior convictions supporting enhancement with such specificity (state convictions), the Legislature intentionally excluded other types of prior convictions, such as that of Defendant ██████

Even if the Court were to adopt the State’s argument that “the military statute of which the defendant was convicted is the equivalent of Minn. Stat. § 609.2113, subd 1 or 2,” permitting the State to enhance its charge on this basis would expand the DWI enhancement statute beyond the Legislature’s intent. Accordingly, the Court declines to grant such permission. Construing all underlying facts in the light most favorable to the State, there is no basis on which a reasonable jury could find Defendant ██████ guilty of the State’s charge.<sup>5</sup>

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<sup>5</sup> With regard to Defendant ██████ second “in conformity” argument, this Court is mindful of *State v. Schmidt*, in which the Minnesota Supreme Court held South Dakota prior DWI convictions could be used to enhance the defendant’s Minnesota DWI charge, notwithstanding constitutional differences between the two states. 712 N.W.2d 530 (Minn. 2006). *Schmidt* does not offer guidance here, where Defendant ██████ argument is not constitutional but statutory. Defendant ██████ does not seek to have the protections of the Minnesota Constitution applied to an out-of-state conviction. Rather, he asserts the State has not sufficiently demonstrated that the military law under which he was convicted is “in conformity” with applicable Minnesota law as required under Minnesota’s DWI enhancement statute. The defendant in *Schmidt* did not dispute the conformity of the South Dakota and Minnesota DWI statutes.

**ORDER**

1. Defendant [REDACTED] Motion to Dismiss Count I, Felony First-Degree Driving While Impaired, is hereby **GRANTED**, for lack of probable cause.
2. Because it was agreed that despite this Court's Dismissal of Count I, Felony First-Degree Driving While Impaired, Defendant [REDACTED] could be charged with Gross Misdemeanor Driving While Impaired, entry of this Order is **STAYED** until February 22, 2022 to allow the State to file an Amended Complaint under this Court File No. 71-CR-21-877.
3. All other motions not directly addressed herein are **DENIED**.
4. Defendant [REDACTED]'s release conditions are modified from previously ordered bail with pre-trial monitoring to random testing, as reflected in the Amended Release Order.
5. A Pretrial Conference scheduled March 7, 2022, at 10:10 A.M., shall remain on the calendar.

**IT IS SO ORDERED.**

**BY THE COURT:**

Dated: February 16, 2022

[REDACTED]

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The Honorable [REDACTED]  
 Judge of District Court