No: 20-5159

IN THE UNITED STATES

SUPREME COURT

State of Minnesota,

Respondent,

vs.

Kristopher Lee Roybal,

Petitioner.

ORIGINAL

PETITION FOR WRIT OF CERTIORARI

FILED
JUN 05 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE UNITED STATES SUPREME COURT
Supreme Court Building
1 First Street N.E.
Washington, DC 20543

KRISTOPHER LEE ROYBAL
OID # 216254
62741 Co. Rd. 551
MCF-Togo
Togo, MN 55723

KEITH ELLISON
Minnesota Attorney General
445 Minnesota Street, Suite 1800
St. Paul, Minnesota 55101

BENJAMIN LINDSTROM
Cass County Attorney
Cass County Courthouse
Second Floor
P.O. Box 3000
Walker, MN 56484

Attorneys for Respondent

Petitioner Pro Se

QUESTIONS PRESENTED

1.) Is impoundment of a vehicle unreasonable under the Fourth Amendment when custody of the vehicle was obtained by a misrepresentation with respect to a particular towing agency that an officer is going to call to retrieve the vehicle?

2.) Did non-disclosure of two NCIC Query searches of Petitioner's license plate and one name search of his identity violate Brady v. Maryland and shake the confidence in the fairness of the contested omnibus hearing?

3.) Was the Petitioner's right to procedural due process as provided by the 14th amendment violated when the Minnesota Court of Appeals refused to address his supplemental pro se brief when he submitted his case to the trial court under Minnesota Rules of Criminal Procedure 26.01, subdivision 4, which provides that he stipulate to the prosecution's case in order to obtain appellate review of the district court's pretrial order, which the parties agreed was dispositive?

4.) Does the United States Constitution allow an officer to justify his reasons for impoundment, after the fact, when the Cass County Sheriff's Office provides the policy and procedures for towing a vehicle which gets it authority from a State Statute that mandates that this particular officer describe his reasons for towing in a written towing report but fails to do so?

5.) Does the inventory search exception require a bright-line rule as presented in the reason for granting the Writ of Certiorari?

PARTIES

The parties' and attorney's names appear in the caption on the cover of this petition.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Decisions

Minnesota Decisions

826 N.W.2d 799 (Minn.2013)
State v. Cook,
498 N.W.2d 17 (Minn.1993)
State v. Varnado,
582 N.W.2d 886 (Minn.1998)

Moylan v. Moylan,
384 N.W.2d 859 (Minn.1986)
Citizens State Bank v. Raven Trading Partners, Inc.,
786 N.W.2d 274 (Minn.2010)

Minnesota Statutes
Minn.Stat.§ 168B.035

Minnesota Rules of Criminal Procedure
Minn.R.Crim.P., Rule 26.01, subd.4

Constitutional Provisions
Minnesota Constitution,
Article I, § 10
United States Constitution,
Amendment VI

Other Sources
Wayne R. LaFave, 3 Search & Seizure § 7.5 (e)(5th ed)(2018)
Black's Law Dictionary (10th ed. 2014)
Anthony Amersterdam, Perspectives on the Fourth Amendment,
58 Minn.L.Rev. 349 (1974)
63C Am.Jur.2d Property § 52 Motor Vehicles
Sharon Finegan's Closing the Inventory Loophole:Developing a New Standard for Civilian Inventory Searches from the Military Rules of Evidence,
20 Geo. Mason L.Rev. 207 (2012)
Jason S. Marks, Taking Stock of the Inventory Search: Has the Exception Swallowed the Rule,
10 Crim.Just.11 (1995)

PROCEDURAL HISTORY

June 13, 2018	Date of offenses.
June 14, 2018	Complaint filed in Cass County District Court charging Roybal with controlled substance possession in the first, third, and fifth degrees, and fifth degrees, and driving after cancellation.
July 23, 2018	Contested omnibus hearing held, the Honorable David F. Harrington presiding. Roybal challenged the stop, impoundment, and inventory search of his vehicle.
October 2, 2018	The court filed its order and memorandum denying Roybal's motion to suppress evidence based on an invalid stop and inventory search.
October 19, 2018	Roybal filed a motion for reconsideration.
October 29, 2018	The court ordered a briefing schedule on the motion for reconsideration, with Roybal's brief due on November 20th, 2018, and the state responding by December 4th, 2018.
January 2, 2019	The court filed its order and memorandum denying Roybal's motion for reconsideration.
January 17, 2019	Amended complaint filed, adding a charge of second-degree controlled substance possession. The case was submitted to the court pursuant to Minnesota Rules of Criminal Procedure 26.01, subdivision 4, stipulating to the prosecution's case in order to obtain appellate review of the district court's pretrial order.
February 14, 2019	Roybal was sentenced to 95 months in prison.
May 13, 2019	Roybal filed his notice of appeal.
June 26, 2019	Final transcripts were mailed to appellate counsel.
August 28, 2019	Roybal's brief was filed and served.
October 5th, 2019	The State filed its oppositional brief.
January 8th, 2020	The Court of Appeals had a non-oral conference.
March 2, 2020	The Court of Appeals issued its opinion affirming Roybal's conviction.

April 1st, 2020 Petition for Review filed in Supreme Court
May 27th, 2020 Review denied by Minnesota Supreme Court

JURISDICTIONAL STATEMENT

The Minnesota Supreme Court denied Petitioner's Petition for Review and rendered final judgment in this case on May, 27th, 2020. This Court has proper jurisdiction in petitioner's case for which he seeks relief. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS

United States Constitution Fourth, Sixth, and Fourteenth Amendments.

REASONS FOR GRANTING THIS PETITION FOR CERTIORARI

This case offers this Court an ideal vehicle to resolve and answer several constitutional questions that were raised in this case with the Minnesota State Courts in relation to the inventory search exception to the Fourth Amendments warrant and probable cause requirement. Because there is a danger that police officers will choose to circumvent the demands of the Fourth Amendment by using the inventory search as a subterfuge for an investigatory search, a principled approach—respecting both an individual's legitimate expectations of privacy and law enforcement agencies' concern for the security of custodial property—suggests the following bright-line rule:

> Any evidence procured or derived from an inventory search cannot be admitted into evidence against the defendant at trial unless the prosecution can prove that, at the time of the search, the law enforcement officials conducting the search had probable cause to believe that contraband or other evidence of crime would be found in the place subject to the search.

Adoption of such a rule would (1) acknowledge the practical impossibility of proving that an officer acted without discretion or that there was an investigatory motive in conducting an inventory; (2) note the administrative need for conducting an inventory; and (3) subject the inventory search to the same Fourth Amendment scrutiny as every other investigative search, shifting the burden of proof with respect to pretext from the defendant to the prosecution.

STATEMENT OF THE CASE

Petitioner, Kristopher Lee Roybal was charged in Cass County District Court with possession of a controlled substance in the first, second, third, and fifth degree; and evidence obtained during the inventory search of his vehicle on the grounds that his vehicle was unreasonably impounded and the inventory search was a pretext for searching for drugs. Roybal

waived his right to a jury trial and submitted his case to the court, pursuant to Minnesota Rules of Criminal Procedure 26.01, subdivision 4, stipulating to the prosecution's case in order to obtain appellate review of the district court's pretrial order. The parties agreed that the court's review of the matter would pertain solely to the count of second-degree controlled substance possession, and the other counts would be dismissed. The parties further agreed that the pretrial issues would be dispositive of the case. The court found Roybal guilty and sentenced him to 95 months in prison. Roybal appealed to the Minnesota Court of Appeals which affirmed his conviction stating that it would not address Roybal's supplemental pro se brief due to Roybal not preserving the issues he submitted. The Minnesota Supreme Court denied review.

Roybal now appeals and asks this court to review the matter as submitted and grant relief herein sought on grounds that the Minnesota Court of Appeals did not fully address all the issues and facts that were preserved in Roybal's brief that was submitted in his motion for reconsideration when it issues its opinion, and this Court can resolve the issues on record or issue an order directing the Minnesota Courts to address Roybal's supplemental pro se brief as he adequately reserved those issues when he engaged in the agreement that he had with the State.

STATEMENT OF THE FACTS

On June 13, 2018, at approximately 1:25 a.m., Cass County Deputy Ryan Huston (Huston) was patrolling the Northern Lights Casino parking lot.(T. 4-5, 16). Huston observed a silver Buick with three occupants enter the casino parking lot. Huston reported that the vehicle stayed for a short amount of time and then went across the road to the Breezy Point Circle housing district. (T. 5, 6, 16). The vehicle returned approximately five minutes later. (T. 5).

(T. refers to contested omnibus transcript)

When the Buick passed Huston's squad, he noticed the license plate lights were out. Huston suspected that the vehicle's occupants were involved in "narcotic activity" because Northern Lights has a "narcotics problem," and the "vehicle came in for a short amount of time, made another quick stop over at the Breezy Point Circle housing."(T. 6). Huston agreed that his suspicion about the Buick's occupants being involved with drugs was in the back of his mind when he started following the vehicle. (T. 6-7).

The Buick travelled down Highway 371, a two-lane highway with a speed limit of 55 miles per hour. (T. 7, 17, 18; Ex. 1-Dash Cam). Deputy Huston observed the Buick's speed vary from 38 to 53 miles per hour. (T. 7, 17). Despite agreeing that the vehicle did not swerve and the driver did not commit any traffic violations, Huston nonetheless testified that he believed the driver was possibly impaired. (T. 8, 17). The deputy followed the vehicle for one and half miles before initiating the traffic stop. (T. 7-8, 18, 19). The Buick pulled over to the side of the road "as far as it could." (T. 24; Ex. 1-Dash Cam at 1:40-1:43).

Huston made contact with the driver, petitioner Kristopher Roybal. (T. 8, 19). Roybal's driver's license had been cancelled inimical to public safety. (T. 9, 20). Huston told Roybal he stopped him because of his varying speed and the equipment violation. (T. 8-9, 19; Ex. 1-Body Cam at 1:32:00-1:32:20). After collecting identification from the vehicle's occupants, Huston questioned Roybal about what he had been doing at Breezy Point Circle. (T. 9, 26; Ex. 1-Body Cam at 1:32:22-1:32:55). When Roybal said he had been visiting a friend, Huston asked for the friend's name. (Id.).

Assuming that he was going to be arrested for driving after cancellation, Roybal asked the deputy if he could call someone from Breezy Point Circle to retrieve his vehicle. (T. 9; Ex. 1-

Body Cam at 1:34:35-1:34:57). Huston told him "to sit tight" and they would get things figured out. (Id.).

After running everyone's name through dispatch, Huston learned that the two passengers had outstanding arrest warrants. (T.10, 20). They were both placed under arrest, as was Roybal. (T. 10-11, 20). Upon searching Roybal, Huston found $1,693 of cash on him. (T. 11). This concerned the deputy because "it kind of went with the whole persona...of narcotics, that time of night, that much in cash, short stops." (T. 11).

While placing Roybal in his squad car, Huston asked him whether he was able to find someone to pick-up the Buick. (T. 12, 20: Ex. 1-Body Cam at 1:40:50-1:41:20). Roybal said he could have someone from Cass Lake pick it up within an hour. (T. 12, 20-21; Ex. 1-Body Cam at 1:40:50-1:41:20.). Huston rejected that idea stating, "that he could not let the vehicle sit there that long," but did not explain why that was a problem. (Ex. 1-Body Cam at 1:41:00). Roybal countered that he could call someone from Breezy Point Circle, which was only a couple miles away. (T. 24: Ex. 1-Body Cam at 1:41:04-1:41:15). Huston ignored Roybal's suggestion, and asked if calling Bob's Towing out of Cass Lake would work better for him. Huston estimated it would take Bob's Towing 40-45 minutes to arrive. (T. 22). Roybal assented. (Ex. 1-Body Cam at 1:41:09-1:41:20). Bob's Towing was never called. (T. 26). Instead, Clark's Towing was called and did not arrive at the scene for almost an hour. (T. 25-26).

Prior to having the vehicle towed, Deputy Huston and the other responding officers searched the vehicle starting with the trunk. (Ex. 1-Dash cam at 17:20). Huston testified that this search was done in accordance with his department's standard policy "to inventory the entire vehicle." (T. 12). During the search, officers discovered controlled substances in a backpack in

the Buick's trunk, including over 50 grams of methamphetamine, 169 Oxycodone pills, and heroin. (T. 12). Once the controlled substances were discovered, the searching officer's attention is captured by the dash cam and suddenly Seargent Brian Welk appears with the inventory sheet to conduct an inventory.

Following the incident, Huston reviewed the towing report and prepared a police report, neither of which mentioned anything about the Buick being a traffic hazard. (T. 23; Ex. 3-Towing Report). Instead, the towing report indicated that the vehicle was "towed due to arrest." (T. 23-24). It was not until Huston testified at the contested omnibus hearing that he asserted that the Buick had to be towed because it was "definitely a traffic hazard." (T. 12, 22-23).

Roybal was charged with possession of a controlled substance in the first, second, third, and fifth degree, and driving after cancellation. Roybal filed a motion to suppress all evidence obtained as a result of Deputy Huston's traffic stop, the impoundment and inventory search of his vehicle, arguing that the traffic stop was pretextual and unwarranted, and the impoundment was unreasonable, and the subsequent inventory search was unreasonable and a pretext. Following a contested omnibus hearing, the district court denied Roybal's motion, finding that the towing the vehicle was reasonable because its location on the side of the road "constituted a traffic hazard," Deputy Huston acted in accordance with his department's towing policy, and the inventory search was not a pretextual.

Following the district court's denial of Roybal's motion to suppress evidence, Roybal filed a motion for reconsideration arguing that the district court erred in using a probable cause standard in upholding the search of his vehicle. The district court allowed Roybal to supplement the record from evidence that was submitted through the discovery process. This evidence

consisted of surveillance footage from the Northern Lights Casino and a primary report authored by Deputy Huston. Additionally, Roybal submitted an Affidavit from Ruth Wittner which was met with no objection from the state. Roybal was allowed a second bite at the apple so to speak and briefed his argument and the state responded, but ultimately the district court stood on it's initial order using a probable cause standard.

Roybal waived his right to a jury trial and submitted his case to the court, pursuant to Minn. R. Crim. P. 26.01, subd. 4, stipulating to the prosecution's case in order to obtain appellate review of the district court's pretrial order, which the parties agreed was dispositive. (PH. 9-15, 21-23). The parties agreed that the court's review of the matter would pertain solely to the count of second-degree controlled substance possession, and the other counts would be dismissed. (PH. 15, 23). The court found Roybal guilty and sentenced him to 95 months in prison.

This appeal follows.

TRANSCRIPT FROM THE HEARING ON OCTOBER 25TH, 2018

Mr. Kragness: We feel that the Court kind of glossed over Mr. Roybal's pro se argument when it came to the pretextual inventory search. Mr. Roybal would like the opportunity to be able to brief that specific issue in detail so the Court can consider that with what he deems as the appropriate standard of review with that specific issue, Your Honor. Pg. 15, Ln. 4-10.

Mr. Lindstrom: There was a pro se brief that was submitted, and I didn't object to the Court considering the pro se brief... Pg. 19, Ln. 2-4.

The Defendant: That was the argument I did not want to waive, because it wasn't included in my attorney's brief. So at the time that he showed me his brief, it was like on a

(PH: refers to petitiones plea hearing transcript)

Friday. So during the weekend, I did the best I could and wrote up my own brief to preserve that argument so it wasn't waived in the event that I had to go to the Appellate Court and argue that, you know. Pg. 19-20, Ln. 25-7.

TRANSCRIPT FROM THE HEARING ON OCTOBER 29TH, 2018

The Court: What if we just set some solid dates of Mr. Roybal having something to us by, say, the 20th of November. Pg. 39, Ln. 9-11…But if we said the 20th of November with the State coming back by the 4th of December… Pg. 39, Ln. 14-16.

Mr. Kragness: Is the Court going to allow Mr. Roybal to introduce for that specific purpose Mr. Huston's primary report as well as the casino surveillance video? Pg. 42-43, Ln. 23-1.

The Court: I think it seems like fair game. Mr. Lindstrom, any thoughts from the state? Pg. 43, Ln. 13-15.

Mr. Lindstrom: I guess the only thing that I would reserve would be the opportunity to potentially call somebody back if it's necessary. I don't know what the report is going to be offered for. So if there's something that needs to be explained that wasn't apparent in whatever portion or report that Mr. Roybal submits. Pg. 43, Ln. 16-22… I don't oppose Mr. Roybal submitting a report and the video. Pg. 44, Ln. 4-5.

PLEA HEARING TRANSCRIPTS FROM JANUARY 17TH, 2019

The Court: So you want to proceed by Lothenbach procedure, Mr. Lindstrom? Pg. 8, Ln. 4-5.

Mr. Lindstrom: Yes, assuming that's what Mr. Roybal wants to do… Pg. 8, Ln. 6-7. And from my perspective, the pretrial issues would be dispositive cause if the drug evidence was suppressed, I wouldn't have any evidence to support the drug charges. Pg. 8, Ln. 10-13.

The Defendant: My only concern was just the pretrial issue, reserving my right to appeal the Judge's order. Pg. 8, Ln. 24-25.

EXAMINATION BY MR. LINDSTROM:

Q: And in terms of the pretrial issue with respect to what we'll be dealing with on this matter, you'd agree that if the drugs were suppressed, that it would be dispositive on this case? Pg. 10, Ln. 21-24.

A: I do. Pg. 10, Ln. 21-25.

Q: And you understand that by using this procedure under Rule 26.01, subdivision 4, that appellante review will be of the pretrial issue? Pg. 14, Ln. 19-21.

A: Yes. Pg. 14, Ln. 22.

The Court intervened after this agreement with the State. "The text of Rule 26.01, subdivision 4, clearly requires the prosecutor and the defendant to acknowledge the dispositive nature of the pretrial issue on the record." State v. Myhre, 875 N.W.2d 799, 808 (Minn.2016).

The Court: As I understand it the single issue, pretrial issue that you're focused on is the issue of the inventory search of your vehicle? Pg. 15-16, Ln. 24-2.

The Judge then outlines what he believes is dispositive. See pg. 15-16, Ln. 24-20. He then asks the County Attorney the following question: "Would it be your understanding that all issues raised in his pretrial motions are fair game on appeal?" Pg. 17, Ln. 1-3. The Judge further articulates his interpretation of the Lothenbach process by stating "My reading of the Lothenbach process, and my understanding of the Lothenbach process is that the only issues that would be considered would be issues that would be dispositive. Meaning if the Court would have ruled the other way at the pretrial, the case basically would have been dismissed. Pg. 17, Ln. 4-9.

The Court: Well sir, I certainly don't have the authority to determine what is a dispositive issue. Pg. 21, Ln. 8-10.

Ordinarily, [The Supreme Court] will not consider errors that were not objected to in the district court. Myhre, 875 N.W.2d at 804. [W]e do not typically review errors that were invited by the defendant or that the defendant could have prevented in the district court. Id.

[W]e will treat any errors committed by the district court or the parties as errors made during the course of a trial and apply the plain error framework. Id.

In order to meet the plain error standard, a criminal defendant must show that (1) there was error, (2) the error was plain, and (3) the error affected the defendant's substantial rights. Id. If the first three prongs are satisfied, we must consider a fourth factor, whether [we] should address the error to ensure fairness and the integrity of the judicial proceedings. Id. at 804-805.

Moreover, in determining whether the defendant had actually received a Lothenbach trial... analysis is focused on the intent of the parties and the fact that all sides received what they had bargained for. Id. at 805. See State v. Verschelde 595 N.W.2d 192, 195 (Minn.1999)(allowing the appeal to proceed because "[e]qually clear on the record before us is the appellant's expectation that he was preserving his right to appeal the trial court's pretrial ruling, and the state's understanding that an appeal would follow");State v. Ford, 397 N.W.2d 875, 878 (Minn.1986)(noting that the defendant intended to appeal a pretrial order and deciding to treat the appeal as if it had complied with Lothenbach).

SENTENCING TRANSCRIPTS FROM FEBRUARY 14TH, 2019

Later, during the sentencing hearing, Myhre's attorney and the district court acknowledged that Myhre was pursuing an appeal of the pretrial ruling and Myhre's attorney made yet another reference to the Lothenbach plea. Myhre, 875 N.W.2d at 802.

Mr. Lindstrom: In terms of a letter that Mr. Roybal sent me, he did have a question about which orders he was going to be able to appeal and had some concern that some of his motions that actually related to the inventory were somehow precluded from appeal. I think he had an initial omnibus hearing related to an inventory search, and then he had filed some motions for reconsideration in terms of the standard in which those should be judged. And from my perspective, that's fair game because that's part of the issue that would be dispositive. If courts were wrong about the standard that they should be looking at, then the inventory should be out. Pg. 9-10, Ln. 17-5.

Mr. Lindstrom: And really the issue is just going to be: did law enforcement legitimately get to the controlled substances in this case? So I just wanted to note that. Pg. 10, Ln. 13-16.

The Court: So that is the dispositive issue that you stipulated to at the time of the—when I was here last about a month ago. And that's what we proceeded on with the stipulated facts. And the issue for appeal being that inventory search of the vehicle and the circumstances surrounding that, which would include your motion with respect to whether the District Court used the correct standard of review. Pg. 11-12, Ln. 24-7.

ARGUMENTS

Traffic Stop

The Fourth Amendment to the United States Constitution, and article I of the Minnesota Constitutions, proscribe unreasonable searches and seizures by the government of "persons, houses, papers, and effects." U.S. Const. Amend. IV; Minn. Const. Art I §10. Subject to only a few exceptions, searches conducted outside the judicial process are per se unreasonable. Katz v. United States, 389 U.S. 347, 357 (1967). A limited investigative stop is lawful if the state can show the officer to have had a "particularized and objective basis for suspecting the particular person stopped of criminal activity." U.S. v. Cortez, 449 U.S. 412, 417-18 (1981). A brief investigatory stop requires only reasonably suspicion of criminal activity, rather than probable cause. Terry v. Ohio, 392 U.S. 1, 21-22 (1968). The police must only show that the stop was not the product of mere whim or idle curiosity, but was based upon "specific and articulable facts which, taken from rational inferences from those facts reasonably warrant that intrusion." Terry, 392 U.S. at 21.

The Minnesota Supreme Court has given reports "the same force and effect as though the witness testified in open court." State v. Diede, 795 N.W.2d 836, 851 (Minn.2011); citing Leskinen v. Pucilji, 262 Minn. 461, 463, 115 N.W.2d 346, 349 (1962). Deputy Huston initially submitted three arrest reports with a disposition date and time of June 13th, 2018 at 06:43. These

arrest reports were created immediately after the events took place while they were still fresh in the Deputy's memory. The sequence of events as detailed in these arrest reports are identical.

The Deputy reported that on June 13th, 2018, at approximately 0125 hours, he was patrolling the Northern Lights Casino. He observed a silver Buick Sedan enter the parking lot and left a short time later and enter the Breezy Circle housing area. He saw the vehicle leave the housing area approximately five minutes later. With his training and experience, short frequent stops are indicative of narcotic activity. As the vehicle left the housing area he began following it west bound on highway 200. The vehicle continued north bound on highway 371. It is at this point that the Deputy reported that "he observed the vehicle did not have a working license plate light making it unable to read."

In sharp contrast to this initial account, the Deputy created a primary report twenty hours after the incident had taken place at 21:42 hours on the same date of June 13th, 2018. In this report the Deputy changed his story asserting that as the vehicle passed him on the Breezy Point Road he claimed that "as it passed he observed the license plate light was not illuminated and he was unable to read the license plate." These accounts are distinguishable as the contested omnibus testimony revealed because as the Deputy's vehicle was behind Roybal's Buick the Deputy conceded that it was hard to tell if the license plate light was out with his lights shining on the license plate where he changed his story that as Roybal's vehicle passed him the Deputy's lights would not be shining on Roybal's plate.

The District Court erred by crediting Deputy Huston's testimony. Finding of fact are clearly erroneous if, on the entire evidence, we are left with a definite and firm conviction that a mistake occurred. State v. Andersen, 784 N.W.2d 320, 334 (2010). Petitioner was allowed to

submit surveillance footage that contradicts the Deputy's claim that as he was patrolling the Casino parking lot at 0125 hours that Roybal came in for a short amount of time and exited into the Breezy housing district. However, the surveillance footage shows Roybal entering the Casino at 11:15 p.m. and exiting at 01:12 a.m.

After Roybal's sentencing he submitted a data request to the Cass County Sheriff's Office seeking documentation showing time lines of when his license plate was ran through dispatch. This information was not disclosed through the discovery process. Roybal was able to obtain a NCIC Query search showing that on June 12th, 2018, the night before Roybal's arrest, Deputy Ryan Huston ran Roybal's plate at 03:55 a.m. Another NCIC Query search revealed that dispatcher Justin Wicks ran Roybal's license plate at 01:21:53 hours despite Deputy Huston claiming that he was unable to read the license plate. See contested omnibus transcript, pg. 6, ("as it passed, I looked at the back side of it to try and get the license plate, and I couldn't see it."); also see primary report ("dispatch relayed that the vehicle was registered to a party out of Brainerd" before he exited the vehicle). Deputy Huston testified that he followed Roybal's vehicle for one point five miles in a fifty five miles an hour speed zone after he couldn't see the license plate. Deputy Huston's body cam shows it being activated at 01:31:49 hours after pulling Roybal's vehicle over and subsequently making contact. If dispatch ran Roybal's license plate at 01:21:53 hours and Deputy Huston testified that he followed that vehicle for one point five miles in a fifty five mile an hour speed zone and his body cam activates at 1:31:49, would this defy logical time? Additionally, another NCIC Query search demonstrates that dispatcher Justin Wicks ran Roybal's name through dispatch at 1:28:14 before the Deputy made contact with Roybal. This was also not disclosed through the discovery process. The deputy's body cam shows the Deputy running Roybal's name through dispatch another time at 1:35:52 hours. These

(The NCIC QUERY searches were admitted into evidence on petitioners Motion to reconsider)

additional facts were concealed from Roybal and were pertinent to Roybal's case and defense because the subsequent towing of Roybal's vehicle and concomitant inventory search cannot be "a pretext concealing an investigatory police motive." South Dakota v. Opperman, 428 U.S. 364, 376 (1976).

A more rational inference can be drawn from the Deputy's three arrest report's as to the real reason he began following Roybal's vehicle. This inference is bolstered by the fact that the Deputy's initial accounts of when he allegedly observed the license plate light not working was after Roybal's "vehicle continued north bound on highway 371" while the Deputy's lights were shining on Roybal's license plate. Deputy Huston testified that "when it went by me on Breezy Point Road is when I turned and got behind it. We came to the intersection, and we turned and went towards Walker." Tr., pg. 16.

Roybal's position has support from Minnesota caselaw ("failure to assert a fact, when it would have been natural to assert it, permits an inference of its nonexistence. The nonexistence of a fact established by the inference arising from such omission to assert may be used to contradict an assertion of its existence. A witness may be impeached by a prior statement, either written or oral, purporting to narrate all the facts with respect to a particular event, which omitted to refer to a vital or important fact to which he testified."). Erickson v. Erickson & Co., 2 N.W.2d 824, 827 (Minn.1942).

Additionally, article I, section 10 of Minnesota Constitution provides distinct protections from the expansion of traffic stops to include intrusive questioning when there was no reasonable articulable suspicion to justify the questioning. State v. Askerooth, 681 N.W.2d 353, 363 (Minn.2004); State v. Fort, 660 N.W.2d 415, 419 (Minn.2003). Here, Deputy Huston questioned

Roybal as to what he had done over at the Breezy Circle. Body cam at 00:57-01:02. Roybal indicated he was visiting a friend and the Deputy asked for the friends name. Body cam at 01:01-01:12. The state conceded in its brief that "Deputy Huston was merely seeking information on potential illegal activity due to the location being Norther Lights and quick stops at Breezy Circle. Pg. 4 of States Memorandum filed on 08/31/18. Individuals have a liberty interest, constitutionally protected, against unreasonably prying into their personal affairs. State v. George, 557 N.W.2d 575, 579 (Minn.1997); State v. Dezso, 512 N.W.2d 877, 880 (Minn.1994).

Ultimately, Deputy Huston can be heard asking dispatcher Justin Wicks to run Roybal's name at 01:35:52 hours. Body cam at 04:00-04:05. A NCIC Query search revealed that the Deputy had already ran Roybal's name at 01:28:14 hours and this was prior to the Deputy making contact with Roybal. This information was not disclosed through the discovery process.

Roybal asserts that he was entitled to this discovery and nondisclosure constitutes a Brady violation, Brady v. Maryland, 373 U.S. 83 (1963), as the Deputy sought to conceal these facts. See United States v. Agurs, 427 U.S. 97, 107 (1976), explaining that a defendant need not request favorable evidence from the state to be entitled to it. And "to establish a Brady violation undermines conviction, convicted defendant must show, (1) evidence at issue is favorable to accused, either because it is exculpatory, or because it is impeaching, (2) state suppressed the evidence, either willfully or inadvertently, and (3) prejudice ensued." Skinner v. Switzer, 562 U.S. 521, 536 (2011).

Clearly, the NCIC Query searches of Roybals vehicle could have been used to establish that the Deputy did in fact see Roybal's license plate which directly contradicts his testimony that he was unable to get a reading on it and could have been used to impeach his testimony. It

also establishes that the Deputy ran the license plate the night prior to arresting Roybal. The state inadvertently suppressed this evidence because the Deputy was attempting to conceal his ongoing investigation and due to these undisclosed facts,prejudice ensued and had an adverse effect on Roybal's contested omnibus hearing. Impeachment evidence is exculpatory for Brady purposes. United States v. Bagley, 473 U.S. 667, 676 (1985). A defendant may base a Brady claim on a piece of material evidence not disclosed by an investigator, even if the prosecutor did not know of the evidence. Kyles v. Whitley, 514 U.S. 419, 434 (1995).

The United States Supreme Court has "made it clear that the Constitutional reasonableness of a traffic stop does not turn on the actual motivation of the officer involved." Whren v. United States, 517 U.S. 806, 813 (1996). Professor Wayne R. LaFave has stated "[T]he Court in Whren then distinguished the expression of concern about 'pretext' in Bertine by explaining that in the inventory context, where a search is being allowed without probable cause because of the special purpose being served, the exemption from the usual probable cause requirement would not obtain if the search was not made for that purpose. What is especially important about that distinction is that the pretextual nature of an otherwise lawful stop or arrest, which under Whren cannot be used to challenge that seizure, can turn out to be powerful evidence of the pretextual/unconstitutional nature of a vehicle inventory conducted thereafter." 3 Search & Seizure § 7.5(e), 97-100 (5th ed)(2018).

An arrest may not be used as a pretext to search for evidence. United States v. Lefkowitz, 285 U.S. 452, 467 (1932); Jones v. United States, 357 U.S. 493, 500 (1958); State v. Hoven, 269 N.W.2d 849, 853 (Minn.1978)(stating "because he waited until defendant entered the truck and drove off before arresting him, the inference is inescapable that the arrest was made and timed primarily to facilitate the warrantless search.").

The circumstances leading up to the traffic stop which includes the concealed NCIC Query searches should have been analyzed under the totality of the circumstances when considering the reasonableness of concomitant inventory search. U.S. v. Kimhong Thi Le, 474 F.3d 511 (8th Cir. 2007).

Impoundment and Inventory Search

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. Amend. IV; Minn. Const. Art I § 10. The Supreme Court in 1976 endorsed the warrantless search of an automobile for the discrete purpose of taking an inventory of items inside an impounded vehicle. South Dakota v. Opperman, 428 U.S. 364, 373 (1976); also see Illinois v. Lafayett, 462 U.S. 640, 643 (1983)(stating that inventory search is a well-defined exception to the warrant requirement); City of St. Paul v. Myles, 218 N.W.2d 697, 699 (Minn.1974) (stating that inventory searches are not constitutionally improper). Under the inventory exception, police need neither probable cause nor a warrant to search a vehicle. State v. Holmes, 569 N.W.2d 181, 186 (Minn.1997). The Court has found such searches to be reasonable because police are performing administrative or caretaking functions designed to serve two distinct interests, (1) the protection of the owner's property inside the vehicle, and (2) the protection of the police from claims that they lost or damaged property within their control. Opperman, 428 U.S. at 369. It is important to recognize that the community caretaking function is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Cady v. Dombroski, 423 U.S. 433, 441 (1973). By contrast, a search conducted "in bad faith or for the sole purpose of investigation" is not a valid inventory search. Holmes, 569 N.W.2d at 188; citing Colorado v. Bertine, 479 U.S. 367, 372 (1987). The burden is on those seeking exemption to show the need for it. Coolidge v. New Hampshire, 403

U.S. 443, 455 (1971). The state may not rely on speculation but, rather, must base the exception "on demonstrated historical facts capable of ready verification or impeachment." Nix v. Williams, 467 U.S. 431, 444 n.5 (1984).

The leading case of South Dakota v. Opperman, supra, treats impoundments and inventory searches as distinctive processes, which are warranted in different (though frequently overlapping) circumstances. Both the decision to take the car into custody and the concomitant inventory search must meet the strictures of the Fourth Amendment. See, e.g., Soldal v. Cook County Ill., 506 U.S. 56 (1992). The decision to impound (the "seizure") is properly analyzed as distinct from the decision to inventory (the "search"). See, e.g., Cardwll v. Lewis, 417 U.S. 583, 593 (1974). Impoundments by the police may be in furtherance of "public safety" or "community caretaking functions", such as removing "disabled or damaged vehicles, and automobiles which violate parking ordinances, and which jeopardize both the public safety and the efficient movement of vehicle traffic." Opperman, 428 U.S. at 368-369. An impoundment must either be supported by probable cause or consistent with the police role as "caretaker" of the streets and *completely unrelated* to an ongoing investigation. Id. at 370, n.5. In other words, "if purpose of the seizure is an investigatory search, seizure must be based on probable cause." United States v. Place, 462 U.S. 696, 706 (1983). The validity of impoundment is not dispositive of the validity of the inventory search. U.S. v. Taylor, 636 F.3d 461, 465 (8th Cir. 2011); citing United States v. Marshall, 986 F.2d 1171, 1174 (8th Cir.1993)(holding that even though the inventory search was invalid the vehicle was properly impounded); also see Cooper v. California, 386 U.S. 58, 61 (1967) (stating lawful custody of an impounded automobile does not in itself dispense with the constitutional requirements of reasonableness of searches thereafter made of it, the reason for and nature of custody may constitutionally justify the search).

The underlying impoundment must be the first part of the analysis of whether an inventory search was reasonable; if impoundment was unreasonable, then the resulting search was also unreasonable. State v. Rhode, 852 N.W.2d 260, 264 (Minn.2014). [W]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case...Cooper, 386 U.S. at 59. The [e]xamination of reasonableness is a fact-sensitive inquiry not susceptible to applying generalizations to a particular person or situation." Askerooth, 681 N.W.2d at 368. Also, the facts and circumstances surrounding the impoundment must not give rise to a "gratuitous assumption of custody by the police." State v. Goodrich, 256 N.W.2d 506, 511 (Minn.1977).

The Facts and Circumstances

Deputy Huston asked Roybal who the vehicle belonged to which Roybal claimed ownership of. Roybal stated that he had the "title and everything" in which the Deputy asked if that was in the dash. Body cam at 02:28-02:43. Roybal requested that he be allowed to contact someone in Breezy Circle to retrieve his vehicle which was located two miles from the traffic stop. The Deputy responded "ok, let's just figure out what we're going to do first." The Deputy then asks where they were traveling to which is immediately followed with another question "back to Cass Lake?" This information is vital to the Deputy because he would later use this information after running every body's name through the system to induce Roybal into assenting to Bob's towing.

[T]he manner in which the seizure...[was] conducted is, of course, as vital a part of the inquiry as whether [it was] warranted at all. Terry v. Ohio, 392 U.S. 1, 28 (1968). After being placed in handcuffs and asked to place his cell phone and wallet on the trunk of the vehicle the

Deputy asks Roybal if he was able to figure anything out with the vehicle. Body cam at 09:00-09:03. Roybal responds "yeah, I mean, I can call someone to come get it" and Huston asks "ok, what's going to be the time frame on that?" It is unreasonable to speculate that Roybal can accurately provide this information, especially when the Deputy initially informed Roybal that "let's figure out what we're going to do first." A good faith effort commanded permitting Roybal, at the very least, a telephone call. Nonetheless, Roybal replies "um...probably like an hour maybe, because she would be coming from Cass Lake." The Deputy tells Roybal "that it would not be able to sit there for an hour" but does not explain why. Roybal then requests that he be allowed to contact his friend in Breezy Circle but is brazenly countered by the Deputy when he asks "how about ah...if we get it towed...do you wanna ah...would Bob's work better for you?" Roybal asks "Bob's towing" and the Deputy uses the vital information that he obtained earlier about where they were all traveling to and quickly answers Roybal "out of Cass Lake." Body cam at 09:04-09:28. Any such concern that the vehicle could not remain stationed where the traffic stop occurred is easily refuted by the Deputy's misrepresentation as to where the vehicle was being towed to. See Tr., pg. 21 (Q: Approximately how far is Cass Lake from where that stop was? A: Time frame, I would say 25, 30 minutes); Tr., pg. 22 (Q: So to get Bob's towing, that would take approximately 40, 45 minutes; is that right? A: Yep); Tr., pg. 24 (Q: And the approximate distance between that vehicle and Breezy Point Circle is about 2 miles; is that correct? A: Yeah, about). See U.S. v. Place, 462 U.S. 696, 710 (1983) ("The violation was exacerbated by the failure of the agents to accurately inform respondent of the place to which they were transporting his luggage...") Additionally, it is often said that "when the accused is directly asked whether he objects to the search, there must be at least some suggestion that

search waits upon his consent." Gorman v. United States, 380 F.2d 158 (1st Cir.1967); State v. Price, 55 Haw. 442, 521 P.2d 376 (1974).

The Supreme Court has stated that "searches conducted in bad faith or for the sole purpose of investigation, are not otherwise valid as inventory searches." Bertine, 479 U.S. at 372. The Minnesota Supreme Court has adopted the standard that faith is bad and investigative purpose sole only when an inventory search that otherwise would not have occurred is brought about." Holmes, 569 N.W.2d at 188; quoting 3 LaFave, § 7.5 (d) at 589-90.

In State v. Sheweich, 414 N.W.2d 227, 230 (Minn.App.1987) the court stated "misrepresentation used to obtain consent to search will invalidate the consent." United States v. Briley, 726 F.2d 1301, 1304 (8th Cir. 1984); United States v. Turpin, 707 F.2d 332, 335 (8th Cir. 1983). Tacit misrepresentation of the purpose of a search can rise to such a level of deception to invalidate the consent. Schweich, 414 N.W.2d at 230; citing United States v. Tweel, 550 F.2d 297 (5th Cir. 1977); Alexander v. United States, 390 F.2d 101 (5th Cir. 1968). Misrepresentation can be evidence of coercion, and may invalidate consent if that consent was given in reliance on the misrepresentation. U.S. v. Kelley, 594 F.3d 1010, 1013 (8th Cir. 2010) (citing Bumper v. North Carolina, 391 U.S. 543, 548-50 (1968)).

Additional Indicia of Pretext

[T]he Fourth Amendment and the Fourteenth Amendments require that consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, no matter how subtly the coercion was applied, the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed." Schneckloth v. Bustamonte, 412 U.S. 218, 228 (1973).

After several requests by Roybal for alternative arrangements that were never truly honored, the District Court stated "after assenting to Bob's towing, Defendant does not further raise the issue of having someone from the Breezy Point come get the vehicle." Court Order, 10/02/18, pg. 9. Mere acquiescence on a claim of police authority or submission in the face of a show of force is, of course, not enough. State v. Howard, 373 N.W.2d 569, 599 (Minn.1985).

Deputy Huston made the suggestion of having Bob's towing retrieve the vehicle in bad faith which brought about the idea of impoundment. No factual finding was ever made with respect to bad faith. Faith is bad and investigative purpose sole only when an inventory search that otherwise would not have occurred is brought about. Holmes, 569 N.W.2d at 188. Deputy Huston intentionally misrepresented the towing agency he was going to contact in order to induce Roybal to the impoundment idea. See Black's Law Dictionary (10th ed. 2014) "Material Misrepresentation, "A false statement that is likely to induce a reasonable person to assent or that the maker knows is likely to induce the recipient to assent." Bob's towing was used as a subterfuge in order to avoid permitting Roybal his alternative arrangement for his vehicle.

The state made the argument that "the issue is not whether the officer could have waited for the girl from Cass Lake or another friend from Breezy Point Circle to appear; rather what is at issue is whether the officer was required to so wait." Citing Colorado v. Bertine, 479 U.S. 367 (1987); See state's memorandum dated 12/04/18, pg. 6. Under Minnesota law "[e]ven under Bertine the police are not required to *offer* a driver the option to make his own arrangements, under Goodrich we conclude that the police may be under an obligation to permit a driver to make reasonable alternative arrangements when the driver is able to do so and specifically makes a request to do so." State v. Gauster, 752 N.W.2d 469, 508 (Minn.2008). Here, not only was a request made but the Deputy refused to honor them. Ultimately, Sergeant Brian Welk

"gratuitously assumed custody of the vehicle" without any discussion of the matter with the arresting officer. Body cam at 14:35-14:43.

Reason for Impoundment

In determining the reasonableness of an inventory search, therefore, courts must ask whether police carried out the search in accordance with standard procedures in the local police department. Holmes, 569 N.W.2d at 187. This principle applies with equal force with the distinctive process of the initial seizure as Cass County Sheriff's Office "provides the procedures for towing a vehicle by or at the direction of the Cass County Sheriff's Office and under Minn.Stat.§ 168B.035, subd.2(a)(2014).

Sergeant Brian Welk ordered the tow at 01:43 and he filled out the towing report. In the remarks section Sergeant Welk indicates "vehicle towed due to arrest." Additionally, six boxes can be checked on this towing report indicating the "standard criteria" when a vehicle can be towed which includes but is not limited to: (1) stolen, (2) accident, (3) abandoned, (4) hazard, (5) arrest, and (6) other. The only box checked by the Sergeant was the arrest box. Deputy Huston looks over the towing report before departing from the scene. Dash cam at 31:13-31:24.

[T]here is often little relationship between the grounds upon which the police take action and the grounds later put forward to justify their actions in court. Anothony G. Amersterdam, Perspectives on the Fourth Amendment, 58 Minn.L.Rev. 349, 420 (1974). [T]he police might impound a car they otherwise would not impound or inventory an impounded car they would otherwise merely secure, again for the purpose for gaining an opportunity to look for evidence. Wayne R. LaFave, 3 Search & Seizure § 7.5(e), 85-87 (5th ed.)(2018). In the case of an inventory search conducted in accordance with standard police department procedures, there is no

significant danger of hindsight justification. Opperman, 428 U.S. at 383, Justice POWELL concurring.

In the instant case, it was put forward at the contested omnibus hearing that the vehicle was towed because it was "definitely a traffic hazard" where it was parked notwithstanding Cass County towing policy providing the procedures to list the reason[s] for towing in a written towing report. Tr., pg. 12. The deputy was permitted to move [this] vehicle a short distance to eliminate [such] hazard if in fact this was his objective. Policy 510.2.3. In the context of an inventory search "an officer's motive can invalidate justifiable behavior under the Fourth Amendment." Whren v. United States, 517 U.S. 806, 812 (1996); also see Ashcroft v. al-Kidd, 563 U.S. 731, 736-737 (2011)(two limited exceptions to this rule are our special needs and administrative search cases, where actual motivations do matter...But those exceptions do not apply where the officers purpose is not to attend to the special needs or to the investigation for which the administrative inspection is justified.)

As stated above, Cass County Sheriff's Office has procedures in place for towing a vehicle and one particular procedure mandates that the deputy list his reason[s] for towing a vehicle in his towing report. Not documenting the reason[s] for towing is an unwritten practice. See U.S. v. Rowland, 341 F.3d 774, 780 (8th Cir. 2003)("[O]ur research has not revealed a case allowing the written procedures of law enforcement to be eroded by unwritten practice.") Standardized procedures are necessary to ensure that this narrow exception is not improperly used to justify, after the fact, a warrantless investigative foray. Colorado v. Bertine, 479 U.S. 367, 381 (1987). Justice MARSHALL dissenting.

Deputy Huston reviewed the towing report prior to departing from the scene and did not document the hazard as the reason for the tow. Additionally, the deputy suggested Bob's towing as the agency to come retrieve the vehicle which was located 40-45 minutes from the traffic stop and made no effort in calling the agency. The Deputy assigned the hazard reason in an after the fact attempt to insulate the state from Roybal's constitutional challenge. The only safeguard afforded Roybal was the Cass County towing policy that provides the procedures for towing a vehicle but this procedure did not "ensure that this narrow exception [was] improperly used to justify, after the fact, a warrantless investigative foray." Opperman stated "that the authority of the police to seize and remove form streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge..." 428 U.S. at 369. This dictum was made in response to a driver or owner of a vehicle who was absent. There must be at least some suggestion that the disposition of an owner's property is relevant when he is present. See Myles, 218 N.W.2d at 302 (The Supreme Court held that the search was not unreasonable Since the police had exercised a form of custody of the car, which constituted a hazard on the highway, the disposition of which by defendant was precluded by intoxication and later comatose condition.) citing Cady, supra. The test of reasonable-ness cannot be fixed by a set of per se rules; each case must be decided on its own facts. Opperman, 428 U.S. at 373. Here,the petitioner was present and was not precluded from making alter-native arrangements for his vehicle.

The towing report is evidence petitioner has used to estab-lish the reason for tow at the time that decision was made. See Myles, 218 N.W.2d at 701 (stating an inventory, while not a guar-antee against unfounded claims of loss, is evidence the police can use to establish that a claim is false.) The Constitution

does not permit police to raise the inventory banner in an after the fact attempt to justify what was...purely and simply a search for incriminating evidence. U.S. v. Kennedy, 427 F.3d 1136, 1144 (8th Cir. 2005). The reason given at the time of the tow was "due to arrest". This suggests that it was purportedly done"to provide reasonable safekeeping" but "even a defendant who was arrested was able to obviate the necessity of protecting his property from theft and the police from claims therefrom by arranging to have a family member take care of his car" under Minnesota case law. Rhode, 852 N.W.2d at 266.

Adding to the controversy is the fact that Deputy Huston violated Minnesota Statute §168B.035, subd.2(a)(2018). This statute requires Huston to describe his reason(s) for tow in his towing report or he may not tow a vehicle. Statute interpretation is a question of law subject to de novo review. Barrow v. State, 862 N.W.2d 686, 689 (Minn.2015). When interpreting statutes, the Minnesota Supreme Court's goal is to effectuate the intent of the lesgislature. In re welfare of J.B., 782 N.W.2d 535, 539 (Minn. 2010). If a statute is unambiguous, we must apply its plain meaning without resorting to cannons of statutory construction. State v. Hayes, 826 N.W.2d 799, 804 (Minn.2013). Deputy Huston's after the fact assignment that the vehicle was a traffic hazard was simply an attempt to insulate the state from petitioner's constitutional challenge. In Minnesota, "serious violations which subvert the purpose of established procedures will justify suppression." State v. Cook, 498 N.W.2d 17, 20 (Minn.1993). If the purpose of the statute is intended to be a safeguard for unreasonable seizures, "was Huston required to follow the plain language of

Minnesota statute 168B.035? The mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment. Mincey v. Arizona, 437 U.S. 385, 395 (1978). Also see Florida v. Royer, 460 U.S. 491, 513 (1983) ("We must not allow our zeal for effective law enforcement to blind us to the peril to our free society that lies in this Court's disregard of the protections afforded by the Fourth Amendment.") Mr. Justice BRENNAN concurring in result.

THE INVENTORY SEARCH

As an initial matter, it is important to note that the subjective motivation of a police officer conducting an alleged inventory search is relevant. Holmes, 569 N.W.2d at 187.(stating the court incorrectly adopted the state's assertion that the subject-motivations of a police officer is entirely irrelevant); reaffirmed by State v. Varnado, 582 N.W.2d 886, 892 (Minn1998) (stating for intrusions that are not based on probable cause, such as the frisk here, we have held that the pretext factor is relevant to determining whether the intrusion is reasonable.) The Court of Appeals held that the deputy's claim that petitioner's vehicle was a safety hazard goes to the deputy's credibility. But one of the exceptions for allowing an inventory search is that police cannot use the exception with a concealed investigatory motive.

In Jones v. United States, 357 U.S. 493 (1958), evidence was suppressed because "their purpose in entering was to search for distilling equipment, and not to arrest petitioner (to which they had an arrest warrant for). Id., at 500. What does the behavior of deputy Huston demonstrate at the inception of the search because "long before the law of probabilities was articulated as

such, practical people formulated certain common-sense conclusion -s about human behavior. Royer, 460 U.S. 491, n.6. Common sense would dictate that once the narcotics were discovered, the officers behavior in terms of what their attention was brought to as seen on the dash cam footage shows that they needed to bring the inventory sheet out as a subterfuge to what they initially sought ... The issue of deputy Huston's motive is a fact finding process , not a crdibility issue. Again, concealment is an element that petitioner has been trying to prove since the beginning of his litigation.

While it is true the Supreme Court has held that police searches are to be tested under a standard of objective reasonableness without regard to the underlying intent of the officer involved, the fact remains that the Court in two of Opperman's most recent progeny has upheld inventory searches only after concluding that the police did not act in bad faith or for the sole purpose of investigation. Holmes, 569 N.W.2d at 187; citing Bertine, 479 U.S. at 372; Florida v. Wells, 495 U.S. 1, 4 (stating that "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence.").

The Holmes Court took notice of the Supreme Court's reinterated language in Whren. In upholding as valid a traffic stop in which narcotic detectives used an objective basis (a violation of minor traffic laws) as a pretext for stopping and then searching persons suspected of drug dealing, the Court noted it would not uphold as valid police attempts to use the objective basis of an inventory search as a pretext for a purely investigatroy search. As the Court wrote:

> We are reminded that in Florida v. Wells we stated that "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence;" that in Colorado v. Bertine, in approving an inventory search, we thought it apparently significant that there had been "no showing that the police, who were following standard procedures, act-ed in bad faith or for the sole purpose of investigation,". In each case we were addressing the validity of a search conducting in the absence of probable cause. Our quoted stat-ement simply explain that the exemption from the need of probable cause (and warrant), which is accorded to searches made for the purpose of inventory, is not accorded to searches that are not made for those puposes.

Whren, 116 S.Ct. at 1773 (citations omitted); Holmes, 569 N.W.2d at 187-188; Ashcroft v. al-Kidd, 563 U.S. at 739-740.

There is no other contention that the search can be upheld on any other ground other than the inventory search exception. The district court abused its discretion when it upheld the search under a probable cause standard. A court abuses its discr- when its decision is based on an erroneous view of the law or is against logic and the facts in the record. Moylan v. Moylan, 384 N.W.2d 859, 864 (Minn.1986). Under an abuse discretion standard, a reviewing court may overrule the district court when the court's ruling is based on an erroneous view of the law. Citizens State Bank v. Raven Trading Partners, Inc., 786 N.W.2d 274, 278 (Minn. 2010)

Here, the district court ruled that the "objective theory of probable cause" and "the objective reasonable" are the same, as probable cause has the reasonableness requirment built into its definition. It was because of this ruling that the district court reasoned that "courts do not look into whether an officer had an improper or ulterior motive" in determining whether an inventory search was reasonable. The Court of Appeals noted that the distr-

ict court misstated the law in this respect but the Court of Appeals held that the district court did not clearly err by finding that Roybal's vehicle posed a traffic hazard. But the "decision to impound is properly analyzed as distinct from the decision to inventory." Despite this distinction, the Court of Appeals relied on Minnesota Case Law that predates Opperman, Bertine,Wells, and Whren when it held that "under Myles, impoundment was proper." More on point, the application of probable cause allowed the district court to disregard any and all pretextual evidence put forward by the petitioner and its ruling (the district court) was premised on the wrong view of the law and those findings by the district court were again relied on by the Court of Appeals.

The U.S. Supreme Court has stated "reasonableness derives content through reference of the warrant clause." United States v. United States District Court, 407 U.S. 297, 309-310 (1972). The difinition of reasonableness turns, at least in part, on the more specific dictates of the warrant clause. Id. at 315. In cases which the Fourth Amendment requires that a warrant to search be obtained, probable cause is the standard by which a particular decision is tested against the Constitutional mandates of reasonableness. Camara v. Municipal Court, 387 U.S. 523, 534 (1967).

The policies behing the warrant requirement are not implicated in an inventory search, nor is the related concept of probable cause; The standard of probable cause is peculiarly related to criminal investigations, not routine, non criminal procedures... The probable cause approach is unhelpful when analysis centers upon the reasonableness of routine administrative caretaking fun-

ctions, particularly when no claim is made that the protective procedures are a subterfuge for criminal investigations. Bertine, 479 U.S. at 371. But "a rule of practice must not be allowed for any technical reason to prevail over a constitutional right", Gould v. United States, 255 U.S. 298, 313 (1921), and "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment."

INDICIA OF PRETEXT AND ADMITTED PRETEXT

A persons purpose and intent are subjective matters and can be known as he makes outward manifestations of them. Erickson & Co., 2 N.W.2d at 827. In finding that the police officer's sole purpose in searching the vehicle was investigatory, the court pointed so several indicia of pretext which raise a question about whether the search was conducted in good faith. Holmes, 569 N.W.2d at 188.

Huston testified that the Northern Lights is having a narcotics problem. T. pg. 6. Huston testified that the vehicle came in for a short amount of time, made another quick stop over at the Breezy Circle Housing. Id. Usually that's pretty indicative of narcotic activity. T. pg. 6. The state also conceded in its brief that Huston's line of questioning regarding what petitioer had done over at the Breezy Circle Housing area was aimed at eliciting an incriminating response because "Huston was merely seeking information on potential illegal activity due to the location being Northern Lights and quick stops at Breezy Circle." Huston additionally conceded that the thought of narcotic activity was in the back of his mind with the purported equipment violation.

T., pg. 6. But "policeman simply cannot be asked to maintain the requisite neutrality with regard to their own investigation-the competitive enterprise that must rightly engage their single mind -ed attention..." Coolidge v. New Hampshire, 402 U.S. 443, 450 (1972). Nonetheless, Huston's concerns were raised by the large amount of cash on petitioer's person because "it went with the whole persona, he guessed, of narcotics, that time of night, that much in cash, short stops." T., pg. 11. Huston misrepresented Bob's towing as a subterfuge to avoid permitting petitioner the Breezy Circle alternative arrangement. Huston stated in his primary report that he returned to the vehicle to conduct a "search incident to arrest". The target of the search incident to arrest was the vehicle. No probable cause was ever implicated to initiate this jealously and carefully drawn exception to the warrant requirement. See Arizona v. Gant, 556 U.S. 332, 339 (2009) (stating if there is no possibility that an arrestee could reach into the area that law enforcement officer's seek to search, both just -ifications for the search incident to arrest exceptions are absent and the rule does not apply.). This outward manifestation demonstrates Huston's subjective purpose and intent when he made the vehicle the target of the search incident to arrest doctrine. More specifically, the exception derives from interest in officer safety and "evidence preservation". Id. at 338. This is the actual admitted pretext that the Court should have taken into account. Whren, 517 U.S. at 814.

An officer can gain no Fourth Amendment advantage through sloppy study of the laws he is duty bound to enforce. Heien v. North Carolina, 574 U.S. 54, 67 (2014). Law enforcement are expe-

cted to school themselves in the niceties of probable cause. O'Connor v. Ortega, 480 U.S. 709, 724 (1987). Because intent poses a factual issue of great difficulty (unlike the credibility issue), the pretextual nature of the officer's conduct will often go un-detected on a motion to suppress. Wayne R. LaFave, 3 Search & Seizure § 7.5 (e) at 90-91 (2018). Here, petitioner has made several showings which are pretextual factor which collectively are harmful to the state's position. See Holmes, 569 N.W.2d at 188(" while any one of these factors probably would not render the search constitutionally defective, collectively they are very harmful to the state's position.")

In finding a pretextual issue dispositive, the Minnesota Supreme Court will not address whether the officer followed standard procedures in his local police department. Holmes, 569 N.W.2d at 188 ("because we find the pretextual issue dispositive, we will not address whether the officer followed standard UMPD procedures in executing the search.").

COMPLIANCE WITH STANDARD PROCEDURE IN TOWING/INVENTORY POLICY

In determining the reasonableness of an inventory search, therefore, courts must ask whether police carried out the search in accordance with standard procedures in the local police department. Holmes, 569 N.W.2d at 187. To pass constitutional muster, the search itself must be conducted pursuant to standard police procedures. Bertine, 479 U.S. at 375. The rule that standardized criteria or established routine must exist as a precondition to a valid inventory search is designed to ensure that the inventory is not a pretext "for a general rummaging in order to discover incriminating evidence." Florida v. Wells, 495 U.S. 1,

4 (1990). In order to perform this function, the procedures must be rationally designed to meet the objectives that justify the se-arch in the first place, and must sufficiently limit the discretion of the officer in the field. Id. at 4. Obviously, there is no need to perform the caretaking function of an inventory,when the vehicle is not in the care, custody, and control of the police. Wayne R. LaFave, 89 Mich. L. Rev. 442, 458 (1990). And this means there is an equivalent need for a decision-limiting rule applicable to both police decisions-whether to take custody of the vehicle..." Id. A regime that...permits officers substantial discretion concerning whether to impound in the first place is just as threatening to Fourth Amendment values as a regime that carfully circumscribes the impoundment decision but leaves the police broad latitude regarding which impounded cars will be inve-ntoried. Id. at 458-459. Searches and seizures in conformity wi-th such regulations are reasonable under the Fourth Amendment. Opperman, 428 U.S. at 376.

In the instant case, there was eight undocumented items of value that were not included on the inventory sheet. The constitutionality of an inventory search does not rise and fall on the abilities of a particular officer. U.S. v. Taylor, 636 F.3d 461, 464 (8th Cir.2011). Failing to make a record of all property with-in the vehicle, law enforcement failed to follow its own procedure and thus did not conduct the search pursuant to standardized procedures. U.S. v. Rowland, 341 F.3d 774, 780 (8th Cir.2003). Law enforcement's failure to record property does illustrate the inventory search was pretextual. Rowland, 341 F.3d at 781. There must be something else to suggest the police raised the inventory banner in an after the fact attempt to justify what was...purely

and simply an investigatory search for incriminating evidence. U.S. v. Marshall, 986 F.2d 1171, 1175 (8th Cir.1993).

Huston testified that his policy required him to inventory the entire vehicle. T., pg.12. Cass County policy clearly circumscribes the purpose and scope of an inventory search which leaves "no significant discretion in the hands of the individual officer because he usually has no choice as to the subject of the search or its scope." Opperman, 428 U.S. at 384. See policy 510.4 stating all property in a stored or impounded vehicle shall be inventoried and listed on the vehicle impound form...Members conducting inventory searches should be as thorough and accurate as practicable in preparing an itemized inventory. Id. These inventory procedures are for the purpose of protecting an owner's property while the owner is in the Sheriff's custody, and to protect the office against fraudulent claims of lost, stolen or damaged property. Id. Huston was not left with discretion on what property to inventory and what property not to inventory. Standardless and unconstrained discretion is the evil the Court has discerned when in previous cases it has insisted that the discretion of the officer in the field be circumscribed, at least to some extent. Delaware v. Prouse, 440 U.S. 648.(1979). The underlying rationale for allowing an inventory exception to the Fourth Amendment warrant rule is that police officers are not vested with discretion to determine the scope of the inventory search. Bertine, 479 U.S. at 376. BLACKMUN concurring.

Many papers, having no pecuniary value to others, are the greatest possible value to the owner and are property of a most important character. Gould, 255 U.S. at 310. Huston acknowledged that the vehicle's title was in the dash when petitioner inform-

ed him that he had the title and everything. See body cam from 02:28-02:43. Ownership of a motor vehicle is generally determined by reference to the title certificate. A title certificate is prima facie evidence that party named on certificate owns vehicle to which it applies, or creates a rebuttable presumption of ownership, but is not conclusive proof or the sole determinant of ownership of a motor vehicle. Under such authority, proof showing different ownership is admissible. 63C Am.Jur2d Property § 52 Motor Vehicles. The United States Supreme Court has recognized "that standard inventories often include an examination of the glove compartment, since it is a customary place for documents of ownership and registration, as well as a place for temporary storage of valuables." Opperman, 428 U.S. at 372. The main piece of evidence that petitioner needed to get his property out of the impound lot was located within the vehicle itself.

To bolster petitioner's position that Huston had no concern for his property within the vehicle, Huston left both the driver side and rear windows rolled down. See dash cam from 30:08-30:14. Also see policy 510.6 stating "if a search of a vehicle leaves the vehicle or any property contained therein vulnerable to unauthorized entry, theft or damage, personnel conducting the search shall take such steps as are reasonably necessary to secure and/or preserve the vehicle or property from such hazards." Huston was the one who requested petitioner to roll down his window so "he didn't have to yell across him." See body cam from 01:12-01:16. Also see U.S. v. Mitchell, 458 F.2d 960 (9th Cir.1972)(quoting the district court "the police had a duty to protect the interior of the car from the elements by making sure that the

windows were rolled up.") Id. at 962. Leaving the windows open se-rves no protection of petitioner's property from pilferage. The undocumented items, had they come up missing, would only be known to have gone missing by the petitioner himself. Members conducting inventory searches should be as thorough and accurate as practicable in preparing and itemized inventory. Policy 510.4.

A minor divation from procedures alone does not prove pretext. Whren, 517 U.S. at 816. It is undisputed that several deviations from procedures exists in this case. The case relied on by the Court of Appeals to uphold the impoundment in this case was "well aware that there was a potential for abuse by the police of the inventory procedure." Myles, 218 N.W.2d at 304. An exploratory search for evidence may be conducted under the pretext of the inventory the contents of an impounded vehicle. Id.

Petitioner has sought the highest court in Minnesota to afford additional safeguards for unreasonable seizures (impoundment) and searches (inventory) under the Constitution of the state. The statute in place which mandates that a towing authority to assign his reasons for towing in their standard policy and procedure or they may not tow a vehicle was completely ignored and justified after the fact. Petitioner urges the U.S. Supreme Court to bring clarity to this exception where case law states that this community caretaking function must be totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute, to being slowing eroded to where Minnesota has adopted a standard that a police officer may have a dual purpose that includes a purpose to search for incriminating

evidence but this is contingent on compliance with following standard procedures in their local police department which was not followe in several respects. The Minnesota Court of Appeals relied on the credibility determination of the district court but at the backdrop of this finding was an erroneous view of the law in which the district court refused to make a finding regarding whether the deputy acted in bad faith or for the sole purpose of investigation but ruling that "courts do not look into whether an officer had an improper or alterior motive." This inquiry into whether a particular officer was concealing a investigative motive or acted in bad faith is a "fact finding" process, and not a a crdibility issue. One who seeks to conceal something does not reveal what he seeks to keep from coming into the light.

For the above-stated reasons, petitioners respectfully asks this Court to revisit this inventory search exception and adopt a new rule from Sharon Finegan's Closing the Inventory Loophole: Developing a New Standard for Civilian Inventory Searches from the Military Rules of Evidence, 20 Geo. Mason L. Rev. 207 (2012); LaFave, 3 Search & Seizure § 7.5(e)(5th ed,)(2018);Jason S. Marks Taking Stock of The Inventory Search: Has the Exception Swallowed the Rule, 10 Crim.Just.11 (1995).

CONCLUSION

After Wells, lower courts and local police departments have been left without adequate guidance to determine what constitutes "standard criteria" that sufficently limit individual police officers' discretion in conducting inventory searches to protect an arrestee's personal effects.

These elements in turn have produced three dilemmas unresolv

-ed by the Court's jurisprudence:(1) Must standardized criteria be in writing? (2) Must a department's policy explicitly remove all discretion from the individual officer conducting the inventory search? (3) Can the inventory search continue to withstand the rigors of the Fourth Amendment solely on the basis of an interest in protecting an arrestee's personal property?

Such rules are necessary to discern good faith searches from bad faith searches because "the search power could unlawfully be exercised whenever it appears that the searches purpose was not aimed at creating an inventory but criminal investigation, since the sole justification for allowing this narrow exception is not present in such a case...the court might fashion a rule excluding from evidence...the rationale of course, would be to discourage abuse of the inventory searchers no motive for searches except that which supports the search power given." Amsterdam, 58 Minn.L .Rev. 349, 435 (1974). Motivation is, in any event, a self-generating phenomenon. Id. at 437. If a purpose to search for incriminating evidence can legally be accomplished only when accompanied by a purpose to inventory, a knowledgeable officer will seldom experience the first desire without simultaneous on rush of the second. Id.

Date: June 5th 2020

Respectfully Submitted,

Kristopher Lee Royhal