

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF MOWER

THIRD JUDICIAL DISTRICT

COURT FILE NO.: 50-CR-13-414

PROSECUTOR FILE NO.: CA-03064

State of Minnesota,

Plaintiff,

v.

Jose Alberto Moyeda DOB: 01/23/1994
928 4th Avenue NE
Austin, MN 55912

Defendant.

☐ Summons ☐ Warrant☒ Order of Detention☐ Amended☐ Tab charge Previously Filed

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant committed the following offense(s):

Count 1

Aid/Abet 1st Degree Assault-Great Bodily Harm-Felony

In Violation Of: 609.221 subd. 1; 609.05 Subd. 1

Penalty: 20 years and/or \$30,000 fine

On or about February 20, 2013, within the County of Mower, the defendant intentionally assaulted T.A.W., DOB/033095, and inflicted great bodily harm, or did aid/abet another in doing same.

Count 2

Aid/Abet 2nd Degree Assault-Dangerous Weapon-Substantial Bodily Harm-Felony

In Violation Of: 609.222 subd. 2; 609.05 Subd. 1

Penalty: 10 years and/or \$20,000 fine

On or about February 20, 2013, within the County of Mower, the defendant intentionally assaulted T.A.W., DOB/033095, with a dangerous weapon (a bat) and inflicted substantial bodily harm, or did aid/abet another in doing same.

Count 3

2nd Degree Assault-Dangerous Weapon-Felony

In Violation Of: 609.222 subd. 1

Penalty: 7 years and/or \$14,000 fine

On or about February 20, 2013, within the County of Mower, the defendant intentionally assaulted D.M.T., DOB/050795, with a dangerous weapon, to-wit: a crow bar.

Count 4

2nd Degree Assault-Dangerous Weapon-Felony

In Violation Of: 609.222 subd. 1

Penalty: 7 years and/or \$14,000 fine

On or about February 20, 2013, within the County of Mower, the defendant intentionally assaulted C.L.J., DOB/020698, with a dangerous weapon, to-wit: a crow bar.

Count 5

2nd Degree Assault-Dangerous Weapon-Felony

In Violation Of: 609.222 subd. 1

Penalty: 7 years and/or \$14,000 fine

On or about February 20, 2013, within the County of Mower, the defendant intentionally assaulted D.A.T., DOB/090496, with a dangerous weapon, to-wit: a crow bar.

Count 6

2nd Degree Assault-Dangerous Weapon-Felony

In Violation Of: 609.222 subd. 1

Penalty: 7 years and/or \$14,000 fine

On or about February 20, 2013, within the County of Mower, the defendant intentionally assaulted J.R.W., DOB/040497, with a dangerous weapon, to-wit: a crow bar.

Count 7

Riot in the 2nd Degree-Dangerous Weapon-Felony

In Violation Of: 609.71 subd. 2

Penalty: 5 years and/or \$10,000 fine

On or about February 20, 2013, within the County of Mower, the defendant, one of three or more persons assembled, disturbed the public peace by an intentional act or threat of unlawful force or violence to a person or property and the defendant was armed with a dangerous weapon or knew that another participant was armed with a dangerous weapon.

STATEMENT OF PROBABLE CAUSE

The Complainant states that the following facts establish probable cause:

On February 20, 2013 at approximately 7:25 p.m., law enforcement officers were dispatched to Ankeny's #1 (1205 Oakland Place SE, Austin, MN) regarding a large fight, involving bats and pipes. Officer Stein arrived and met with four (4) juvenile males: D.M.T., DOB/050795; D.A.T., DOB/090596; C.L.J., DOB/020698; and J.R.W., DOB/040497.

Other responding officers were in the area looking for the suspect vehicle (a black Lincoln LS). Stein was informed by the juvenile males that another car (yellow with black racing stripes) was also involved and drove away (east on 1st Place SE). Officer Schuweiler located the black Lincoln LS (MN license 833JTA) and Officers Hartman and Deutsch went to assist. Schuweiler conducted a felony traffic stop on the Lincoln in the 800 block of 14th Street NE and identified the occupants as Luis Rey Rodriguez, DOB/082586; Jose Alberto Moyeda, DOB/012394, the defendant herein; Roberto Francisco Rocha, DOB/030890.

The juveniles said they were assaulted and an ambulance was dispatched to the scene. D.M.T. identified the assailants as Rodriguez, the defendant, Rocha and another person whom he did not know. D.M.T. also reported that there was fifth victim (T.A.W., DOB/033095), who ran back to D.M.T.'s residence after being struck in the head and face with a bat.

Lt. Phan then informed Stein that the suspects (Rodriguez, the defendant and Rocha) were in custody and would be transported to Ankeny's #1 for identification by the juveniles. Rodriguez was transported by Sgt. Ellis of the Mower County Sheriff's Office. The defendant was transported by Deutsch. Rocha was transported by Schuweiler. D.M.T., D.A.T., C.L.J., J.R.W. and T.A.W. identified Rodriguez, the defendant and Rocha as their attackers. T.A.W. was transported to Mayo Clinic Health System-Austin due to the extent of his injuries. Phan interviewed T.A.W. at the hospital. Phan later informed Stein that T.A.W.'s injuries were classified as "great bodily harm" (inner cranial hemorrhaging and a lower skull fracture). T.A.W. was later airlifted to St. Marys Hospital in Rochester.

Stein transported D.M.T., D.A.T., C.L.J., and J.R.W. to the Mower County Law Enforcement Center (LEC) for interviews. Stein interviewed D.M.T. first. D.M.T. said that he and the others were walking back to D.M.T.'s house from the 12th Street SE bridge. D.M.T. said that Rodriguez "and his friends" (the defendant and Rocha) jumped out of a car at Ankeny's #1 and that Rodriguez hit him in the head with bat. Rodriguez then started to hit D.A.T. and then hit everyone else.

D.M.T. also said that a skinny, Hispanic male with long hair was in the yellow car and that male hit him in the back of his head with his fist. D.M.T. said that Rodriguez was the driver of the Lincoln and was the person wielding an aluminum baseball bat. D.M.T. said that the defendant also had a weapon, which D.M.T. described as a "crow bar" or "tire iron" (black and approximately 14 inches long). D.M.T. said that Rodriguez hit T.A.W. in the side of the face with the bat and that Rodriguez, the defendant and Rocha were "taking turns" in attacking T.A.W.

Stein then interviewed D.A.T., who stated that he and the others were walking from a cousin's house when the yellow car pulled into the gas pumps at Ankeny's #1 and the driver (skinny, Hispanic male with long hair) went inside the gas station. Rodriguez then arrived in the Lincoln and got the bat from the trunk. Rodriguez,

the defendant and Rocha then "rushed at everyone" and Rodriguez attacked them with a bat. The driver from the yellow car then came out of the gas station and started to "swing." D.A.T. said the attackers then held T.A.W. on the ground and beat him with the bat.

T.A.W. went to the home of D.M.T. and D.A.T., where there mother (T.M.G., DOB/060976) tried to calm him down. T.M.G. said that T.A.W. had blood running out of his ear and the back of his head. D.A.T. reported that T.A.W. got hit 2-3 times in the face and in the back. D.A.T. said he got hit on the left arm, back, left calf and the shoulder.

Stein then interviewed C.L.J., who reported that he and the others were walking towards Jim's Supervalu when four (4) adult males got out of a black Lincoln and were yelling at D.M.T. C.L.J. identified Rodriguez and the defendant, but did not know the other two. C.L.J. said the males had baseball bats and a crowbar and chased C.L.J. and his friends. Rodriguez hit C.L.J. in the back with a bat and C.L.J. ran into Ankeny's #1 to call the police.

C.L.J. stated that he saw T.A.W. on the ground one of the suspects was on top of him. C.L.J. stated that the driver of the yellow car did not get into the fight or hit anyone. C.L.J. said the incident was "gang-related" and that the attackers were "Northsiders." C.L.J. stated the baseball bat was aluminum (black and silver). The suspects also had a crow bar and another object that was approximately a foot long. C.L.J. said that Rodriguez had the bat and the defendant had the crow bar.

Stein then interviewed J.R.W., who said that he and his friends were walking to Ankeny's #1 to get something to drink before going to D.M.T.'s house. As they were walking through the Ankeny's #1 parking lot, "They drove up in the car and they all jumped out." J.R.W. said he ran towards D.M.T.'s house, but returned when he saw the suspects getting in their car to leave. J.R.W. identified Rodriguez as having a baseball bat and the defendant as having a crow bar. J.R.W. said that the male in the yellow car had punched D.A.T. J.R.W. said the aluminum bat was silver, with possibly red and black marks on it.

Hartman spoke to a witness who observed the attackers leave the scene. The witness said that the Lincoln stopped in the 1200 block of 1 Avenue NE for a short period. Officers checked the area where the Lincoln stopped and located a cell phone that belonged to T.A.W.

Schuweiller later located owner of the yellow vehicle (V.R., DOB/092485), who said she, her husband and her children were at Ankeny's #1 getting gasoline when she heard a commotion and saw a bunch of people fighting. V.R. said that her brother (Rodriguez) was fighting with someone and that she saw him get hit on his right side with a black baseball bat. V.R. said she heard Rodriguez tell Rocha (in Spanish), "Get the bat." V.R. said that Rocha and the defendant then tackled D.A.T. and wrestled the bat away from him. V.A. said she saw the bat get thrown from Rodriguez's Lincoln into a grassy area near the intersection of 12th Street NE and 1st Avenue NE.

Phan had the suspects taken to jail and interviewed by Deutsch and Schuweiler. Phan went to the hospital and interviewed T.A.W., who reported that he was walking to a friend's house when a group of 4-5 people got out of a black Lincoln LS and attacked him. T.A.W. described the attackers as Hispanic males ("Northsiders") in their twenties and specifically identified Rodriguez and the defendant. T.A.W. said that the defendant was punching him, so he wrestled the defendant to the ground. T.A.W. said that Rodriguez then hit him with a black metal baseball bat after the initial altercation with the defendant. T.A.W. said that Rodriguez was the driver of the Lincoln and had grabbed the bat out of the trunk. T.A.W. said that there was also a crowbar used as a weapon.

Deutsch spoke with the defendant while he was in a squad car. The defendant said that D.M.T. and T.A.W. "disrespected" the defendant's 14-year-old brother at the Austin Public Library. The defendant then went looking for D.M.T. and T.A.W. and when he found them he hit T.A.W., which knocked him to the ground. The defendant said he was not aware of any weapons that were used and that he did not see anyone with a baseball bat.

The defendant was transported to Mower County Jail where he was read a Miranda warning. The defendant said that D.A.T., T.A.W. and another unidentified person insulted the defendant's little brother at the Austin Public Library by cutting off a rosary around his neck. D.A.T., T.A.W. and the unidentified person then threatened to beat up the defendant's brother if he told anyone about the incident. The defendant said that Rocha and Rodriguez picked up the defendant's brother from the library.

When asked if any weapons were involved in the assault, the defendant replied, "Not that I know of." The defendant then stated that he did not use a weapon and he did not believe that Rocha used a weapon. The defendant was unsure whether Rodriguez used a weapon. The defendant also said that Rodriguez "keeps a bat in his trunk." The defendant said they knew D.A.T. and T.A.W. have friends in the area of Ankeny's #1, so they searched that area for them.

The defendant said they saw them and then circled the block before he jumped out of the vehicle and attacked T.A.W. The defendant said he went after T.A.W., tackled him and began punching him in the face and stomach. The defendant said he got hit in the mouth by T.A.W. and kicked in the back by an unknown person. After they left the area, Rodriguez threw the bat out of the Lincoln. The defendant was unsure of the exact location. The defendant said it was a metal bat, but he was unable to describe it. The defendant believed the bat was thrown in a yard near the sidewalk.

Rocha was read a Miranda warning and said that D.A.T. and T.A.W. "ganged up" on the defendant's brother at the library. D.A.T. and T.A.W. grabbed the rosary around the boy's neck and cut it off with a knife. The defendant's brother reported the incident to Rocha, who said he "just wanted to talk" to D.A.T. and T.A.W. Rocha said he wanted to get the rosary back from D.A.T. and T.A.W., but "things got out of control" and a fight broke out. Rocha was unaware who had the bat, but said he could hear a bat being swung. Rocha said he was "just throwing people back." Rocha stated, "I heard a couple of bats swinging," but he could not identify who possessed

them.

Detective Heickley was briefed by Phan, who advised that three adults were arrested in connection with the assault. Phan stated that a frightened witness (MB) was refusing to come in for a statement and would no longer answer the telephone. Phan gave Heickley the contact information and Heickley arranged an interview. Heickley met with MB and learned that MB arrived at 12th Street SE and E. Oakland Place and observed a group of about five people wearing dark clothing crossing over E. Oakland Place towards the Ankeny's #1 gas station.

MB then observed a black Lincoln with three occupants pull into Ankeny's #1 and stop. The trunk lid and the driver's door of the Lincoln opened simultaneously and the driver went to the trunk and got a "baseball bat" from the trunk. The driver then approached the group of five, who were now in close proximity to the Lincoln. The driver then swung the bat a couple times at one or more of the group. MB drove closer to get the license plate of the Lincoln and call the police.

After the altercation, the driver returned to the Lincoln, tossed the bat into the trunk and drove away. MB reported that after some time the Lincoln, was driving east on 4th Avenue NE and stopped "near the wall" by the East Side Lake. The Lincoln then drove north and was stopped by the police. MB reported losing sight of the Lincoln following the incident as it traveled without its headlights on in the area by East Side Lake. MB stated that the baseball bat could have been removed from the Lincoln during the brief time that MB lost sight of it.

NOTICE: You are hereby notified that failure to appear for court when required to do so is a criminal offense in the State of Minnesota, pursuant to Minn. Stat. §609.49. If you are charged with or have been convicted of a felony offense, an intentional failure to appear for a court appearance is a felony offense, which is punishable by one-half of the statutory maximum term of imprisonment or fine, for the underlying crime for which you fail to appear, and is to be no less than one (1) year and one (1) day in prison, and/or a \$1,500 fine, pursuant to Minn. Stat. §609.49, Subd. 1(a). If you are charged with a gross misdemeanor or misdemeanor offense, an intentional failure to appear for trial is a misdemeanor offense and may be punished by imprisonment of up to ninety (90) days in jail and/or a \$1,000 fine, pursuant to Minn. Stat. §609.49, Subd. 1.

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

COMPLAINANT'S NAME:

COMPLAINANT'S SIGNATURE:

David McKichen[Signature] 2019

Subscribed and sworn to before the undersigned this 21st day of February, 2013

NAME/TITLE:

SIGNATURE:

J. Koenigs / SR. COURT CLERK[Signature]

Being authorized to prosecute the offenses charged, I approve this complaint.

Date: 2/21/13

PROSECUTING ATTORNEY'S SIGNATURE:

[Signature]

Name: Eric V. Herendeen

Chief Deputy County Attorney

201 2nd Avenue NE

Austin, MN 55912

(507) 437-9428

Attorney Registration Number: 238703

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps to be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

☐ **SUMMONS**

THEREFORE, YOU THE ABOVE-NAMED DEFENDANT, ARE HEREBY SUMMONED to appear on the _____ day of _____, 20__ at _____ before the above-named court at _____ to answer this complaint

☐ **WARRANT**

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I hereby order, in the name of the State of Minnesota, that the above-named Defendant be apprehended and arrested without delay and brought promptly before the above-named court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

☐ *Execute in MN Only*
☐ *Execute Nationwide*
☐ *Execute in Border States*
☒ **ORDER OF DETENTION**

Since the above-named Defendant is already in custody, I hereby order, subject to bail or conditions of release, that the above-named Defendant continue to be detained pending further proceedings

Bail: \$500,000

Conditions of Release:

Sign Waiver of Extradition; Make all court appearances; Maintain contact with attorney; Be law abiding and good behavior; Supply Court with any change of address; No use/possession of mood altering chemicals; Not be present where mood altering chemicals are used/sold/served; Random testing; Weekly check-ins with Court Services; No contact with victim(s) or witness(es); Not be within 500' of victim(s) residence, work or school; GPS monitoring; No possession of weapons

This complaint, duly subscribed and sworn to, is issued by the undersigned Judicial Officer this 21 day of February, 2013.

JUDICIAL OFFICER:

NAME: Fred W. Wellmann
TITLE: Judge of District Court

SIGNATURE:

Fred W. Wellmann

COUNTY OF MOWER
STATE OF MINNESOTA

State of Minnesota

Plaintiff

vs

Jose Alberto Moyeda

Defendant

Following witnesses: *Clerk's Signature or File Stamp*

RETURN OF SERVICE

I hereby Certify and Return that I have served a copy of this Order of Detention upon the Defendant(s) herein-named

Signature of Authorized Service Agent:

[Signature] 2/21/13

STATUTE AND OFFENSE GRID

Cnt	Statute Type	Offense Date	Statute Number & Description	Offense Level	MOC	GOC	Controlling Agencies	Control Number(s)
1	Chrg/Penalty	02/20/2013	609.221 subd. 1 Aid/Abet 1st Degree Assault-Great Bodily Harm-Felony	F	A1145	N	MN0500100 Arresting	13001625
	Modifier		609.05 Subd. 1 Liability for Crimes of Another-Intentional					
	Chrg/Penalty		609.221 subd. 1 Assault-1st Degree-Great Bodily Harm					
2	Chrg/Penalty	02/20/2013	609.222 subd. 2 Aid/Abet 2nd Degree Assault-Dangerous Weapon-Substantial Bodily Harm-Felony	F	A2245	N	MN0500100 Arresting	13001625
	Modifier		609.05 Subd. 1 Liability for Crimes of Another-Intentional					
	Chrg/Penalty		609.222 subd. 2 Assault-2nd Degree-Dangerous Weapon-Substantial Bodily Harm					
3	Chrg/Penalty	02/20/2013	609.222 subd. 1 2nd Degree Assault-Dangerous Weapon-Felony	F	A2345	N	MN0500100 Arresting	13001625
	Chrg/Penalty		609.222 subd. 1 Assault-2nd Degree-Dangerous Weapon					
4	Chrg/Penalty	02/20/2013	609.222 subd. 1 2nd Degree Assault-Dangerous Weapon-Felony	F	A2345	N	MN0500100 Arresting	13001625
	Chrg/Penalty		609.222 subd. 1 Assault-2nd Degree-Dangerous Weapon					

5	Chrg/Penalty	02/20/2013	609.222 subd. 1	F	A2345	N	MN0500100	13001625
			2nd Degree Assault-Dangerous Weapon-Felony				Arresting	

Chrg/Penalty	609.222 subd. 1 Assault-2nd Degree-Dangerous Weapon
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6	Chrg/Penalty	02/20/2013	609.222 subd. 1	F	A2345	N	MN0500100	13001625
			2nd Degree Assault-Dangerous Weapon-Felony				Arresting	

Chrg/Penalty	609.222 subd. 1 Assault-2nd Degree-Dangerous Weapon
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7	Chrg/Penalty	02/20/2013	609.71 subd. 2	F	N1010	N	MN0500100	13001625
			Riot in the 2nd Degree-Dangerous Weapon-Felony				Arresting	

Chrg/Penalty	609.71 subd. 2 Riot-2nd Degree-Armed w/Dangerous Weapon
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STATE OF MINNESOTA vs. Jose Alberto Moyeda

Prosecutor File Number: CA-03064

DEFENDANT FACT SHEET

1. **Address:** 928 4th Avenue NE
Austin, MN 55912
2. **DOB:** 01/23/1994
3. **Other DOBs:**
4. **Race/Ethnicity:** White Ethnicity: Hispanic
5. **SID:** MN13F23733
6. **WID:**
7. **Alias Information:**
8. **Fingerprinted:** No
9. **Handgun Permit:** No
10. **Location of Violation:** Austin
11. **Drivers License #:** F 166 053 649 413 (MN)
12. **Accident Type:**
13. **License Plate #**
14. **Alcohol Concentration:**