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State of Minnesota

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STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF POLK — NINTH JUDICIAL DISTRICT

Court File No. [redacted]

State of Minnesota,

Plaintiff,

vs.

[redacted]

Defendant.

ORDER AND MEMORANDUM

The above-entitled criminal proceeding remains pending before the Court.

The Plaintiff ("State") has been represented herein by its legal counsel, [redacted] Prosecutor for the City of [redacted]

The Defendant has been represented herein by his legal counsel, [redacted] Defense Counsel/Attorney at Law.

The matter came before the Court for a Contested Omnibus Hearing on November 9, 2023. The focus of the Contested Omnibus Hearing was the Motion to Dismiss which had been filed by the Defendant/Defense Counsel/Defense on October 12, 2023. The State appeared through and was represented by Prosecutor [redacted] The Defendant appeared and was represented by Defense Counsel [redacted] The hearing record consisted of: (1) Hearing Exhibit 1 [Audio Call for Service to Dispatch by Witness/Citizen [redacted] Hearing Exhibit 2 [Audio/Video Bodycam of Deputy [redacted] of the Polk County Sheriff's Office], Hearing Exhibit 3 [Audio/Video Bodycam of Deputy [redacted] of the Polk County Sheriff's Office], Hearing Exhibit 4 [Photograph of the Defendant's House] and Hearing Exhibit 4A [Photograph of

[redacted]

Defendant's House Indicating Estimated Location of Two Responding Squad Vehicles]; (2) the testimony of Witness/Citizen [redacted] (3) the testimony of Deputy [redacted] and, (4) the testimony of Deputy [redacted] The record was kept open for the Court Reporter to file a Transcript of Hearing [filed November 17, 2023]. The record was also kept open for the following written submissions: (1) Defendant/Defense Counsel/Defense Initial Submission – due three weeks after Transcript of Hearing was filed [filed December 8, 2023]; (2) State/Prosecutor/Prosecution – Responsive Submission - due two weeks after Defendant/Defense Counsel/Defense [filed December 22, 2023]; and, (3) Defendant/Defense Counsel/Defense – Rebuttal Submission – due one week after State/Prosecutor/Prosecution [filed January 5, 2024][1].

The Court has: reviewed and considered the entire record established in this Court File No. [redacted] reviewed and considered the written submissions made by the Defense and by the Prosecution[2]; and researched, reviewed and considered the relevant law. Given the foregoing record and review, the Court issues and files the following:

ORDER

IT IS ORDERED:

1. The Defendant's motion to suppress evidence and derivative evidence resulting from the impermissible and unconstitutional search and/or seizure is GRANTED.
2. The Defendant's motion to dismiss is GRANTED.
3. The charge set forth in Count 1 of the Complaint against the Defendant is DISMISSED.
4. The Defendant is RELEASED from any terms and conditions in the Order for Unconditional or Conditional Release filed on June 20, 2023.

   The Order for Unconditional or Conditional Release filed on June 20, 2023 is VACATED.
5. No further hearings are presently scheduled in this case.

[1] The Court granted an extra week for the final submission through an email exchange/process.
[2] The Court commends both the State and the Defense for the very high-quality written submissions.

[redacted]

6. The attached Memorandum is incorporated herein by reference.

7. The Court Administrator shall file this Order.

8. The Court Administrator shall distribute a copy of this Order to:

[redacted]

9. The Court Administrator shall administratively close this file.

Dated: February 16, 2024

BY THE COURT:

Remick, Jeffrey
2024.02.16 13:05:46
-06'00'

Jeffrey S. Remick, Judge of District Court

[redacted]

MEMORANDUM

RELEVANT FACTS

The relevant facts of the case are set forth in the Statement of Probable Cause of the Complaint filed with the Court Administrator on June 20, 2023. That recitation of facts is incorporated herein by reference.

The Defendant/Defense Counsel/Defense has also set forth the facts of the case in the "Introduction" and "Background" portions of the Motion to Suppress and Dismiss filed on December 8, 2023 [Pages 1-5]. That recitation of facts is incorporated herein by reference.

The State/Prosecutor/Prosecution has set forth the facts of the case in the "Facts" portion of the Brief in Response to Defendant's Motion to Suppress filed on December 20, 2021 [Pages 1-3]. That recitation of facts is incorporated herein by reference.

The Court summarizes the relevant factual information in the following paragraphs:

- On June 18, 2023, Witness/Citizen [redacted] was working for Polk County Environmental Services, inspecting watercraft entering/leaving the East Shore Landing of Maple Lake near Mentor, Polk County, Minnesota. [redacted] observed the Defendant and another individual entering/leaving the landing to/from a fishing/boating excursion on Maple Lake. From his personal observations and his own background/experience, [redacted] believed the Defendant and the other individual were sufficiently impaired by alcohol so that neither should be driving a motor vehicle. [redacted] reported his observations/opinions –along with highly detailed descriptions of the two relevant motor vehicles, including license plate information—to the Polk County Dispatch Center. The Polk County Dispatch Center, in turn, contacted the relevant law enforcement officers in the geographic area to respond and investigate.
- Deputy [redacted] of the Polk County Sheriff's Office learned that the registered owner of one of the subject motor vehicles –a white 2010 Ford F-150 pickup truck bearing Minnesota license plate number [redacted] —resided at [redacted] Polk County, Minnesota. Deputy [redacted] proceeded to that address.
- Deputy [redacted] arrived at the Defendant's home in [redacted] and parked his squad vehicle along the south side of [redacted] a paved street that runs east-west on the north side of the Defendant's home. Deputy [redacted] observed the relevant Ford pickup truck in

[redacted]

the driveway; there were multiple crushed beer cans in the bed of the truck, as well as an open case of beer.

- Deputy [redacted] did not have a search warrant.
- Deputy [redacted] did not have an arrest warrant.
- Deputy [redacted] did not go to the front door of the residence which is located on the west side of the residence. In this regard, the Court notes that the address of the home is [redacted] is a paved street that runs north-south on the west side of the Defendant's home. [redacted] is also Minnesota State Highway No. [redacted] it is the main north-south paved highway artery that runs through the [redacted] As the Defendant/ Defense Counsel/Defense have noted, law enforcement was essentially dispatched to this [redacted] address. The house number for the home is located on the west side of the home, which faces [redacted] The home does not have a house number on the side of the home facing [redacted]
- Deputy [redacted] observed that the westerly overhead vehicular garage door directly in front of the Ford pickup truck was open. Deputy [redacted] entered the garage. Deputy [redacted] further observed that there were two service entry doors; one door was along the south wall of the double-stall garage and one door was along the west wall of the double-stall garage. Each door had a screen door and an exterior door. Each door also appeared to have a doorbell. Deputy [redacted] rang the doorbell for the door on the south side of the garage. As Deputy [redacted] waited in the garage for a response to his doorbell ring, the Defendant promptly appeared and answered the other service entry door on the west side of garage.
- Deputy [redacted] and the Defendant thereafter engaged in a very polite and civil conversation and exchange.
- Deputy [redacted] later arrived. Deputy [redacted] did not go to the front door of the residence which is located on the west side of the residence. Rather, Deputy [redacted] engaged with Deputy [redacted] and the Defendant in the garage. Again, the conversations between both deputies and the Defendant were very polite and civil.
- Given all information available and given the personal observations of both deputies while interacting with the Defendant, Deputy [redacted] eventually advised the Defendant that the Defendant was under arrest. After allowing the Defendant to attend to his fish, dog and other

necessary issues, Deputy [redacted] transported the Defendant to the Northwest Regional Corrections Center (NWRCC) in Crookston.[3]

- Once at the NWRCC, the State has alleged in the Complaint that the Defendant refused to engage in a breath test after being provided with the relevant Implied Consent Advisories. This criminal proceeding followed.

ISSUE PRESENTED

Did the actions of Deputy [redacted] in entering the garage of the Defendant's home without an arrest warrant and/or without a search warrant violate the Defendant's rights under the Fourth Amendment of the Constitution of the United States of America and/or under Article I, Section 10 of the Constitution of the State of Minnesota?

RELEVANT LAW

Relevant Federal Constitutional Law

The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures.[4] The Fourth Amendment expressly states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Relevant State Constitutional Law

Article I, Section 10 of the Constitution of the State of Minnesota prohibits unreasonable searches and seizures. Article 1, Section 10 expressly states: "Unreasonable searches and seizures prohibited. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized."

General Relevant Case Law

The Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution prevent law enforcement officers from entering constitutionally protected areas without a warrant, subject to limited exceptions. *In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003). These constitutional protections extend to all places where an

[3] The NWRCC serves as the jail for Polk County.

[4] The Fourth Amendment is a part of the Bill of Rights and is made applicable to the states through the Due Process Clause of the Fourteenth Amendment. *See*, *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

[redacted]

individual has a reasonable expectation of privacy, including the home and its curtilage. State v. Carter, 569 N.W.2d 169, 176–77 (Minn. 1997), *rev'd on other grounds sub nom.* Minnesota v. Carter, 525 U.S. 83, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998).

It has been long recognized that a garage adjoining a home enjoys the same constitutional protections against warrantless entry as the home. *See:* Lange v. California, 549 U.S. ___, 141 S.Ct. 2011, 210 L.Ed.2d 486 (2021); Taylor v. United States, 286 U.S. 1, 5, 52 S.Ct. 466, 467, 76 L.Ed. 951 (1932); Haase v. Commissioner of Public Safety, 679 N.W.2d 743, 746 (Minn. Ct. App. 2004); State v. Crea, 305 Minn. 342, 345, 233 N.W.2d 736, 739 (1975). This principle is so well grounded that many courts do not undertake any expectation-of-privacy analysis. *See, e.g.,* United States v. Ojeda, 276 F.3d 486, 489 (9th Cir. 2002); People v. Robles, 23 Cal.4th 789, 97 Cal.Rptr.2d 914, 3 P.3d 311, 314 (2000). The majority rule, almost without exception, provides that the Fourth Amendment applies equally to the garage and the home.[5] *See, e.g.,* State v. Legg, 633 N.W.2d 763, 768 (Iowa 2001); State v. Winkler, 552 N.W.2d 347, 352 (N.D. 1996). Furthermore, the Minnesota Supreme Court has explicitly recognized that the garage is part of the curtilage and is entitled to the same expectation of privacy as the home. State v. Crea, 305 Minn. at 345, 233 N.W.2d at 739.[6]

"Searches and seizures inside a home without a warrant are presumptively unreasonable." Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). Warrantless entries

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[5] Additional cases reaching the same result include: State v. Cochrane, 84 S.D. 527, 173 N.W.2d 495, 497 (1970); State v. Kennedy, 20 Conn.App. 354, 567 A.2d 841, 844 (1989); People v. Alexander, 272 Ill.App.3d 698, 209 Ill.Dec. 65, 650 N.E.2d 1038, 1043 (1995); People v. Dugan, 102 Mich.App. 497, 302 N.W.2d 209, 212 (1980); Brown v. City of Oklahoma City, 721 P.2d 1346, 1349 (Okla.Ct.App.1986), *aff'd in part, rev'd in part on other grounds*, 721 P.2d 1356 (Okla.1986); and Commonwealth v. Ealy, 12 Va.App. 744, 407 S.E.2d 681, 685 (1991).

[6] As recently summarized by U.S. District Judge Holly A. Brady in United States v. Ramer, 2023 WL 5368858 (N.D. Indiana – August 22, 2023):

> The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." But when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's "very core" stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961). Courts therefore regard the area "immediately surrounding and associated with the home"—what case law calls the curtilage—as "part of the home itself for Fourth Amendment purposes." *Oliver v. United States*, 466 U.S. 170, 180 (1984). That principle has ancient and durable roots. Just as the distinction between the home and the open fields is "as old as the common law," *Hester v. United States*, 265 U.S. 57, 59 (1924), so too is the identity of home and what Blackstone called the "curtilage or homestall," for the "house protects and privileges all its branches and appurtenants." 4 W. Blackstone, Commentaries on the Laws of England 223, 225 (1769). This area around the home is "intimately linked to the home, both physically and psychologically," and is where "privacy expectations are most heightened." *California v. Ciraolo*, 476 U.S. 207, 213 (1986). An attached garage falls within these protections. *Lange v. California*, 141 S.Ct. 2011 (2021).

[redacted]

and searches of a home are presumptively unreasonable.[7] The United States Supreme Court has stated that "at the very core of the Fourth Amendment stands the right of a man to retreat into his own home."[8] The constitution "has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant."[9]

A search occurs for Fourth Amendment purposes when the Government obtains information by physically intruding on a constitutionally protected area to obtain information or by invading a person's reasonable expectation of privacy. *United States v. Jones*, 565 U.S. 400, 404-408, 132 S.Ct. 945, 949-952, 181 L.Ed2d 911 (2012).

"A search or seizure conducted without a warrant is considered unreasonable per se. Absent a warrant, the State has the burden to show that a search or seizure falls within one of the specifically established and well delineated exceptions to the warrant requirement." *State v. Sargent*, 968 N.W.2d 32, 37 (Minn. 2021) (internal citations and quotation marks omitted).[10]

Law enforcement officers are prohibited from making a warrantless and nonconsensual entry into a home to make a routine felony arrest.[11]

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[7] *See*: *Illinois v. Rodriguez*, 497 U.S. 177, 110 S. Ct. 2793, 111 L.Ed.2d 148 (1990); *State v. Halla-Poe*, 468 N.W.2d 570 (Minn. Ct. App. 1991); *State v. Thompson*, 578 N.W.2d 734 (Minn. 1998); *Kyllo v. U.S.*, 533 U.S. 27, 121 S. Ct. 2038, 150 L.Ed.2d 94 (2001) (With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered "no."). *See also*: *Kentucky v. King*, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011); *Lange v. California*, 549 U.S. ___, 141 S.Ct. 2011, 210 L.Ed.2d 486 (2021).

[8] *See: Soldal v. Cook County, Ill.*, 506 U.S. 56, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992), *on remand* 986 F.2d 1425 (7th Cir. 1993); *Silverman v. U.S.*, 365 U.S. 505, 511, 81 S.Ct. 679, 682, 5 L.Ed.2d 734 (1961). *See also*: *Oliver v. U.S.*, 466 U.S. 170, 178–79, 104 S.Ct. 1735, 1741–42, 80 L.Ed.2d 214 (1984); *Wyman v. James*, 400 U.S. 309, 316, 91 S. Ct. 381, 385, 27 L.Ed.2d 408 (1971); *Payton v. New York*, 445 U.S. 573, 601, 100 S.Ct. 1371, 1387, 63 L.Ed.2d 639 (1980); *Caniglia v. Strom*, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021); and, *Lange v. California*, 549 U.S. ___, 141 S.Ct. 2011, 210 L.Ed.2d 486 (2021).

[9] *State v. Hanley*, 363 N.W.2d 735 (Minn. 1985); *Krause v. Commissioner of Public Safety*, 358 N.W.2d 481 (Minn. Ct. App. 1984); *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); *State v. Morin*, 736 N.W.2d 691 (Minn. Ct. App. 2007); *Kirk v. Louisiana*, 536 U.S. 635, 122 S.Ct. 2458, 153 L.Ed.2d 599 (2002) (Absent exigent circumstances, officers' warrantless entry into apartment and arrest and search of defendant violated the Fourth Amendment.); and, *Lange v. California*, 549 U.S. ___, 141 S.Ct. 2011, 210 L.Ed.2d 486 (2021).

[10] It is well established that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quotation marks omitted) (*quoting Katz v. United States*, 389 U.S. 347, 357 (1967)). Generally, "[t]he proponent of a motion to suppress has the burden of proving, by a preponderance of evidence, that the evidence in question was obtained in violation of his Fourth Amendment rights." *United States v. Kelley*, 981 F.2d 1464, 1467 (5th Cir. 1993) (*quoting United States v. Smith*, 978 F.2d 171, 176 (5th Cir. 1992)). However, in cases where a warrantless search occurs, the government bears the burden of proving that the search was valid. *United States v. Waldrop*, 404 F.3d 365, 368 (5th Cir. 2005) (*citing United States v. Castro*, 166 F.3d 728, 733 n.6 (5th Cir. 1999)).

[11] *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); *State v. Houston*, 359 N.W.2d 336 (Minn. Ct. App. 1984).

[redacted]

The only basis upon which law enforcement officers may make a warrantless entry of a home to arrest for a misdemeanor would be either consent, or that a person within the home is in need of emergency aid.[12]

Specific Relevant Case Law

The State relies on Tracht v. Commissioner of Public Safety to justify Deputy [redacted] entry into the garage. *See*: Tracht v. Commissioner of Public Safety, 592 N.W.2d 863 (Minn. Ct. App. 1999), *review denied* (Minn. July 28, 1999). In Tracht, the Minnesota Court of Appeals acknowledged that constitutional protections do not extend to areas around the home that are "impliedly open." Id. at 865. Such areas are not cloaked with a reasonable expectation of privacy because they are areas where a visitor may be expected to go. State v. Carter, 569 N.W.2d at 176. Impliedly open areas include ordinary routes of access to the entrance of a residence, such as driveways or sidewalks. Crea, 305 Minn. at 346, 233 N.W.2d at 739. In Tracht, a resident had left the overhead door of his attached garage open. Tracht, 592 N.W.2d at 864. Police entered the garage to access the service door to the resident's home. Id. The Minnesota Court of Appeals held under the undisputed facts that the garage was impliedly open to the police solely "for the purpose of knocking on the service door," not for "looking for evidence in the garage." Id. at 865. The Minnesota Court of Appeals ultimately held in Tracht that the police officers' conduct in entering the defendant's attached garage through an open overhead door and knocking on a service door connecting the attached garage to the house did not violate the Fourth Amendment's prohibition against unreasonable searches and seizures. Id. at 865-866.

The "knock-and-talk"[13] procedure utilized by law enforcement in the 1999 Tracht decision was seemingly limited by the Minnesota Supreme Court in State v. Chute, 908 N.W.2d 578 (Minn. 2018). In relevant part, the Minnesota Supreme Court stated:

> In *United States v. Wells*, the Eighth Circuit Court of Appeals held that officers violated the scope of an implied knock-and-talk license when they "made no attempt to raise Wells at the front door," and instead walked directly "to the back corner of the home from where they had a view of the entire backyard." 648 F.3d at 680. The court explained: "To the extent that the 'knock-and-talk' rule is grounded in the homeowner's implied consent to be contacted at home,

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[12] Negaard v. Commissioner of Public Safety, 500 N.W.2d 148 (Minn. Ct. App. 1993); and, Lange v. California, 549 U.S. ___, 141 S.Ct. 2011, 210 L.Ed.2d 486 (2021).

[13] As stated by the Minnesota Supreme Court in State v. Chute: "Knock-and-talk" is a procedure used by law enforcement officers that involves "knocking on the door and seeking to speak to an occupant for the purpose of gathering evidence." 908 N.W.2d 578, 581 at Footnote 1, *citing* Florida v. Jardines, 569 U.S. 1, 21, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013).

[redacted]

> we have never found such consent where officers made no attempt to reach the homeowner at the front door." *Id.* at 679.
>
> Like the Eighth Circuit, we have never held that a "knock-and-talk" license allows officers to proceed to the backyard of the property *before attempting to contact the resident at the front door*.

State v. Chute, 908 N.W.2d at 587 [Italics and underscoring added for emphasis].

The Polk County District Court interprets the statements made by the Minnesota Supreme Court in the very recent 2018 decision in *State v. Chute* as holding that the "knock-and-talk" procedure requires a law enforcement officer to attempt to contact the resident or occupant of a home first at the front door. *Id.*

ANALYSIS

In the present case, the Court finds and concludes that the actions of Deputy [redacted] in entering the garage of the Defendant's home --without an arrest warrant, without a search warrant and without first attempting to contact a resident or occupant of the home at the front door-- did violate the Defendant's rights under the Fourth Amendment of the Constitution of the United States of America and/or under Article I, Section 10 of the Constitution of the State of Minnesota.

In sum, barring exigent circumstances, the relevant federal and state case law requires under the "knock-and-talk" procedure that a law enforcement officer must first attempt to contact a resident or occupant of a home at the front door. *State v. Chute*, 908 N.W.2d 578, 587 (Minn. 2018), *citing United States v. Wells*, 648 F.3d 671, 678-680 (8th Cir. 2011). Here, Deputy [redacted] entered the attached garage of the Defendant's home without an arrest warrant and/or without a search warrant. Case law demands that Deputy [redacted] should have first attempted to make contact with the Defendant [or any other resident of the home] at the front door of the home located at [redacted] Polk County, Minnesota. Deputy [redacted] made no attempt to raise the Defendant [or any other occupant of the home] at the front door of the home. Accordingly, the entry in this case cannot be justified as a "knock-and-talk." Going directly into the garage –a constitutionally protected area—without a warrant and failing to observe proper procedure was an unreasonable search then leading to an unreasonable seizure of the Defendant.

[redacted]

SUPPRESSION

Evidence that is obtained as a result of an illegal search or seizure must be suppressed. State v. Diede, 795 N.W.2d 836 (Minn. 2011); State v. Hardy, 577 N.W.2d 212 (Minn. 1998) (stating evidence obtained as result of illegal seizure must be suppressed).

It is well established that "evidence discovered by exploiting previous illegal conduct is inadmissible." State v. Olson, 634 N.W.2d, 229 (Minn. Ct. App. 2001) (*citing* Wong Sun vs. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)), *review denied* (Minn. Dec. 11, 2001).

If a law enforcement officer enters a constitutionally protected area without a warrant, that entry is presumed to be unreasonable, and evidence obtained as a result must be suppressed. State v. Othoudt, 482 N.W.2d 218, 222 (Minn. 1992). For that evidence to be otherwise admissible, the State has the burden to establish that the entry was justified by an applicable exception to the warrant requirement. State v. Ture, 632 N.W.2d 621, 627 (Minn. 2001).

When the State fails to show that the evidence is not obtained in violation of the Fourth Amendment, "'[t]he exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion.'" State v. McDonald-Richards, 840 N.W.2d 9, 15 (Minn. 2013) (*quoting* Wong Sun v. United States, 371 U.S. 471, 485 (1963)).

Minnesota Statutes, Section 626.21 provides, in relevant part: "A person aggrieved by an unlawful search and seizure may move the district court... to suppress the use, as evidence, of anything so obtained ... If the motion is granted the property ... shall not be admissible in evidence at any hearing or trial."

As ruled above, the Defendant's rights under the United States Constitution and/or the Minnesota Constitution were violated in relation to impermissible search and the resultant seizure of the Defendant. Evidence which is obtained by an unreasonable search and seizure may not be used as evidence in a state criminal proceeding. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). Under the exclusionary rule, any evidence seized during an unlawful search cannot be used as proof against the victim. Wong Sun v. United States, 371 U.S. 471, 484, 83 S.Ct. 407, 416, 9 L.Ed.2d 441 (1963). The exclusionary rule extends to indirect products of invasions and can be used to bar both physical and verbal evidence. Id. at 484–86, 416, 83 S.Ct. 407. The principal reason for the rule is to deter unlawful law enforcement conduct. The rule has also been justified as protecting the privacy of the individual against unreasonable searches and seizures and

[redacted]

preserving judicial integrity necessary to the administration of justice. *Mapp v. Ohio*, *supra*. *See* Wilkey, "The Exclusionary Rule: Should the Criminal Go Free Because the Constable Blundered?" 62 Jud. 214 (November 1978). The Court can identify no exception to the requirement of a search warrant or an arrest warrant. The Court has found and concluded that Deputy [redacted] entry into the garage was an unreasonable search which resulted in an unreasonable seizure. Thus, the fruits of the deputy's warrantless entry --including the ensuing interactions and interviews with the Defendant; the observed indicia of the Defendant's intoxication; and, the resultant purported refusal to submit to testing once at the NWRCC—all must be suppressed under the exclusionary rule.[14]

The Polk County District Court confirms that the appellate courts of the State of Minnesota have seemingly established a state exclusionary rule under Article I, Section 10 of the Minnesota Constitution which protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" by the government. The Minnesota Supreme Court has affirmed that Minnesota has a state-based exclusionary rule which bars the use of evidence obtained in violation of Article I, Section 10. *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 666 (Minn. 2014) (identifying that a separate exclusionary rule applies for Minnesota Constitution Article I, Section 10 violations from U.S. Constitutional violations); *State v. Askerooth*, 681 N.W.2d 353, 362 (Minn. 2004) (stating evidence discovered as a result of a violation of Article I, Section 10 must be excluded); *In re B.R.K.*, 658 N.W.2d 565, 580 (Minn. 2003) (suppressing evidence based on violation of Fourth Amendment and Article I, Section 10); *State v. Zanter*, 535 N.W.2d 624, 635 (Minn. 1995) (suppressing evidence based on Article I, Section 10 violation of the Minnesota Constitution).

Here, the Court finds and concludes that the relevant line was crossed when Deputy [redacted] impermissibly and intrusively entered the Defendant's garage without a search warrant, without an arrest warrant and without first attempting to make contact with the Defendant [or any other resident of the home] at the front door of the home located at [redacted] in

[14] The Court is deeply troubled that such a serious offense is dismissed in these proceedings. However, the rule of law set forth in the federal and state constitutions must be observed by the Court. The Court, in doing so, recognizes that "...our liberties are based upon the idea that it is better for some of the guilty to go free than for any who are innocent to be convicted." *State v. Butenhoff*, 155 N.W.2d 894, 900 (Minn. 1968). *See also*, 4 William Blackstone, Commentaries *358 ("Better that ten guilty persons escape than that one innocent suffer."); Letter from Benjamin Franklin to Benjamin Vaughan (March 14, 1785), in 9 Benjamin Franklin Works 293 (1970)("...that it is better [one hundred] guilty Persons should escape than that one innocent Person should suffer.").

[redacted] Polk County, Minnesota.[15] All evidence gathered from that point forward should be and is herein suppressed.

DISMISSAL

Without the evidence gathered at the time of and after the violations of the Defendant's constitutional rights, there is no remaining substantive evidence that the Defendant committed the alleged offense; there is no probable cause to pursue the charges in the Complaint.

Given the suppression of the evidence, the State does not have probable cause to pursue the charge against the Defendant.

Accordingly, the criminal Complaint against the Defendant should be dismissed.

CONCLUSION

In closing, the Court finds the dissenting opinion of Justice Brandeis in *Olmstead v. United States*, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944 (1928), to memorably capture the importance of the fundamental right be free from unwarranted governmental intrusions:

> "[T]he right to be left alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment."

Id. at 478, 48 S.Ct. 564 (Brandeis, J., dissenting).

Concerns for this essential element of our personal freedom are reflected in the Fourth Amendment and in Article I, Section 10 of the Minnesota Constitution protecting the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." *See*: United States Constitution, Amendment IV; and, Minnesota Constitution, Article I, Section 10.

Here, the law enforcement officer's impermissible entry into the attached garage without an arrest warrant, without a search warrant, without any exigent circumstances, and without first attempting to contact the Defendant or any other person in the home at the home's front door, lead

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[15] Searches and seizures may sometimes be permitted when probable cause and exigent circumstances exist. *Welsh v. Wisconsin*, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984). The State has the burden of showing the existence of exigent circumstances. *Id.* No exigent circumstances involving any emergency situation where life or safety were at risk was presented under the facts known to the Court. No hot pursuit of a suspect has been cited. No dangers to the public have been cited. No concerns of law enforcement officer safety have been noted. No issues of loss or destruction of evanescent evidence appear to be presented. *State v. Richards*, 552 N.W.2d 197 (Minn. 1996); *Cupp v. Murphy*, 412 U.S. 291, 93 S.Ct. 2000, 36 L.Ed.2d 900 (1973). As stated, there was no factual or legal basis for such an intrusion without first following the mandated process of attempting to initiate contact with the Defendant or any other resident of the home at the front door of the home or, alternatively, securing a search warrant or an arrest warrant.

[redacted]

the Court to grant the Defendant's motions for suppression and dismissal under the relevant federal and state constitutional protections [United States Constitution, Amendment IV and Minnesota Constitution, Article I, Section 10] and the related case law.[16]

The Defendant's motions for suppression and dismissal therefore are accordingly granted herein.

JJSR

[16] *See, additionally*: Minnesota Statutes, Section 626.21: "A person aggrieved by an unlawful search and seizure may move the district court... to suppress the use, as evidence, of anything so obtained ... If the motion is granted the property ... shall not be admissible in evidence at any hearing or trial."