STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

K[redacted] A[redacted] H[redacted], | Court File No.: 27-CV-08-19685

Petitioner,

vs. | **MEMORANDUM IN SUPPORT OF MOTION TO RESCIND REVOCATION**

Commissioner of Public Safety,

Respondent

INTRODUCTION

K[redacted] A[redacted] H[redacted] ("Ms. H[redacted]") was arrested on August 8, 2008 after two police officers entered her apartment without a warrant and without her knowledge or consent, seized her, escorted her to a squad car, and administered a chemical breath test. Based on the Intoxilyzer 5000 test results, the Commissioner of Public Safety rescinded her driver's license for a period of 90 days. The Minneapolis City Attorney's Office elected not to charge this case criminally, and indicated to the undersigned that the signing judge would not even sign the criminal complaint. Because of the arresting officers lacked probable cause to believe that she had driven while under the influence of alcohol, and because all evidence against Ms. H[redacted] was obtained as a result of an unlawful search and seizure, Ms. H[redacted], through her attorney, moves the Court to rescind the revocation of her driver's license.

FACTS

On August 8, 2008, Minneapolis Police Department Officers G[redacted] J[redacted] and P[redacted] X[redacted] responded to a citizen informant's report of a vehicle traveling on the road which "may have been involved in an accident" that evening. *P.R.*, pg. 1.[1] Officer J[redacted] discovered

[1] P.R. pg. 1 refers to the Police Officers Report, page 1.

an unoccupied vehicle matching the informant's description in the reported area with significant damage to the driver's side front wheel and door. There was no evidence of injury from the accident. He ran the vehicle's license plate number and learned the vehicle was registered to Ms. H who lived in a nearby apartment complex. The police report does not indicate when the informant's call was received by dispatchers or how long it took the police officers to locate the suspect vehicle.

Officers J and X "gained access" to Ms. H's apartment building. *Id.* Ms. H's apartment building is secure, and the only way to gain access is to have a resident "buzz" the door. Ms. H did not "buzz: the door. The two male officers walked to Ms. H's apartment, "knocked on her door repeatedly and announced their presence but received no response." *Id.* The officers discovered that the door was unlocked and they entered Ms. H's apartment. They had not applied for a search warrant before entering the apartment. Upon entering the apartment, officers did not see anyone in the apartment but heard the shower running. The bathroom door was closed. They knocked loudly on the bathroom door and announced their presence. The police reports indicate that Ms. H eventually opened the bathroom door clad only in a towel. *P.R.*, pg. 1. Ms. H will testify however that officers actually opened the bathroom door and entered the bathroom while she was in the shower. At that point the questioned her while she was still in the shower.

Officers asked Ms. H if she needed was okay or needed an ambulance because of her vehicle being involved in an accident. *P.R.*, pg. 1. Ms. H declined medical attention. *Id.* Ms. H told the officers that she had been drinking wine, and the officers observed that she smelled like alcohol and that her eyes were bloodshot and watery. At that point the officers did not ask whether she had consumed any alcohol before driving, or even whether she

had been driving that evening. Furthermore, Ms. H[redacted] will testify that she had two glasses of wine at a friend's house at approximately 7:00 p.m., and that she consumed more alcohol when she arrived home at approximately 11:00 p.m. Although Ms. H[redacted] did not tell officers that she consumed after getting home, Ms. H[redacted] was understandably quite flustered when two armed police officers entered into her apartment without her knowledge or consent, interrupted her while she was in the shower, confronted her while she was clad only in a towel, and began to interrogate her.

After being ordered to get dressed, the officers escorted Ms. H[redacted] to their squad cars. They noticed that she had problems balancing and was unsteady on her feet. She told Officer J[redacted] that she'd been drinking at a friend's house, and that she knew that she'd been involved in a car accident. A portable breath test indicated she was over the legal limit. Based on the results, Officer J[redacted] formally arrested Ms. H[redacted], took her to the Minneapolis Chemical Test Unit, and administered a chemical breath test. Her test results, a 0.24 BAC, were above the legal limit. She was not criminally charged, however, due to an unconstitutional search and evidence of post-driving consumption.

ARGUMENT

The Court should rescind the revocation of Ms. H[redacted]'s license because (1) Officers J[redacted] and X[redacted] lacked probable cause to believe that she had committed a crime before they placed Ms. H[redacted] under de facto arrest; (2) Officers J[redacted] and X[redacted]'s warrantless entry into Ms. H[redacted]'s apartment without her consent or exigent circumstances constituted an unconstitutional search; and (3) Ms. H[redacted]'s admission that she'd consumed alcohol at her friend's house, her acknowledgement that she'd driven afterwards and been in an accident, her problems balancing, and the results of the PBT and Intoxilyzer tests, are the fruits of the

unlawful search. Without this evidence, Officer J[redacted] lacked probable cause to believe that Ms. H[redacted] had driven while under the influence of alcohol.

1. THE POLICE DID NOT POSSESS PROBABLE CAUSE TO BELIEVE THAT MS. H[redacted] HAD BEEN DRIVING WHILE INTOXICATED SUFFICIENT TO JUSTIFY PLACING HER UNDER DE FACTO ARREST UPON ENTERING HER APARTMENT.

The United States Constitution and the Minnesota Constitution protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Not every interaction between people and police amounts to a seizure. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn.1993). To be reasonable, a limited, investigatory seizure requires a "particularized and objective" suspicion, while a seizure amounting to an arrest generally requires probable cause. *State v. Pike*, 551 N.W.2d 919, 921 (Minn.1996). And an arrest of a person inside the home requires a warrant in addition to probable cause, unless some exception to the warrant requirement applies. *State v. Perkins*, 582 N.W.2d 876, 878 (Minn.1998).

A. Ms. H[redacted] was placed under de facto arrest when the officers entered her apartment and began questioning her.

A person has been arrested when circumstances exist that would cause a reasonable person to conclude that he was "under arrest" and not free to leave. *State v. Beckman*, 354 N.W.2d 432, 436 (Minn.1984). A reasonable person would typically conclude that he was under arrest if his freedom of movement is directly restrained by handcuffs, *State v. Moorman*, 505 N.W.2d 593, 599 (Minn.1993); the person has been detained in the back of a squad car for an extended period, *State v. Lohnes*, 344 N.W.2d 605, 610 (Minn.1984); or the person is otherwise restricted beyond what is necessary for the purpose of an investigatory stop. *See State v. Blacksten*, 507 N.W.2d 842, 847 (Minn.1993) (concluding that continuing to hold suspect while seeking search warrant was "not a reasonable pre-arrest investigatory stop"). In some circumstances, actions by police outside a home can amount to an arrest of a person inside the

home. *See State v. Riley*, 568 N.W.2d 518, 523 (Minn.1997) (holding that forty-five armed members of Emergency Response Unit surrounding home was arrest because these circumstances "would communicate to a reasonable person ... an attempt by the police to capture or seize or otherwise to significantly intrude on the person's freedom of movement").

In other circumstances, actions that result in direct physical restraint may not rise to the level of arrest. *See State v. Herem*, 384 N.W.2d 880, 883 (Minn.1986) (concluding that suspect was not in custody when required to sit briefly in back of police car); *State v. Nading*, 320 N.W.2d 82, 84 (Minn.1982) (concluding that no arrest occurred when suspect was ordered to lie on ground); *O'Neill*, 299 Minn. at 67-68, 216 N.W.2d at 828 (same, suspects held at gun-point). Similarly, arrest does not necessarily occur when an officer outside a home merely summons a person inside to come to the door. *State v. Patricelli*, 324 N.W.2d 351, 354 (Minn.1982); see *United States v. Gori*, 230 F.3d 44, 53 (2d Cir.2000) (holding that neither warrant nor probable cause was required for seizure that occurred after occupants opened door for delivery person and police then asked them to step outside).

It is clear that Ms. H[redacted] was placed under de facto arrest (or arrest) when she was ordered to get dressed and thereafter escorted by two male armed police officers to their squad cars. Two armed and uniformed police officers entered her apartment at night without her consent or knowledge while she was showering, pounded numerous times on the bathroom door (according to Ms. H[redacted] they actually entered the bathroom while she was in the shower), and then began questioning her when she was wearing nothing but a towel. After violating the sanctity of her home, the officers ordered her to get dressed and then escorted her to their squad cars. Under these circumstances and taking into consideration that she was seized in her own home while she was taking a shower, not only it is unlikely that any reasonable person would

believe that they could freely leave, it would have been impossible for her to leave had she wanted.

B. The arresting officers lacked probable cause to believe that Ms. H[redacted] had driven while under the influence when they placed her under de facto arrest.

A de facto arrest requires probable cause. "Probable cause exists where all the facts and circumstances would warrant a cautious person to believe that the suspect was driving or operating a motor vehicle while under the influence." *Johnson v. Comm'r of Pub. Safety*, 366 N.W.2d 37, 350 (Minn. App. 1995). A police officer does not have to personally observe the driving or operating the vehicle to request a test to determine the suspect's blood alcohol concentration. *State v. Harris*, 202 N.W.2d 878, 880-881 (Minn. 1972). But the evidence must reflect a temporal connection between the driver's intoxication and the driver's operation of the motor vehicle. *Dietrich v. Comm'r of Pub. Safety*, 363 N.W.2d 801, 803 (Minn. App. 1985).

Where there is no evidence connecting the time of driving with the time of an officer's observations, the officer's proof of probable cause in inadequate. *Hedstrom v. Comm'r of Pub. Safety*, 410 N.W.2d 47, 49 (Minn. App. 1987) (citations omitted). This does not mean that an officer is required to know the exact time an accident occurred to make a valid arrest for driving while under the influence. *Delong v. Comm'r of Pub. Safety*, 386 N.W.2d 296, 298 (Minn. App. 1986), *review denied* (Minn. June 13, 1986). "However, there must be a time frame established showing a connection between drinking and driving." *Id.*

Probable cause that a driver is intoxicated does not exist simply because the driver was in an accident. *Musgjerd v. Comm'r of Pub. Safety*, 384 N.W. 2d 571, 573-74 (Minn. App. 1986) (holding that Musgjerd's single-vehicle accident alone was not sufficient to establish probable cause and justify the police officer's administration of a portable breathalyzer test).

Furthermore, an informant's tip alone does not establish probable cause unless it "provides at least some specific … allegation of criminal activity … [and] some specific and articulable facts to support [it]." *Olson v. Comm'r of Pub. Safety*, 371 N.W. 2d 552 (Minn. 1985) (holding that a tip that a driver was "possibly drunk" without a factual basis to support the allegation was insufficient to establish probable cause that the driver was drunk).

In this case, the record is entirely devoid of evidence showing that the arresting officers had sufficient probable cause to believe that Ms. H was the driver of the damaged vehicle, and that she was under the influence while driving. First, the officers were alerted to Ms. H's vehicle on the vague report that it "may have been involved in an accident." However, the reports did not indicate that Ms. H was driving the vehicle, nor was there anything that suggested that the driver of the vehicle was under the influence of alcohol. There is simply no evidence whatsoever connection Ms. H to the vehicle in the accident. Next, when the officers located the vehicle, they noticed significant damage on the car's front wheel and driver's side door; however, nothing in the record indicates when the damaged vehicle was on the road, when the police officers received the report of the damaged vehicle, who was driving the vehicle, a description of the driver, and when they actually were able to locate the damaged vehicle while parked by the side of the road. Furthermore, evidence that an accident occurred does not support a probable cause determination that the driver was intoxicated. Although Ms. H was the registered owner of the vehicle, the police officers did not observe her driving the car, there is no evidence that a witness saw her driving the car, she in the nearby vicinity of the car when the officers entered her apartment nor was there evidence showing the approximate time of the alleged accident.

Further, it is clear that Officers X[redacted] and J[redacted] lacked probable cause to place Ms. H[redacted] under de facto arrest after they entered the apartment and discovered Ms. H[redacted] in the shower. Even if recent damage was evident on Ms. H[redacted]'s vehicle, the officers made no attempt to establish a time frame for that accident, nor did they ask whether Ms. H[redacted] had consumed any alcohol before driving. They did not feel the hood of the car to see if it was warm to establish temporal connection. Although they observed indicia of intoxication, and although Ms. H[redacted] admitted to drinking wine, they did not inquire until after being arrested whether she'd even been driving that evening. Any admissions that she made regarding an accident or drinking at her friends house were made *after* she was ordered out of the bathroom and forced to get dressed. Any inferences that the officers could have made at the point of her de facto arrest do not establish the factual basis that an officer must articulate as his reason for making the arrest. In the absence of showing Ms. H[redacted] was the driver or in control of the vehicle, the fact that Officer J[redacted] may have had probable cause to believe that Ms. H[redacted] was drinking is without consequence because at the time of her de facto arrest, he lacked sufficient evidence to believe that she'd been driving under the influence. Any evidence obtained subsequent to Ms. H[redacted]'s de facto, including her admission that she had been in an accident, her admission that she'd been drinking prior to driving, and the results of her preliminary breath test and Intoxilyzer 5000 test, must be suppressed and the revocation of her driver's license should be rescinded.

2. THE OFFICER'S ENTRY INTO MS. H[redacted]'S APARTMENT WITHOUT A WARRANT OR PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES VIOLATED MS. H[redacted]'S FOURTH AMENDMENT RIGHTS.

The Fourth Amendment to the United States Constitution and Article I of the Minnesota Constitution proscribe unreasonable searches by the government of "persons, houses, papers and

effects." U.S. Const. amend. IV; Minn. Const. art. I, § 10. They draw "a firm line" at the entrance of a home: absent exigent circumstances, a warrantless entry of a person's house to search or make an arrest is per se unreasonable. *Payton v. New York,* 445 U.S. 573, 590 (1980); *State v. Lohnes,* 344 N.W.2d 605, 610 (Minn.1984). To justify a warrantless entry of a person's home to conduct a search or make an arrest, the State must show either consent or a combination of probable cause and exigent circumstances. *State v. Othoudt,* 482 N.W.2d 218, 222 (Minn. 1992).

Probable cause exits if there is sufficient evidence to cause "a person of ordinary care and prudence [to] entertain an honest and strong suspicion that a crime has been committed." *State v. Johnson,* 314 N.W.2d 229, 230 (Minn.1982). However, as noted above, probable cause that a driver is intoxicated does not exist simply because the driver was in an accident. *See Musgjerd,* 384 N.W. 2d at 573-74 (Minn. App. 1986). Furthermore, an informant's tip alone does not establish probable cause. *See Olson,* 371 N.W. 2d at 552 (holding that a tip that a driver was "possibly drunk" without a factual basis to support the allegation was insufficient to establish probable cause that the driver was drunk).

In this case, when the officers entered Ms. H[redacted]'s apartment, the sum total of facts and circumstances that supported probable cause that she had been driving while intoxicated were strikingly scant. They knew only that someone had reported that her car was seen driving on the road in a damaged condition. Although the officers found a damaged vehicle, there was nothing to indicate when it had been in an accident. Noticeably absent was any information suggesting that alcohol was involved in the accident. When they entered Ms. H[redacted]'s apartment Officers X[redacted] and J[redacted] guessed only that her car was in an accident; they did not know when the accident had occurred or even if alcohol was in any way involved. They did not

even know the vehicle they suspected was the actual vehicle in the accident. Since a traffic accident alone is not a crime, the officers had no suspicion of criminal activity. Thus her alleged traffic accident alone was insufficient to establish probable cause that she drove while intoxicated. *Musgjerd*, 384 N.W. 2d at 573-74. Therefore, the officers did not possess probable cause when they entered Ms. H[redacted]'s apartment and their entry violated the Fourth Amendment of the United States Constitution and Article I of the Minnesota Constitution. *Lohnes,* 344 N.W.2d at 610.

Furthermore, even if the police officers had probable cause to enter Ms. H[redacted]'s apartment, even though it is clear they did not, they did so without sufficient exigent circumstances justifying a warrantless entry. A valid arrest warrant implicitly authorizes police to enter a suspect's residence when there is reason to believe that the suspect is within. *Payton v. New York*, 445 U.S. 573, 603, 100 S. Ct. 1371, 1388 (1980). But absent exigent circumstances, police may not legally search for the subject of an arrest warrant in a home or a third party without first obtaining a search warrant for the home. *Steagald v. United States,* 451 U.S. 204, 218, 101 S. Ct. 1642, 1650-51 (1981).

Minnesota courts recognize two types of exigent-circumstances analysis: (1) single-factor analysis and, in the absence of a single factor, (2) a totality of the circumstances analysis. *State v. Gray*, 456 N.W.2d 251, 256 (Minn. 1990). Single-factor exigent circumstances include hot pursuit of a felon, imminent loss of evidence, protection of human life, likely escape of a suspect, and fire. *Id.* One of the single factors must be clearly implicated to constitute exigent circumstances. *Id*. If the facts of the case do not clearly implicate any single factor, the reviewing court must apply a totality-of-the-circumstances test to determine whether exigent circumstances existed *Id.*

In weighing the totality of the circumstances, Minnesota courts consider the factors set forth in *Dorman v. United States*, 435 F.2d 385 (D.C. Cir. 1970), which include (a) whether a grave or violent offense is involved; (b) whether the suspect is reasonably believed to be armed; (c) whether there is strong probable cause connecting the suspect to the offense; (d) whether police have strong reason to believe the suspect is on the premises; (e) whether it is likely the suspect will escape if not swiftly apprehended; and (f) whether peaceable entry was made. *State v. Hummel*, 483 N.W.2d 68, 72-73 (Minn. 1992) (quotation omitted). In addition to the *Dorman* factors, Minnesota courts also consider the amount of time available for officers to obtain a search warrant and whether the warrantless entry was part of a planned arrest or occurred in the field as a result of unfolding developments. *In re Welfare of D.A.G.*, 484 N.W.2d 787, 791 (Minn. 1992). The purpose of the analysis is to determine whether a warrantless intrusion was based on a compelling need for immediate police action. *State v. Lohnes*, 344 N.W.2d 605, 611 (Minn. 1984).

Here, the police reports fail to establish the existence of single-factor exigent circumstances, i.e., hot pursuit of a felon, imminent loss of evidence, protection of human life, likely escape of a suspect, or fire. Applying the *Dorman* factors to the undisputed facts of this case, it is clear that there was no compelling need for immediate police action.

First, Officers X[redacted] and J[redacted] had no basis to suspect that Ms. H[redacted] was driving while under the influence of alcohol. They merely received a report of a vehicle that may have been involved in an accident which no one had actually witnessed. There was nothing to indicate that Ms. H[redacted] was involved in a "grave or violent offense." Although the officers located a vehicle with extensive damage on the driver side, they had nothing to indicate that Ms. H[redacted] had recently driven the vehicle, or whether she had been drinking prior to that. The officers were

investigating a minor automobile accident that included no reported injuries and only minor damage to the vehicles involved. They certainly did not have "strong probable cause" as required by *Dorman.* Although Officers X[redacted] and J[redacted] made peaceable entry into Ms. H[redacted]'s apartment, the officers were not in hot pursuit or concerned about destruction of evidence. There was no evidence of alcohol consumption. Nor were there any allegations that Ms. H[redacted] was armed or that she would escape apprehension if the officers did not enter the apartment immediately. They had not even applied for a telephonic warrant. On this record, there was no reason to believe that immediate entry without a warrant was necessary.

Further, the "emergency exception" to the warrant requirement does not apply. Under this exception, police are allowed to make a warrantless entry and search of a home when they reasonably believe that a person within is in need of aid. *State v. Othoudt*, 482 N.W.2d 218, 223 (Minn.1992). The state has the burden of proving an officer's actions were based on an *objectively* reasonable belief that an emergency existed. *Id*. (emphasis added). Otherwise stated, courts look to whether the officers acted on reasonable and legitimate concerns for a person's safety. *State v. Halla-Poe*, 468 N.W.2d 570, 572 (Minn.App.1991). Minnesota courts have "adopted a two-part test for use of the emergency exception." *State v. Lopez*, 698 N.W.2d 18, 22 (Minn. App. 2005).. (*citing State v. Auman*, 386 N.W.2d 818, 821 (Minn.App.1986), *review denied* (Minn. July 16, 1986)). Under this test, the officer must be "motivated by the need to render aid or assistance," and the circumstances must be such that "a reasonable person [would] believe that an emergency existed." *Id*. (citing *Auman*, 386 N.W.2d at 821).

Here, however, no such concern about Ms. H[redacted]'s safety existed. The police were not even certain that she'd been involved in a recent accident. They simply guessed that (1) Ms. H[redacted]'s vehicle was the vehicle reported by dispatch and (2) that Ms. H[redacted] was driving.

There was nothing about the damage on her vehicle that would have raised issues of immediate concern for her health. They did not observe blood or vomit in the vehicle, there were no witnesses to the actual accident, no broken glass or cracked windshield, no torn clothing nor were any injuries whatsoever reported. Concern for Ms. H's health and well-begin did not provide a legitimate reason to enter her apartment without a warrant because no reasonable person would have believed that an emergency existed.

3. ANY STATEMENTS MADE BY MS. H TO THE POLICE OFFICERS REGARDING HER DRIVING ACTIVITIES AND ALLEGED ACCIDENT, AS WELL THE RESULTS OF THE PRELIMINARY BREATH TEST AND INTOXYLIZER TEST MUST BE SUPPRESSED AS THE FRUITS OF UNLAWFUL POLICE CONDUCT.

If a warrantless entry is made without probable cause and exigent circumstances, its fruit must be suppressed. *See Wong Sun v. United States*, 371 U.S. 471, 484 (1963); *State v. Paul* 548 N.W.2d 260, 264 (Minn.1996). Minnesota courts look at several factors to determine whether evidence is "fruit of the poisonous tree" under *Wong Sun*. These factors include the purpose and flagrancy of the misconduct, the presence of intervening circumstances, whether it is likely that the evidence would have been obtained in the absence of the illegality and the temporal proximity of the illegality and the evidence alleged to be the fruit of the illegality. *State v. Sickels*, 275 N.W.2d 809, 814 (Minn.1979). In this case, the police misconduct was particularly flagrant and offensive. Consequently, the scope of exclusion becomes broader because the primary purpose of the exclusionary rule is the deterrence of police misconduct. See 4 LaFave, Search and Seizure, § 11.4(a) at 374 (2d ed.1987).

When applying these factors to the case at hand, first, it is impossible that the police officers would have obtained any of this evidence against Ms. H had they not entered the apartment. Ms. H was unable to hear Officers X and J knocking on the apartment. If the officers had left and returned later on to inquire about the alleged car accident,

it is likely that Ms. H[redacted]'s blood alcohol content would have dissipated greatly. It is also unlikely that Officers X[redacted] and J[redacted] would have been able to obtain a warrant to enter her apartment on the basis of the observed damage on the front of the vehicle, and the police dispatch. Probable cause for the search warrant simply did not exist. If the officers had not unlawfully entered Ms. H[redacted]'s apartment, they would not have obtained any evidence that she had been driving while under the influence of alcohol.

Second, because the police officers obtained the unlawful evidence within minutes of entering Ms. H[redacted]'s apartment there were no "intervening circumstances sufficient to purge the illegality of its primary taint." *State v. Ingram*, 570 N.W.2d 173, 178 (Minn.App.1997), review denied (Minn. Dec. 22, 1997). Third, and related to the intervening circumstances factor, "[a] close temporal proximity favors exclusion." *Olson*, 634 N.W.2d at 229 (holding that close temporal proximity existed where officer "discovered the methamphetamine within a short time after the initial arrest"). Here, all evidence against Ms. H[redacted] was obtained within a very short time after police officers entered her apartment and bathroom and placed her under de facto arrest.

Finally, it is clear that the police conduct in this case was not only unconstitutional but particularly egregious under the circumstances. Officers J[redacted] and X[redacted] used their observation of a damaged vehicle as justification to enter a single woman's apartment, at night, without her consent or knowledge, and without objective independent probable cause and exigent circumstances. They pounded on her bathroom door, entered the bathroom and confronted her while she was wearing nothing but a towel. Ms. H[redacted] was understandably terrified when she heard someone banging on her bathroom door while she was taking a shower. The fact that the intruders were police officers did little to assuage her fear when they instantly began questioning

her, ordered her out of the bathroom, told her to get dressed, and then escorted her out of her apartment in her pajamas to their squad cars. The officers placed Ms. H in an unsettling and extremely embarrassing position, and all without an iota of evidence that she had committed any crime. She was in the most private part of the place warranting the greatest Fourth Amendment protection: the bathroom of her home. The exclusionary rule is, in part, designed to discourage police officers from engaging in unlawful conduct. *Mapp v. Ohio*, 367 U.S. 643, 657 (1961). Although Officers J and X may have been concerned about Ms. H's safety, this concern was merely a means to an end and this type of careless police conduct cannot be condoned or tolerated in any way.

Thus Ms. H's admission that she'd been drinking and had consumed alcohol at her friend's house, her acknowledgement that she'd driven afterwards and been in an accident, her problems balancing, and the results of the PBT and Intoxylizer tests, are the fruits of the unlawful search. Because, absent this evidence, Officer J lacked probable cause to believe that Ms. H had been driving while under the influence of alcohol, the revocation of her driver's license must be rescinded.

CONCLUSION

Officers X and J failed to establish a sufficient factual basis such that they had probable cause to believe that Ms. H was driving under the influence when they placed her under de facto arrest. Although they received reports that a car "may have been in an accident," and though they later discovered a vehicle parked outside of Ms. H's apartment building that appeared to have been in an accident, these circumstances simply did not warrant the officers entering the apartment without Ms. H's knowledge or consent. Although Ms. H later acknowledged that she had consumed alcohol, this admission did

not warrant her subsequent de facto arrest, because Officers X[redacted] and J[redacted] failed to establish that she had consumed alcohol *before* driving her vehicle or that she'd been involved in an accident. Thus, any evidence obtained as a result of this seizure, including Ms. H[redacted]'s admission that she'd driven the vehicle after drinking, her admission that she'd been in an accident, and the results of her preliminary breath test and Intoxylizer test, must be suppressed. Without this evidence, Officer J[redacted] lacked probable cause to suspect that Ms. H[redacted] was driving under the influence, and the revocation of Ms. H[redacted]'s license should therefore be rescinded.

Respectfully submitted,

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Dated: _____

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