STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

S[redacted] M.

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE AND DISMISS CHARGES**

Court File No.

TO: THE HONORABLE JUDGE OF THE RAMSEY COUNTY DISTRICT COURT; THE ASSISTANT CITY ATTORNEY.

## INTRODUCTION

On June 3, 2009, the charged the Defendant with: *1) Unlawful Possession of a Pistol* in violation of Minn. Stat. § 624.714, subd. 1(a); and *2) Obstructing the Legal Process* in violation of Minn. Stat. § 609.50, subd. 1. The Defendant submitted a motion to suppress all evidence as the fruit of an illegal search. This memorandum follows in support of that motion.

## FACTS

On the night of June 1, 2009, Officer of the Saint Paul police department observed the Defendant driving at the intersection of 7th Street and Wall Street. (Off. Report, p. 4 June 2, 2009). The Defendant failed to stop for a red light, and he pulled into the Super America station a few feet away, where he parked his car. *Id.* Officer pulled in behind him and conducted a traffic stop. The Defendant began to open his car door, but Officer commanded him to stay where he was. *Id.*

Office approached the Defendant and asked for identification. "Without hesitation," the Defendant asked her not to tow the car because his sister needed it. *Id.*

Officer Phillips repeated her request to see a driver's license. The Defendant admitted that he did not have a valid license, and Office told him to sit in her squad car while she checked his status. *Id.*

After confirming that the Defendant did not have a valid license, Office returned to the Defendant's car to search the passenger compartment. *Id.* She searched behind the driver's seat and found a small backpack. *Id.* When she grabbed it, she felt what seemed to be a handgun. She opened the bag and found a .45 caliber pistol. *Id.*

Office returned to the squad car and subdued the Defendant. She placed him under arrest for illegal transportation of a firearm. Rather than towing the car, Officer released it to the Defendant's sister. *Id.* at 5.

While in custody, the Defendant spoke with Sergean (Sgt. Report, p. 1 June 2, 2009). Sergeant read the Defendant his *Miranda* rights, and the Defendant made several incriminating statements throughout the course of the interview. *Id.*

**ARGUMENT**

The Constitution protects against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, warrantless searches are per se unreasonable. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). The arrest of a driver, by itself, is not enough to justify an automobile search. *Arizona v. Gant*, 129 S.Ct. 1710, 1723 (2009). The State argues that Office search of the Defendant's backpack was justified through the inventory exception to the warrant requirement. *Colorado v. Bertine*, 479 U.S. 367, 371 (1987) ("[I]nventory searches are now a well-defined exception to the warrant requirement."). When the State claims that a search is justified

by an exception to the warrant requirement, the burden is on the State to demonstrate that exception. *McDonald v. United States*, 335 U.S. 451, 456 (1948).

This search cannot be justified as an inventory search. The most apposite authorities are *State v. Gauster*, 752 N.W.2d 496 (Minn. 2008) and *State v. Goodrich*, 256 N.W.2d 506 (Minn. 1977). *Gauster* and *Goodrich* demonstrate that this search was unreasonable because any attempt to impound the vehicle was improper.

## I. OFFICER PHILLIPS'S ACTIONS ARE NOT JUSTIFIED AS AN INVESTIGATORY SEARCH.

The search of Defendant's vehicle cannot be justified as an investigatory search. Police are not allowed to search vehicles incident to arrest. They may only search a vehicle if they have a warrant or a well-delineated exception to the warrant requirement.

Vehicle searches incident to arrest used to be common under *New York v. Belton*, 453 U.S. 454 (1981). But on April, 2009, just five weeks before the search in this case, the Supreme Court clarified its Fourth Amendment jurisprudence in *Arizona v. Gant*. In *Gant*, a man was arrested for driving with a suspended license. *Gant*, 129 S.Ct. at 1715. He was placed in the back of a squad car. Officers searched his car and found cocaine in the back seat. *Id.* The Court held that this type of vehicle search incident to arrest was unconstitutional—the result of an overbroad reading of *Belton*. *Id.* at 1714. A broad reading of Belton would authorize a vehicle search incident to every arrest. *Id.* at 1719. Since Gant did not have access to his vehicle or the contents therein at the time of the search nor was there the possibility of finding offense-related material, the Supreme Court held that the search was unconstitutional. *Id.* The Court expressed concern that this practice has been taught at police academies for decades and that "[c]ountless individuals guilty of nothing more serious than a traffic violation have had their constitutional right

to the security of their private effects violated as a result." *Id.* at 1722–23. "Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Id.* at 1723.

The Federal Eighth Circuit has applied *Gant* in circumstances very much like the present case. *United States v. Hrasky*, 567 F.3d 367 (8th Cir. 2009). In *Hrasky*, the defendant was arrested during a traffic stop and placed in handcuffs in the rear of the patrol vehicle. United States v. Hrasky, 453 F.3d 1099 (8th Cir. 2006). After the officer determined Hrasky would be subject to a "full custodial arreat" the officer searched the vehicle and found a handgun in his car. *Id.* at 368. "In light of *Gant*," the court found that "the search of Hrasky's vehicle violated the Fourth Amendment, because Hrasky was handcuffed in a law enforcement vehicle at the time of the search." *Id.*

This case is exactly like *Gant* and *Hrasky.* The Defendant was placed in the rear of Officer Phillips's squad car after his arrest for driving without a valid license, as was Hrasky. As in both *Gant* and *Hrasky*, after Defendant was already secure in the squad car, the police officer conducted a search.The Court in *Gant* allowed two exceptions to the exclusionary rule forbidding searches incident to arrest.These are (1) searches pursuant to officer safety and (2) searches to collect evidence of the offense of arrest. Due to the Defendant's detention, he posed no safety risk to Office and the offense charged did not facilitate the possibility of finding offense related material inside the vehicle. Therefore, just as the Court determined in *Gant* and *Hrasky*, this search cannot be justified as a search incident to arrest.

## II. OFFICER P[redacted]'S SEARCH CANNOT BE JUSTIFIED AS AN INVENTORY SEARCH.

The impoundment of a vehicle is what "gives rise to the need for and justification of the inventory [search]." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quoting *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977)). So the threshold inquiry in determining if a search was reasonable is whether or not the impoundment of the vehicle was proper. *Id.* "For impoundment to be proper, the state must have an interest in impoundment that outweighs the individual's Fourth Amendment right to be free of unreasonable searches and seizures." *Id.*

The interest in public safety is sufficient to remove vehicles from the road that impede traffic or threaten safety. *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). Additionally, police have an interest in safekeeping a driver's property. *Goodrich*, 256 N.W.2d at 511. However, neither the public safety interest nor the safekeeping of the Defendant's property justify the search in this case.

### A. THE INTEREST IN SAFE ROADS DOES NOT JUSTIFY THIS ATTEMPTED IMPOUNDMENT.

If the Defendant's vehicle had constituted a safety hazard (*e.g.*, by blocking the road), Officer P[redacted] would have been justified in impounding it. Minn. Stat. § 168B.04, subd. 2(b)(1)(ii); *see also State v. Reese*, 2007 WL 1128815 (Minn. App. 2007).

In *Reese*, the defendant was stopped and issues a citation for driving without insurance. *State v. Reese*, 2007 WL 1128815, *1 (Minn. App. 2007). Reese requested to have a friend come and pick up the car, but the officer refused the request because it was the officer's understanding that all uninsured vehicles must be towed. *Id.* The officer conducted an inventory search of the vehicle at which time he found two marijuana pipes and a small amount of marijuana. *Id.* at *2. The defendant argued that there was no

legitimate reason to tow the car, thus the inventory search was unreasonable.*Id.* The court agreed. *Id.* Officer Diamond alternatively claimed the car was a public safety hazard that required towing, however the court found that the car was parked in a gas station parking lot in such a way that cars could easily pass. *Id.* at *6. A friend was also available to pick up the vehicle. *Id.* The court held that "[t]he arrangement would have been reasonable and supports a determination that the impound was unlawful." *Id.*

In this case, the Defendant's car was not a public safety hazard. Just as in *Reese*, the defendant stopped his car in a gas station parking lot, where it did not impede any other traffic or pose a danger to the public. A friend was available to pick up the vehicle from the parking lot, obviating the need for a tow and inventory search. The search was therefore unjustified based on a public safety hazard theory.

**THE INTEREST IN SAFEKEEPING THE DEFENDANT'S PROPERTY DOES NOT JUSTIFY ANY ATTEMPTED IMPOUNDMENT.**

The interest in protecting the Defendant's property from theft or vandalism does not justify this attempted impoundment. Generally, police may justify an impoundment when it is "essential for them to take custody of and responsibility for a vehicle due to the incapacity or absence of the owner, driver, or any responsible passenger." *City of Saint Paul v. Myles*, 218 N.W.2d 697, 701 (Minn. 1974); *see also* Saint Paul Police Dep't, Procedure Manual sec. 445.151 (attached) (listing the protection of the driver's property as a purpose for a search). But when a driver assumes responsibility for his property, there is no need for the police to take on the responsibility to protect it. *Goodrich*, 256 N.W.2d at 511. In this case, the Defendant assumed responsibility for his property, and Officer Phillips could not use it as justification for an impoundment.

In *Goodrich*, a driver pulled into a gas station where he was arrested. *Id.* at 508. The driver refused to allow the officer to search his vehicle, and called his brother and mother to come retrieve the vehicle. *Id.* Shortly thereafter, the driver's family arrived to take custody of the car. *Id.* The officer refused to allow the driver's brother to take the vehicle, and instead impounded the car. *Id.* The officer was unable to inventory the vehicle immediately but the following morning returned to the vehicle and subsequently discovered a small amount of LSD. *Id.* The driver moved to suppress the fruits of the inventory. *Id.* at 509. The Court held that the impoundment could not be justified by the need to protect the defendant's property. *Id.* at 511 ("The gratuitous assumption of custody by the police on the facts of this case gave rise to an invasion of defendant's privacy protected by the Fourth Amendment.").

This case is similar to *Goodrich*. The Defendant told Officer P[redacted] that he did not want the car towed and that it belonged to his sister. As in *Goodrich*, the car was off the public way and in a gas station parking lot. There were no complaints about the Defendant's car blocking traffic, impeding walkways, or hindering business activities. The Defendant's sister eventually arrived, took possession of the car, and drove it away. The car was never towed. This search was not justified by any need to protect the Defendant's property.

### B. THE MINOR NATURE OF THE OFFENSE WEIGHS AGAINST THE NEED FOR IMPOUNDMENT.

A minor offense does not suggest the need to impound a vehicle. At the time of the search, the Defendant was only suspected of driving after suspension and failing to stop at a stoplight, both misdemeanor offenses. He had candidly admitted to these

offenses and cooperated with the officer in verifying his identity. Such minor offenses do not warrant impounding the vehicle.

At the time of the search, Office had not placed the Defendant under arrest, nor should she have. *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004) ("[T]he lack of a driver's license, by itself, is not a reasonable basis for confining a driver in a squad car's locked back seat when the driver is stopped for a minor traffic offense."). The fact that the defendant was not under arrest suggests that he could have found a way to dispose of the car—by calling for a private tow truck or by calling his sister (as he did).

Alternatively, had Office placed the Defendant under arrest and detained him in the backseat of the squad car, his arrest would not provide a sufficient basis for a unilateral deciding to impound the vehicle. "Further, no Minnesota statute authorizes the police to impound a vehicle merely because the driver's license is suspended." *Gauster*, 752 N.W.2d at 504 n.3. In *Gauster*, the officer cited the driver for driving on a suspended license and for failure to provide proof of insurance, both misdemeanors. *Id.* at 504. The court considered whether or not the severity of these crimes justified impoundment, and it noted that when an offense does not require a custodial arrest, it should not require vehicle impoundment. *Id.*; *see also* Minn. R. Crim. P. 6.01(a) ("Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued."). The court concluded, "Given the statute and the criminal rules, impoundment would have had to be authorized on some other ground than the nature of the violations or the arrest of the driver."

Like the driver in *Gauster*, the Defendant was cited—but not arrested—for two misdemeanor traffic-related offenses. These crimes do not call for custodial arrest, and they weigh against the need for impoundment.

### C. MINNESOTA STATUTE § 169.041 DOES NOT ALLOW A TOW.

#### *i. Minnesota Statutes Would Not Have Allowed a Tow.*

If Officer P[redacted] had towed the car, she would have been in violation of Minnesota Statutes. "In enforcing state and local parking and traffic laws, a towing authority may not tow . . . until four hours after issuance of the traffic ticket or citation." Minn. Stat. § 169.041, subd. 3. The law gives an exhaustive list of exceptions to the four-hour rule. *Id.*, subd. 4.[1] That list includes situations when the car threatens public safety

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[1] Subd. 4. A towing authority may tow a motor vehicle without regard to the four hour waiting period if: (1) the vehicle is parked in violation of snow emergency regultions;
(2) the vehicle is parked in a rush-hour restricted parking area;
(3) the vehicle is blocking a driveway, alley, or fire hydrant;
(4) the vehicle is parked in a bus lane, or at a bus stop, during hours when parking is prohibited;
(5) the vehicle is parked within 30 feet of a stop sign and visually blocking the stop sign;
(6) the vehicle is parked in a disability transfer zone or disability parking space without a disability parking certificate or disability license plates;
(7) the vehicle is parked in an area that has been posted for temporary restricted parking (i) at least 12 hours in advance in a home rule charter or statutory city having a population under 50,000, or (ii) at least 24 hours in advance in another political subdivision;
(8) the vehicle is parked within the right-of-way of a controlled-access highway or within the traveled portion of a public street when travel is allowed there;
(9) the vehicle is unlawfully parked in a zone that is restricted by posted signs to use by fire, police, public safety, or emergency vehicles;
(10) the vehicle is unlawfully parked on property at the Minneapolis-St. Paul International Airport owned by the Metropolitan Airports Commission;
(11) a law enforcement official has probable cause to believe that the vehicle is stolen, or that the vehicle constitutes or contains evidence of a crime and impoundment is reasonably necessary to obtain or preserve the evidence;
(12) the driver, operator, or person in physical control of the vehicle is taken into custody and the vehicle is impounded for safekeeping;

or when the officer needs to safeguard the driver's property, but those situations do not apply here. *See supra* Parts II.A, II.B. This scenario does not fit into any of the exceptions to the four-hour rule. Minn. Stat. § 169.041, subd. 4.

But the law does provide a solution for this situation. The statute says that a private party may call for a tow when a car is unlawfully parked on his property. Minn. Stat. § 169.041, subd. 6. The Defendant's car was parked on private land, specifically a gas station lot. If the Defendant's car had become a nuisance to the landowner, it would have been the right of that owner to call for a tow. The fact that the landowner could have requested a tow suggests that the police did not need to unilaterally impound the car. Here, there is no evidence that the owner was botherec by the vehicle's presence.

*ii.* *City of Saint Paul Impoundment Procedures Would Not Have Allowed a Tow.*

Officei acted outside of police procedures when she began the impoundment process. Under "Authority to Remove" the police manual says:

> Any vehicle, wherever found, in violation of the ordinances of the City of Saint Paul or the laws of the State of Minnesota, is hereby declared to be a nuisance and the same may be summarily abated by or under the direction or at the request of a police officer by removing and impounding such vehicle . . .

Saint Paul Police Dep't, Procedure Manual sec. 445.14.

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(13) a law enforcement official has probable cause to believe that the owner, operator, or person in physical control of the vehicle has failed to respond to five or more citations for parking or traffic offenses;
(14) the vehicle is unlawfully parked in a zone that is restricted by posted signs to use by taxicabs;
(15) the vehicle is unlawfully parked and prevents egress by a lawfully parked vehicle;
(16) the vehicle is parked, on a school day during prohibited hours, in a school zone on a public street where official signs prohibit parking; or
(17) the vehicle is a junk, abandoned, or unauthorized vehicle, as defined in section 168B.011, and subject to immediate removal under chapter 168B.

This procedure does not apply to the Defendant's situation. His car was not "in violation of the ordinances of the City of Saint Paul or the laws of the State of Minnesota." *Id.* It was safely parked in the lot of an open-for-business gas station. Officer states that the Defendant violated a traffic law a few minutes before, but the vehicle was not violating any law *at the time* of the attempted impoundment.

The Manual's use of the word "abate" reinforces the notion that the violation must be ongoing at the time of the impoundment. "Abate" means "[t]o put an end to, do away with." Oxford English Dictionary (2009). It is impossible to "put an end to" something which is already ended.

Saint Paul police towing procedures only authorized Officer to abate an ongoing violation of the law. Because the Defendant's car was no longer in violation of any law, Officer Phillips exceeded her authority by attempting to impound it.

## III. THIS CASE RAISES THE CONCERN OF THE "PRETEXT PROBLEM."

This case raises what the Minnesota Supreme Court has labeled "the pretext problem." *State v. George*, 557 N.W.2d 575, 579 (Minn. 1997). Minnesota courts have "serious concerns" about the need to prevent pretextual searches. *Id.*; *see State v. Reese*, 2007 WL 1128815 (Minn. App. 2007) (finding an officer's search pretextual and unconstitutional where the offense was a misdemeanor (inunsured operation of a vehicle) and where a tow was unwarranted because a friend was available to pick up the vehicle). This case has several "red flags" raising those concerns: 1) The Defendant was only stopped for a minor traffic violation; 2) His offense—driving after suspension—was a nonviolent misdemeanor not typically leading to arrest. Minn. Stat. § 171.24; 3) He immediately confessed to the violation and cooperated with law enforcement; 4) He was

not under arrest at the time of the search; 5) He specifically told the officer he did not want the car towed; and 6) *The Officer never actually impounded the car.* The Defendant's sister drove it away. These concerns should make the Court wary of a claim that this search was legal.

## IV. THE COURT SHOULD SUPPRESS BOTH THE WEAPON ITSELF AND THE DEFENDANT'S SUBSEQUENT CONFESSION.

The Court should not only suppress the firearm, but also the Defendant's in-custody incriminating statements. "The exclusionary rule prohibits introduction into evidence of tangible materials seized during an unlawful search and testimony concerning knowledge acquired during an unlawful search." *Murray v. United States*, 487 U.S. 533, 536 (1988). But it also prohibits the introduction of confessions resulting from illegal searches. *Brown v. Illinois*, 422 U.S. 590 (1975).

The Supreme Court articulated a test for determining "the fruit of the poisonous tree" in *Wong Sun v. United States*, 371 U.S. 471 (1963). The "apt question" is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Id.* at 488.

The Court applied this test to the context of a post-search interrogation in *Brown*. There, two Chicago police officers illegally seized a man in his house. *Brown*, 422 U.S. at 593. They took him to the station and read him is *Miranda* rights. *Id.* at 594. He made an incriminating statement. *Id.* They took him out of the station for a few hours to search for another suspect. *Id.* In the middle of the night, they returned to the station and read his *Miranda* rights again. *Id.* He made yet another incriminating statement. *Id.* At trial, Brown's attorney objected that the multiple *Miranda* readings were not sufficient to

"purge the taint" of the illegal arrest. The Supreme Court agreed. "*Miranda* warnings, and the exclusion of a confession made without them, do not alone sufficiently deter Fourth Amendment violations." *Id.* at 601.

The Defendant's case calls for suppression of his incriminating statements. His statements were even more closely related to the Fourth Amendment violation than the statements in *Brown*. Brown was illegally arrested and questioned, but he was not confronted with physical evidence. In contrast, the Defendant was directly confronted with the illegally obtained handgun. This made it even more difficult for him to remain silent and deny the officers' allegations. The Fourth Amendment violation directly caused the Defendant's statements. Those statements still bear the "primary taint" of the illegal search, and the Court should suppress them.

## CONCLUSION

Under *Gant*, this search was illegal. It cannot be justified as an investigatory search, and the State has failed to demonstrate that it falls under the inventory exception to the warrant requirement. The Defendant requests that the Court suppress the handgun and all of the Defendant's statements concerning it as the fruits of an illegal search.

Respectfully submitted,

**CAPLAN LAW FIRM, P.A.**

Dated: _____

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