COPY

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF WATONWAN — FIFTH JUDICIAL DISTRICT

State of Minnesota
(County of Watonwan), Plaintiff,

v. Court File: **CR-07-207**

S[redacted]M[redacted] D[redacted], Defendant.

RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCOVERY PURSUANT TO RULE 9.01, SUBD. 1(4)

RESPONSE TO: The Honorable Judge of Watonwan District Court; Attorney for Defendant, Ryan P. Garry, Kaplan Law Firm, P.A., 525 Lumber Exchange Bldg, 10 S Fifth St, Minneapolis MN 55402

FACTS

On December 31, 2006, Defendant was arrested and taken to the Madelia Police Department where he performed various field sobriety tests. The Defendant was then read the Motor Vehicle Implied Consent Advisory and during the process, contacted an attorney. Thereafter, Defendant agreed to submit to a blood test. He also had a right to have a second sample taken at his expense, which he obviously declined to do.

The Minnesota Bureau of Criminal Apprehension conducted a laboratory examination of the blood collection, Kit No. 294418 and the analysis revealed an ethyl alcohol concentration of .08 grams per 100 milliliters of blood. The Defendant was later charged with DWI in the 4th Degree.

I am attaching a copy of the report on the examination of physical evidence indicating the alcohol concentration. This document is dated January 8, 2007. The bottom of this Report on the Examination of Physical Evidence contains the following notation: "**Disposition:** This evidence

will be destroyed by the laboratory six months following the date of this report ..."

A copy of this document was served with all other documentation upon Defendant's counsel on March 22, 2007. The warning clearly indicated on that document that the sample would be destroyed six months after the date of the report or on July 8, 2007. Defendant had a copy of this report 3½ months prior to the destruction date.

Defendant made numerous motions to the Court on April 9, 2007, approximately three months prior to the destruction date. This motion did not include a request for discovery or production of the blood sample.

Obviously, the motivation behind that omission when there were motions totaling nine in number, was to wait until the sample was destroyed.

Having the knowledge that the sample was destroyed on July 8, 2007, the Defendant now makes his motion.

The District Court case copied and attached to Defendant's motion is not of precedential value. However, I am providing notice and attaching a copy of an unpublished Court of Appeals case in support of my opposition to the discovery request. I am hereby citing the case o

, Court of Appeals

of Minnesota, 2001 Minn. App. LEX This was a case out o

County where the urine sample was actually destroyed prior to the criminal complaint even being served on the Defendant.

MEMORANDUM

The Defendant must show that the destroyed evidence constitutes intentional destruction and that the exculpatory value of the evidence was apparent and material. That case also cites the factors that the destruction of evidence claim requires consideration of the strength of the State's

case if the evidence were available and further states that the police must make every effort to preserve evidence where it is feasible to do so.

The case at hand is distinguishable from the **Janisch** case in that the blood sample was not destroyed prior to the Complaint being issued. In fact, the Defendant was provided with a copy of the report including the information that the laboratory was destroying the blood sample on or after July 8, 2007. Defendant was aware of this fact from and after March 22, 2007. He sat on this information and waited until after the blood sample was destroyed and then, knowing that it had been destroyed, demanded that the sample be produced through discovery. The Defendant has not met his burden. His delay or laches is the reason no sample is available.

It is my belief that this matter should be argued at the already scheduled pretrial on April 15, 2008.

Based upon the arguments set forth in this response and the unpublished case of State of Minnesota v and the fact that the Defendant will not be prejudiced, it is my request that the Court deny the motion to compel discovery. The State's failure to be able to provide the blood sample is directly attributable to the conduct of the Defendant.

Respectfully submitted,

Special Assistant Watonwan County Attorney

Attachments