STATE OF MINNESOTA | **IN DISTRICT COURT**

[COUNTY] COUNTY | **[DISTRICT] JUDICIAL DISTRICT**
(Case Type: Crim/Traf Mandatory)

STATE OF MINNESOTA, **Plaintiff,** **v.** **[DEFENDANT],** **Defendant.**	**NOTICE OF MOTIONS, DEFENDANT'S MOTION TO SUPPRESS EVIDENCE, MOTION TO DISMISS FOR LACK OF PROBABLE CAUSE, AND BRIEF IN SUPPORT OF MOTIONS** **Case No: [CASE NUMBER]**

TO: The State of Minnesota, by and through its Attorney of Record,

NOTICE OF MOTIONS

PLEASE TAKE NOTICE that, pursuant to the Minnesota Rules of Criminal Procedure, the above-named Defendant, [Defendant], will move for and Order of the Court suppressing evidence and dismissing this case for lack of probable cause at a date and time scheduled by the Court, in the courtroom to which this matter will be assigned, located in the [County] County Courthouse, in [City], Minnesota.

MOTION TO SUPRESS EVIDENCE

The Defendant, [Defendant] hereby moves for an Order of the Court to suppress all evidence obtained as a result of an illegal search and seizure in contravention of [Defendant's] state and federal constitutional rights. This Motion is based on the accompanying Brief in Support of the Motion, any and all documents previously filed, and any documents or evidence to be presented at a hearing on the Motion.

MOTION TO DISMISS FOR LACK OF PROBABLE CAUSE

Upon suppression of the illegally obtained evidence, the Defendant, [Defendant], hereby moves for an Order of the Court dismissing the above-referenced matter for lack of probable cause. This Motion is based on the accompanying Brief in Support of the Motion, any and all documents previously filed, and any documents or evidence to be presented at a hearing on the Motion.

TIME NEEDED FOR CONTESTED OMNIBUS/MOTION HEARINGS

On information and belief, the Defense anticipates that the time needed for the contested omnibus/motions hearing will last approximately one (1) to one and one-half (1 ½) hours.

BRIEF IN SUPPORT OF MOTIONS TO SUPPRESS EVIDENCE AND MOTION TO DISMISS FOR LACK OF PROBABLE CAUSE

This case arises from a traffic stop, arrest, and subsequent search and seizure, which resulted in the discovery of controlled substances from [Defendant's] person on [date]. In the brief below, [Defendant] argues law enforcement violated his constitutional rights by illegally stopping the vehicle in which he was riding as a passenger and immediately arresting the occupants by holding them at gunpoint.

[Defendant] has moved for an Order of the Court suppressing evidence and dismissing the case for lack of probable cause. Based on the facts, law, and argument outlined below, the evidence should be suppressed and the charges against him dismissed.

I. FACTS

This case arises from a traffic stop, arrest, and subsequent search and seizure, which resulted in the discovery of controlled substances from [Defendant]'s person on [Date]. On November 29, [Defendant] was riding as a passenger in [Driver's] white Dodge Ram king cab dually pickup truck in [County], Minnesota. At approximately 11:30 p.m., [Driver's] vehicle was approaching the intersection of [Highway] and [Road]. While [Driver's] vehicle was stopped at the intersection waiting for an opportunity to turn right onto [Highway], a vehicle approached from the south, appearing to be negotiating a right turn from [Highway] onto [Road]. As the vehicle negotiated the turn, it straightened and approached the driver's door. The vehicle turned on its overhead emergency stop lights. As the driver of the vehicle, [Arresting Officer], exited, he drew his gun, training it on [Driver] and [Defendant].

Shortly thereafter, another law enforcement officer, [Backup Officer], approached the scene of arrest. On [Arresting Officer's] instruction, [Backup Officer] ordered [Driver] out of the vehicle. [Driver] was ordered to place his hands on the driver's side of the pickup so a pat-down search could be completed. Then, [Backup Officer] ordered [Defendant] out of the vehicle. [Backup Officer] then searched [Defendant] while [Arresting Officer] kept his gun trained on the two Defendants. In the course of the search, the deputies located controlled substances and paraphernalia on [Defendant]'s person. After the search, [Defendant] was handcuffed and placed in the front seat of a squad car, while [Driver] was placed in the rear of the same squad car.

While [Arresting Officer] was approaching [Road] from [Highway] perpendicular to [Driver's] pickup truck, [Arresting Officer] was not in a position to identify the vehicle's

license plate number, vehicle make or model, or any other pertinent identifying features of the pickup truck, other than it had nice "pipes" and "lights," especially considering the time the traffic stop was initiated—11:30 p.m. According to the complaint and subsequent investigative reports/timelines, [Arresting Officer] formulated his purported probable cause to conduct the traffic stop and immediate arrest based on information that the [District] Minnesota Drug Task Force, specifically, [Supervising Officer], wanted the vehicle stopped.

The Task Force suspected [Unrelated Defendant], who resides in [City], Minnesota, of drug activity. The Task Force began surveillance on the [Unrelated Defendant] residence on [Date], the day before the traffic stop in this case. The information available concerning the relevant night in question was that while the Task Force was surveilling the [Unrelated Defendant's] residence, a Dodge pickup truck approached the residence at approximately 10:15 p.m. The truck stayed at the [Unrelated Defendant's] residence until approximately 11:15 p.m. — about an hour. During this time period—10:45 p.m. as noted by Judge [Blank]—[Warrant Applying Officer] of the Task Force applied for and received a search warrant for the [Unrelated Defendant's residence located at [Address of Unrelated Defendant]; the person of [Unrelated Defendant]; and any other buildings or containers on the described property. Neither the application for a search warrant, the [Warrant Applying Officer] affidavit, or the issued search warrant mentioned or authorized the stop, seizure, search, or arrest of individuals who were located on the premises at the time the search warrant was executed, or those individuals who may have recently been at the [Unrelated Defendant's] residence.

Nevertheless, despite the fact that the pickup at [Unrelated Defendant's] residence was under surveillance the entire time it was at the residence, [Supervising Officer] instructed [Arresting Officer] to stop the pickup without a warrant while [Supervising Officer] suspended execution of the [Unrelated Defendant's] residence search warrant until they discovered whether "it may be carrying [Unrelated Defendant] or it could be carrying contraband." In other words, [Supervising Officer] decided to suspend execution of the search warrant for which he had a judicial determination of probable cause sufficiency to execute a stop and search on a vehicle for which he did not have a judicial determination of probable cause to see if there was additional evidence he could gather in relation to the execution of the search warrant.

II. LAW AND ARGUMENT

The evidence obtained during the illegal and unconstitutional search of [Defendant] should be suppressed for two reasons: First, [Arresting Officer] who stopped the vehicle in which [Defendant] was riding as a passenger did not have probable cause to stop and arrest the vehicle's occupants. [Arresting Officer] made an immediate warrantless arrest at the request of [Supervising Officer] at gunpoint as soon as [Arresting Officer] stopped {Driver's] truck and exited his squad car. As a result of law enforcement's lack of probable cause, any evidence obtained during the course of the search was unconstitutionally and illegally obtained.

Second, the State of Minnesota will undoubtedly argue probable cause exists on the basis of the collective knowledge doctrine. Here, the collective knowledge doctrine is inapplicable and even if applied, law enforcement's collective knowledge—based on historical information, mere suspicion, whims, caprice, idle curiosity, or hunches—still

falls short of the probable cause required to justify the traffic stop, immediate arrest, and subsequent search of [Defendant]'s person.

As a result of law enforcement's lack of probable cause, the physical evidence obtained as a result of the constitutionally impermissible search should be suppressed.

A. The Arresting Officer Lacked Probable Cause

Both the Fourth Amendment to the United States Constitution and Article I of the Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1 § 10. The Constitution generally mandates the issuance of a search warrant prior to governmental intrusion. See State v. Richards, 552 N.W.2d 197, 203 (Minn. 1996) (citing Payton v. New York, 445 U.S. 573, 585 (1980)). If a citizen has a reasonable expectation of privacy in the area to be searched, a warrant is required. Id. (citing Katz v. United States, 389 U.S. 347, 354 (1967); State v. Tungland, 281 N.W.2d 646, 649-50 (Minn. 1979)). A warrant must be based on probable cause, supported by oath or affirmation, and must particularly describe the things, places, and persons, to be searched. See U.S. Const. amend. IV; Minn. Const. Art. 1 § 10; see also Minn. Stat. § 626.08 (requiring probable cause and particularity before search warrants may be issued).

The Supreme Court of the United States has established that a search, which is conducted without a warrant, is per se unreasonable. State v. Hanley, 363 N.W.2d 735, 738 (Minn.1985). (citing Katz, 389 U.S. at 357; Coolidge v. New Hampshire, 403 U.S. 443 (1971)); see also State v. Burbach, 706 N.W.2d 484, 488 (Minn. 2005); State v. Albrecht, 465 N.W.2d 107, 108 (Minn. Ct. App. 1991). A search is only lawful when it is conducted pursuant to a valid search warrant except in narrowly limited circumstances.

Id. For instance, if an arrest is valid, law enforcement may conduct a search of the person without a warrant or additional justification. State v. Olson, 634 N.W.2d 224, 228 (Minn. Ct. App. 2001). The Minnesota Supreme Court reiterated that constitutionally required rule in Matter of Welfare of G.M., where the Court held:

> Unless one of the well-delineated exceptions is applicable, police need both probable cause and a warrant before they can seize an item from a person. U.S. Const. amend IV. In addition, unless one of the well-delineated exceptions is applicable, the police need both probable cause and a warrant before they can search the seized item.

560 N.W.2d 687, 692 (Minn. 1997).

The Supreme Court has repeatedly held that "searches and seizures 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." Minnesota v. Dickerson, 508 U.S. 366, 372 (1993) (internal quotations and citations omitted). If law enforcement arrests a person and searches him or her without prior approval by a judge or magistrate or a "specifically established and well-delineated exception[]," all evidence obtained as a result of the illegal search should be suppressed under the "fruit-of-the-poisonous tree" doctrine. State v. Jackson, 741 N.W.2d 146, 152 (Minn. Ct. App. 2007) (citing Wong Sun v. United States, 371 U.S. 471, 485-86 (1963)). "A passenger in a vehicle stopped by the police has standing to contest the legality of the stop." State v. Timberlake, 726 N.W.2d 509, 513 (Minn. Ct. App. 2007) (citing State v. Ritchie, 379 N.W.2d 550, 552-53 (Minn. Ct. App. 1985)). Therefore, a passenger in a vehicle like [Defendant] has "a 'protectible Fourth Amendment interest in not being stopped unless the police officers

were able to justify the stop based on the standards set forth in Terry and . . . Cortez.'" Id. (quoting Ritchie, 379 N.W.2d at 552-53).

Here, the arresting officer may not justify the search as subsequent to a valid arrest because the officer failed to possess the necessary probable cause to make the immediate warrantless arrest in the first place. In Minnesota, probable cause to arrest is determined by evaluating whether there were "objective facts that would lead a reasonable person to believe that a crime has been committed" and that the defendant committed it. See State v. Hussong, 739 N.W.2d 922, 925-26 (Minn. Ct. App. 2007); see also State v. Laducer, 676 N.W.2d 693, 697 (Minn. Ct. App. 2004).

In order to establish that probable cause existed for a warrantless arrest, the State holds the burden of proving that at the time of the arrest, the police had factual information obtained from reliable sources from which they could conclude that there was probable cause to believe the defendant had participated in a crime. State v. Eling, 355 N.W.2d. 286, 290 (Minn. 1984); see also 4 Wayne R. LaFave et al., Criminal Procedure § 3.3(b) (4th ed. 2004). Courts look to the totality of the circumstances known to the officers in determining whether there is probable cause for an arrest. See, e.g., State v. Zanter, 535 N.W.2d 624, 633 (Minn.1995).

Here, it is indisputable that law enforcement did not have a warrant authorizing the search of [Defendant]'s person or the vehicle he was riding in at the time of the seizure, nor did the officers have a search warrant to seize the vehicle in which [Defendant] was riding. It is also indisputable that [Arresting Officer] was not operating under "investigatory stop" principles to identify the individual whom he and other law enforcement suspected may have committed a crime. Rather, [Arresting Officer] received a phone call from

[Supervising Officer], who directed him to make an arrest based on a vague description of a vehicle but included no other valuable information. When [Arresting Officer] saw a vehicle that had been imprecisely described to him at an intersection miles from the vehicle's alleged point of origin and approximately 15 minutes after the vehicle had left, he cornered the vehicle and immediately trained a gun on the vehicle's occupants. A reasonable person in [Defendant]'s position would immediately have felt he could not leave. Clearly, [Defendant] was seized and arrested immediately by Arresting Officer's] clear and excessive assertion of authority use of force. See Timberlake, 726 N.W.2d at 513.

[Arresting Officer]—having witnessed no traffic infractions, equipment violations, or any other reason to stop the vehicle and without verifying the vehicle's make, model, and license plate, and alleged occupants—acted on a mere whim that the vehicle may be containing contraband. As Minnesota courts have repeatedly held, an officer must have more than a mere hunch, whim, caprice, or idle curiosity. See, e.g., State v. Harris, 590 N.W.2d 90, 99 (Minn. 1999).

It is obvious in this case that the warrantless traffic stop was made without probable cause from [Arresting Officer] perspective. The traffic stop was not investigatory in nature, so the Terry reasonable suspicion standard does not apply. The State must show there was probable cause to not only stop the vehicle, but also to immediately arrest the vehicle's occupants. The State has failed to show the police officer had probable cause at the time of the arrest. Consequently, the arrest should be rendered unconstitutional and all evidence obtained as a search incident to the unlawful arrest should be suppressed.

B. The Collective Knowledge Doctrine is Inapplicable on These Facts

In general, Minnesota subscribes to the "collective knowledge" doctrine, which can, in certain circumstances, be used to impute one officer's objectively justified probable cause determination to another officer. See State v. Conaway, 319 N.W.2d 35, 40 (Minn. 1982); see also State v. Riley, 568 N.W.2d 518, 523 (Minn. 1997) (reiterating the collective knowledge approach is used when police officers are working as a "team"). That is, knowledge of the police force is collectively pooled and imputed to the arresting officer for the purpose of determining the sufficiency of probable cause to arrest. Conaway, 319 N.W.2d at 40. Despite the general rule, the common knowledge doctrine is not always sufficient to establish probable cause to arrest and subsequently search incident to that arrest. See id. In Conaway, the Minnesota Supreme Court emphasized:

> Should, however, the police network fail to have sufficient information to establish probable cause, then the arrest is illegal.

319 N.W.2d at 40 (citing Whitley v. Warden, 401 U.S. 560 (1971)); accord State ex. rel Law v. Ramsey County District Court, 150 N.W.2d 18 (Minn. 1967)).

Like the situation noted in Conaway, the State is unable to establish the collective probable cause to stop [Driver's] pickup truck. The operative question is whether the police as a collective body have knowledge of information that provides for probable cause at the time of the arrest. Conaway, 319 N.W.2d at 40; see also 1 W. LaFave, Search and Seizure § 3.5(d) (1978). [Defendant]'s arrest cannot be justified by what the subsequent search disclosed. Conaway, 319 N.W.2d at 37. Because law enforcement did not have collective knowledge of objectively reasonable facts sufficient to establish probable cause to stop the [Driver's] vehicle and immediately arrest its occupants, everything else obtained after the unlawful seizure falls and the evidence

must be suppressed. Conaway, 319 N.W.2d at 37 (citing Henry, 361 U.S. at 103 and Mapp, 367 U.S. 643 (1961)).

In addition to the lack of probable cause to make the warrantless arrest, subsequent search incident to the unlawful arrest was unconstitutional because {Arresting Officer] and [Supervising Officer] lacked a nexus between the alleged criminal activity and the defendant. See State v. Souto, 578 N.W.2d 744 (Minn. 1998). In order to make a probable cause determination, the Court must look to the totality of the circumstances test announced by the Supreme Court in Illinois v. Gates. See Souto, 578 N.W.2d at 747 (quoting Gates, 462 U.S. 213, 238 (1983)). The probability that contraband will be found in a particular place must be determined by the link between the alleged crime to the place to be searched and the freshness of the information. Id. (citing 2 LaFave, Search and Seizure § 3.7(d) (3d. ed. 1996). The majority of the information used here to purportedly establish probable cause was historical; stale at best. Probable cause is lacking in this case because the state failed to establish a nexus between the alleged criminal and the Defendant.

Here, the Task Force observed the [Unrelated Defendant's] residence where the crime allegedly occurred during the time in which law enforcement suspected illegal activity was occurring. The Task Force was surveilling the residence for over and hour, and even after suspecting that a crime was being committed, failed to freeze the scene until obtaining a warrant authorizing law enforcement to seize and search third persons present at the time of the Samuelson search warrant execution, which would have been constitutionally authorized. Judge [Blank] had signed the search warrant approximately 30 minutes before the pickup truck left the [Unrelated Defendant's] residence; plenty of

time to have called her Honor back and request a modification of the search warrant based on oral testimony pursuant to Minn. R. Crim. P. 36. Furthermore, the Task Force failed to collect any information about the Defendants, [Defendant] and [Driver], or [Driver's] vehicle prior to conducting the unjustified stop and arrest of the defendants. Once the pickup left the residence, [Supervising Officer] made a cell phone call to [Arresting Officer] with a request that he arrest whoever was driving a white pickup in the area. [Supervising Officer] and the Task Force failed to describe the pickup in sufficient detail when instructing [Arresting Officer] of his wishes to stop the vehicle due to his insufficiency of gathering information while the pickup was at the [Unrelated Defendant's] residence.

At the time of the arrest, the officers did not possess sufficient factual information to support a finding of probable cause for a traffic stop and immediate arrest without a warrant. Here, [Arresting Officer] was given vague instructions and an indistinct description of the vehicle he was asked to stop. [Arresting Officer] may have had enough information to conduct an investigatory stop,[1] he acted impetuously by making more than an investigatory stop by immediately arresting the vehicle's occupants. The search that followed the illegal arrest further invaded [Defendant]'s constitutional right to be secure from unreasonable searches and seizures.

The information law enforcement possessed at the time of the traffic stop was not sufficient to establish probable cause. Consequently, this Court should suppress the illegally obtained evidence and dismiss this matter for lack of probable cause.

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[1]While [Defendant] does not concede this point, it illustrates the fact that [Arresting Officer] could have used a reasonable degree of restraint in stopping the vehicle he, along with [Supervising Officer], suspected may contain fruits of a crime.

III. CONCLUSION

For the foregoing reasons, [Defendant] respectfully asks the Court to enter an Order, suppressing any and all evidence obtained from the warrantless arrest, and the following search.

Respectfully submitted this ___ day of February, 2008.

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