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March 10, 2008

VIA FAX AND U.S. MAIL

The Honorable
Judge of the Watonwan County District Court
P.O. BOX 518
St. James, MN 56081

RE: State of Minnesota v. S[redacted] M[redacted] D[redacted]
Court File No.: CR-07-207

Dear Judge [redacted]

I received Mr. request for reconsideration regarding your order granting my discovery motion. Mr. request should be denied for several reasons.

First, my office properly filed and served Defendant's motion to compel discovery on January 15, 2008. The State had ample time to respond and chose not to until receiving your order granting Defendant's discovery motion to independently test his own blood sample.

Second, I am aware of no rule of criminal procedure or state statute that allows for a "motion of reconsideration." Based on our experience and practice, these rare motions to reconsider by the State almost always involve entirely substantive issues, i.e., Fourth Amendment suppression issues whereby the case is dismissed. My motion, rather, involves a procedural issue, i.e., motion for *discovery*.

Finally, the Janisch case as cited by the State provides no precedential value in this matter. Janish involved a second time DWI with a urine test of .18. The court in Janish ruled that "because appellant failed to make an offer of proof to show that evidence from an independent test would have been exculpatory, he has failed to establish a basis for reversal." The court also noted that "any prejudice to appellant arising from destruction of the evidence is overcome by other strong evidence of appellant's guilt, including strong evidence of intoxication preceding and at the time of the arrest."

In this case, there is no strong evidence of guilt. Rather, Mr. D[redacted] is charged with his first DWI with a blood test at *exactly* the legal limit of .08. He was given two field sobriety tests at the police station and passed both tests. The blood sample clearly has possible exculpatory value, which is why Defendant requested to independently test his blood sample.

Being a first time DWI offender with an alleged .08 BAC, the undersigned reasonably expected that this case could resolve as a careless driving, especially given the fact Defendant lost his implied consent hearing (making a careless driving "alcohol related").

Despite Mr. D[redacted]'s case being a first time .08 BAC offense, there is no reasonable offer by the State but to plead straight guilty to the charge of Fourth Degree DWI. Because there is no offer but to plead guilty, Defendant has a right, in preparing for trial, under the Minnesota Rules of Criminal Procedure, to "inspect and reproduce any results or reports of ... scientific tests ... made in connection with" his case. The State's allegation that it is Defendant's fault the State cannot provide the blood sample is misplaced.

The Bureau of Criminal Apprehension's policy of destroying evidence in a criminal case before trial does not trump Minnesota Rule of Criminal Procedure 9.01. Perhaps the State should advise the BCA to adopt policies that do not violate these rules and moreover the United States and Minnesota Constitutions.

I respectfully request that you deny the State's request for reconsideration.

Very truly yours,

CAPLAN LAW FIRM, P.A.

Ryan Garry

cc:

Via Fax and U.S. Mail