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STATE OF MINNESOTA

IN SUPREME COURT

Daniel Garcia Mendoza,
a/k/a Ricardo Cervantes-Perez
Appellant ,

vs.

2003 Chevy Tahoe,
VIN: 1GNEC13V23R143453,
Plate # 235 JBM, $611 in U.S. Currency,
Respondent.

BRIEF OF AMICUS CURIAE
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STATEMENT OF THE CASE AND FACTS[1]

Amicus Curiae Minnesota County Attorneys Association concurs with the statement of the case and facts of the Respondent.

STANDARD OF REVIEW

Amicus Curiae Minnesota County Attorneys Association concurs with the standards of review of the Respondent.

ARGUMENT

A. This Court need not reach the constitutional question regarding the application of the exclusionary rule under the state or federal constitution because an adequate basis for deciding the case exists under state law and the facts of this case.

It is well-settled law that courts should not reach constitutional issues if matters can be resolved otherwise. *See, Ashwander v. Tennessee Valley Authority,* 297 U.S. 288, 346-48, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (Brandeis, J., concurring). In *State v. Bourke,* 718 N.W.2d 922, 926 (Minn. 2006), the Minnesota Supreme Court stated:

> We address Bourke's statutory argument first because "[o]ur general practice is to avoid a constitutional ruling if there is another basis on which a case can be decided." *Erlandson v. Kiffmeyer,* 659 N.W.2d 724, 732 n. 7 (Minn.2003); see also *In re Senty-Haugen,* 583 N.W.2d 266, 269 n. 3 (Minn.1998) ("It is well-settled law that courts should not reach constitutional issues if matters can be resolved otherwise.").

See also, Torgelson v. Real Prop. Known as 17138 880th Ave., Renville County, 749 N.W.2d 24, 29-30, (Minn. 2008) (Gildea, J., concurring).

In this case, it is not necessary to reach constitutional questions under the state or the federal constitutions to resolve the issues for three reasons. First, by pleading guilty

[1] Certification is hereby made pursuant to Minn. R. Civ. App. P. 129.03 that no person or entity has paid for or authored this brief other than the undersigned attorney and the Minnesota County Attorney's Association.

to a crime with a valid factual basis that included acts on March 19, 2012, the date of the seizure, the Appellant waived all non-jurisdictional issues and defects as to his conviction, including the propriety of the stop, arrest, and seizure; he should not thereafter be heard to contest issues in the related forfeiture resolved by his guilty plea. Second, this case can be decided on the findings and memorandum of the District Court in its order granting summary judgment to the Respondent, dated January 11, 2013, as modified by the Court of Appeals. Third, but for the Appellant's waiver of the issue, both in the District Court and on appeal, (See Respondent's brief, p. 21), he had an available statutory remedy which obviated the need for this Court to consider the constitutional issues.

By pleading guilty, a defendant waives all non-jurisdictional defects in the case, including constitutional claims. In *State v. Lothenbach,* 296 N.W.2d 854, 857 (Minn.1980) the Court quoted the Supreme Court in *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed. 2d 235 (1973) with approval, when it stated,

> When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.

However a defendant may still withdraw a guilty plea to correct a manifest injustice. *State v. Farnsworth,* 738 N.W.2d 364, 371 (Minn. 2007). In this case, the Appellant entered a guilty plea to a felony drug crime, albeit in federal court. Under Minnesota law, he should not now be heard to raise constitutional issues in the state forfeiture case

that he waived by his guilty plea in the criminal case. Beyond this waiver, he should also be estopped from re-litigating the ruling from the federal suppression hearing. See Respondent's brief, page 17, n.7.

The District Court determined in its findings of fact that the Appellant was indicted in United States District Court with four counts of possession and distribution of methamphetamine. The Court found that on or about August 8, 2012, the Appellant pleaded guilty to Count II of the indictment which charged him with the distribution of 50 or more grams of methamphetamine. (District Court memorandum dated January 11, 2013, Appellant's Appendix, p. A-5). Pursuant to the plea agreement the Appellant agreed to forfeit property used to facilitate the commission of his violation. *Id.*

The District Court indicated that the issue before it was whether there were any genuine issues of material fact as to whether the property was subject to forfeiture pursuant to the plea agreement and the applicable statutes. (Appellant's Appendix, pp. A-3, A-5 and A-6). It went on to conclude that the Appellant did not argue and the Court did not find that any genuine issues of material fact existed.

The Court of Appeals disagreed with the District Court that the federal forfeiture statute could be the basis for the summary judgment ruling. (*Garcia-Mendoza v. 2003 Chevy Tahoe, Vin # 1GNEC13V23R143453, Plate # 235JBM*, A13-0445, 2013 WL 6152304 (Minn. Ct. App. Nov. 25, 2013) (Unpublished), Appellant's Appendix, p. A-30). The Court of Appeals reasoned that the lower court should have relied on state forfeiture statutes since the state retained jurisdiction over the forfeiture, but that the grant of summary judgment could be affirmed if there were any grounds on which it could be

sustained. *Id.* The Court of Appeals went on to determine that the Appellant had not overcome the presumption of forfeitability of items in proximity to controlled substances in Minn. Stat. Section 609.5314, Subd. 1. The Court of Appeals specifically relied on the fact that the Appellant admitted possession methamphetamine over a course of conduct which included March 19, 2012, the date of the seizure of the disputed items. (Appellant's Appendix, p. A-32).

Those determinations by the Court of Appeals establish a sufficient basis for this Court to review and rule on the issues, without reaching the constitutional issue whether this Court should apply the exclusionary rule in a civil case. Both the District Court and the Court of Appeals concluded that the legality of the police actions were not relevant to the key question, which was whether there were any genuine issues of material fact in the summary judgment motion. The District Court's view that the stop and seizure were unconstitutional appears to be dicta, since it specifically stated that that issue was not before it. (Appellant's Appendix, p. 3). Had the Appellant properly preserved the claim in District Court, he would have had a state statutory remedy available under Minn. Stat. Section 626.21. See Respondent's brief, pp. 20-22. Since there is a separate legal ground on which to decide this case without reaching the constitutional question, precedent from this Court suggests that a constitutional ruling should not be made.

B. Applying the exclusionary rule to civil cases will exacerbate court calendar congestion, overburden county and city attorneys' offices, and place persons in need at risk.

Additional, weighty considerations that militate against the application of the exclusionary rule in civil cases are the burdens that this would place on district and appellate courts as well as the civil and enforcement sections of county and city attorneys' offices. Allowing litigants in civil cases to raise suppression issues will unquestionably increase the already burgeoning caseloads of district courts, contribute to docket delays, and require the equivalent of contested omnibus hearings in the midst of protracted civil litigation. Crowded court dockets have been an issue over the years. *See,* e.g., *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986) (delay of speedy criminal trial was due to overburdened judicial system and responsibility weighed against the State); *State v. Friberg,* 421 N.W.2d 376, 378 (1988) (same). Grafting suppression issues onto civil cases will place additional responsibilities on district courts to hear testimony, make credibility determinations, review state and federal Fourth Amendment case law, and make detailed findings in civil cases, all of which will add unwarranted complexity to the caseload of appellate courts. Once suppression issues are introduced into civil litigation, it is reasonable to predict that district courts will be deluged with requests for testimonial hearings in civil cases, challenging the admissibility of evidence.

In addition, should an expansive application of the exclusionary rule in civil cases begin, it will likely be raised in a multitude of cases with even greater social costs than those in the criminal area. Child in need of protection or services cases would likely be early targets for requests to suppress evidence, which if granted, could severely hamper the needed actions of social services departments, working in the best interests of neglected or abused children. The application of the exclusionary rule in adult protection

cases could have like results, where reliable and probative evidence demonstrating health-threatening living conditions of a vulnerable adult could be excluded. That in turn could put an adult with special needs at risk, delaying or preventing a health intervention or a judicial commitment necessary to provide for the person's physical health, mental health, or medication regimen. From these cases, it would be a short leap to applying the exclusionary rule to other civil cases, including sexually dangerous person or sexual psychopathic personality commitments, thereby delaying or preventing the process of dealing with some of the most problematic cases that society faces. Once the flood gates open, it is doubtful that suppression issues can or will be limited to forfeiture cases.

C. The Supreme Court has declined to extend the exclusionary rule to civil cases where the application of the rule would not provide significant additional deterrence; the rule should not be applied to the instant case since it will not provide significant deterrence.

The United States Supreme Court has stated in a number of cases that the exclusionary rule is not a personal constitutional right of a person accused, but is a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect." *United States v. Calandra,* 414 U.S. 338, 348, 94 S.Ct. 613, 620, 38 L. Ed. 2d 561 (1974); *United States v. Leon,* 468 U.S. 897, 906 104 S.Ct. 3405, 3412, 82 L. Ed. 2d 677 (1984). The Court in *Leon* explained that whether the exclusionary rule is appropriately imposed in a particular case is an issue separate from

the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct, citing *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L. Ed. 2d 527 (1983). Only the former question was before the Court in *Leon*. The Court said that the question had to be resolved by weighing the costs and benefits of preventing the use in the prosecutor's case-in-chief of inherently trustworthy and tangible evidence obtained in reliance on a search warrant issued by a detached and neutral magistrate that was ultimately found to be defective. *Leon*, 468 U.S. at 906-07, 104 S. Ct. at 3412. The Court added that,

> [T]he social costs exacted by the exclusionary rule for the vindication of Fourth Amendment rights have long been a source of concern. Our cases have consistently recognized that the unbending application of the exclusionary sanction to enforce ideals of governmental rectitude would impede unacceptably the truth-finding functions of judge and jury.

The Supreme Court was concerned in particular with situations in which law enforcement officers acted in objective good faith or where their transgressions had been minor, and that the magnitude of the benefit conferred on such defendants offended basic concepts of the criminal justice system. *Leon*, 468 U.S. at 908. The Court has repeatedly emphasized the deterrence purpose of the exclusionary rule, and has declined to apply the rule in a number of different contexts if there was little deterrence to be had from the application of the rule beyond a criminal prosecution.

Professor LaFave in 1 Wayne R. LaFave, *Search and Seizure,* Section 1.1 at 21 (4th ed. 2004) concluded that although not explicitly mentioned in the early cases, such as *Boyd* and *Weeks,* discussed *infra*, it was fair to say that the deterrence of unreasonable searches and seizures was a major purpose of the exclusionary rule. He noted that in *Elkins v. United States*, 364 U.S. 206, 217, 80 S.Ct. 1437, 1444, 4 L.Ed. 2d 1669 (1960), the Supreme Court explained the purposes of the exclusionary rule by saying,

> The rule is calculated to prevent, not repair. Its purpose is to deter – to compel respect for the constitutional guarantee in the only effectively available way – by removing the incentive to disregard it.

LaFave further observed that the focus in recent years has almost exclusively been on the deterrent function of the exclusionary rule, as seen in *United States v. Calandra, supra,* and later decisions of the Court. LaFave, *Search and Seizure,* Section 1.1(f) at 23. Indeed, LaFave pointed out that in *Janis, infra,* the Court stressed that the prime purpose of the exclusionary rule, if not the sole one, was to deter future unlawful police conduct and that purpose would not be served by excluding in a federal civil tax proceeding evidence obtained by a state law enforcement officer. *Id.*

All three *amicus curiae* briefs argue that *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 85 S.Ct. 1246, 14 L.Ed.2d 170 (1965) requires application of the Fourth Amendment exclusionary rule in this case. An examination of more recent decisions of the Supreme Court in the 50 years since *One Plymouth Sedan* shows that the Court has repeatedly declined to apply that decision and its progenitor, *Boyd v. United*

States, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746 (1886), in a number of different circumstances. The development, application, and evolution of the exclusionary rule as seen in the opinions of the Supreme Court is important to determine the rule's current efficacy as applied to civil *in rem* forfeitures and its role in the present case.

In *Weeks v. United States*, 282 U.S. 383, 34 S.Ct. 341, 58 L. Ed. 2d 652 (1914), the Supreme Court applied the exclusionary rule only to federal criminal prosecutions. However, the Court decided in 1961 in *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081(1961) to fully apply the exclusionary rule to the states through the Due Process Clause of the Fourteenth amendment. The Court explained that other remedies to deter violations of the Fourth Amendment had been ineffective, and therefore it concluded that the adoption of the exclusionary rule to all state criminal cases was necessary. "[W]ithout the... rule the assurances against unreasonable... searches and seizures would be a 'form of words.'" *Mapp,* 367 U.S. at 635, 81 S.Ct. at 1691.

In *Linkletter v. Walker,* 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965), the Supreme Court declined to make *Mapp* retroactive. It stressed that the purpose of the rule was deterrence, and that deterrence would not be achieved by giving *Mapp* retroactive effect. *Id* at 637, 85 S.Ct. at 1742.

In a series of cases, including *United States v. Calandra,* 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974), the Supreme Court declined to expand the reach of the exclusionary rule to cases where there was no clear deterrent effect, and therefore it refused to apply the rule beyond criminal cases. In *Calandra*, the Court declined to apply the exclusionary rule to a grand jury. It doing so, the Court made it clear that the

exclusionary rule was not a personal constitutional right of the accused, but instead "[T]he rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect rather than a personal constitutional right of the party aggrieved." 414 U.S. at 348, 94 S.Ct. at 620. More importantly, it stated,

> Any incremental deterrent effect which might be achieved by extending the rule to grand jury proceedings is uncertain at best. Whatever deterrence of police misconduct may result from the exclusion of illegally seized evidence from criminal trials, it is unrealistic to assume that application of the rule to grand jury proceedings would significantly further that goal. 414 U.S. at 351-52, 94 S.Ct. at 621-22.

The *Calandra* decision was followed by *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed. 2d (1976). There the Supreme Court declined to apply the exclusionary rule to federal habeas corpus review of state court decisions. The Court stressed that the primary justification of the rule was the deterrence of police conduct that violated the Fourth Amendment, and that the rule was not a personal constitutional right. The Court in *Powell* expressed concern over the social costs of applying the rule, and pointed out the disparity in particular cases between the error by the police officer and the windfall afforded a defendant. 428 U.S. 489-90, 96 S. Ct. at 3050.

The Court similarly declined to extend the exclusionary rule in *United States v. Janis*, 428 U.S. 433, 96 S. Ct. 3021, 49 L. Ed. 2d 1046 (1976). There the police searched the premises of a book-making operation and seized $4,940 in cash, but the trial court

suppressed the evidence in the criminal case. The Internal Revenue Service seized the money, and the federal district court applied the exclusionary rule to the tax case. The Supreme Court reversed, stating that the primary purpose of the rule, if not the sole purpose, was to deter future unlawful police conduct. 428 U.S. at 446, 96 S. Ct. at 3028. In describing the rule, the Court made the oft-quoted statement,

> In the complex and turbulent history of the rule, the Court never has applied it to exclude evidence from a civil proceeding, federal or state.

428 U. S. 447, 96 S. Ct. 3029. The Court added a footnote to that statement and cited two cases, *Boyd v. United States*, 116 U.S. 616, 634, 6 S.Ct. 524, 534, 29 L.Ed. 746 (1886), and *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 85 S.Ct. 1246, 14 L.Ed.2d 170 (1965), discussed below. The Court did not consider either case to be an example of the application of the exclusionary rule in a civil proceeding.

The Supreme Court again refused to extend the exclusionary rule to a civil deportation case in *Immigration and Naturalization Service v. Lopez-Mendoza*, 468 U.S. 1032, 104 S. Ct. 3479, 82 L. Ed. 2d 778 (1984). The Court stated that,

> [W]e conclude that application of the rule in I.N.S. civil deportation proceedings, as in the circumstances discussed in *Janis*, is unlikely to provide significant, much less substantial, additional deterrence... 468 U.S. 1046, 104 S. Ct. at 3487.

Even in a criminal context, the Supreme Court refused to apply the exclusionary rule beyond the prosecution's case-in-chief in *United States v. Havens,* 446 U. S. 620, 100 S. Ct. 1912, 64 L. Ed. 2d 559 (1980). It ruled that the purposes of the exclusionary

rule were adequately satisfied by the exclusion of the evidence from the government's case-in-chief, and that the incremental furthering of the ends of the exclusionary rule were insufficient to preclude impeaching the testifying defendant with the excluded evidence, and thereby impeding the fact finding goals of a criminal trial. 446 U.S. at 627-28, 100 S.Ct. at 1916-17. *See also*, *Brown v. United States,* 411 U.S. 223, 93 S.Ct. 1565, 36 L.Ed.2d 208 (1973).

The limitations placed on the exclusionary rule continued in *United States v. Leon,* 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), where the Supreme Court reiterated what it had said in *Janis*, and emphasized,

> Proposed extensions of the exclusionary rule to proceedings other than the criminal trial itself have been evaluated and rejected under the same analytic approach. 468 U.S. at 909, 104 S.Ct. at 3413.

In 1996, the Supreme Court decided *United States v. Usury*, 518 U.S. 267, 116 S.Ct. 2135, 135 L.Ed.2d 549 (1996) and held that the civil forfeitures at issue in that case, and civil forfeitures generally, do not constitute "punishment" for the purposes of the Double Jeopardy Clause. In its opinion the Supreme Court relied on its two-part test from *United States v. One Assortment of 89 Firearms,* 465 U.S. 354, 104 S.Ct. 1099, 79 L.Ed.2d 361(1983). First, the Court determined that the legislative intent of Congress was that the forfeiture proceedings at issue were civil, since the procedures for obtaining a forfeiture were civil. Second, the Supreme Court required the clearest proof that forfeitures were so punitive in form and effect that the Court would consider them

punitive despite Congress' intent to treat them as civil. While this case dealt with the Double Jeopardy Clause, its reasoning that civil *in rem* forfeitures were civil and not punitive is equally applicable to the question whether such civil cases are sufficiently punitive that the exclusionary rule should apply to them.

In *Pennsylvania Board of Parole & Probation v. Scott*. 524 U.S. 357, 118 S.Ct. 2014, 141 L.Ed.2d 344 (1998), the Supreme Court declined to apply the exclusionary rule to bar the use of improperly seized evidence at a parole revocation hearing. The Court stated that the exclusionary rule applied only where its remedial objectives were most efficaciously served. The Court stated that the rule applied only where its deterrence benefits outweighed the substantial social costs inherent in precluding consideration of reliable, probative evidence.

As recently as 2011, the Supreme Court reiterated the importance of the deterrence element of the exclusionary rule, and emphasized the Court's more discriminating approach to the exclusionary rule. In *Davis v. United States*, 131 S.Ct. 2419, 180 L.Ed. 2d 285 (2011), the Court stated,

> Admittedly, there was a time when our exclusionary-rule cases were not nearly so discriminating in their approach to the doctrine. Expansive dicta in several decisions suggested that the rule was a self-executing mandate implicit in the Fourth Amendment itself... In time, however, we came to acknowledge the exclusionary rule for what it undoubtedly is—a judicially created remedy of this Court's own making, *Calandra, supra.* We abandoned the old, reflexive application of the doctrine, and imposed a more rigorous weighing of its costs and deterrence benefits. In a line of cases beginning with *United States v. Leon,* we also recalibrated our cost-

> benefit analysis in exclusion cases to focus the inquiry on the flagrancy of the police misconduct at issue.
>
> The basic insight of the *Leon* line of cases is that the deterrence benefits of exclusion vary with the culpability of the law enforcement conduct at issue. When the police exhibit deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs. But when the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, deterrence rationale loses much of its force, and exclusion cannot pay its way. (Citations and quotation marks omitted). 131 S.Ct. at 2427-8.

The decisions of the United States Supreme Court cited above put heavy emphasis on the need for deterrence as well as the weighing of the costs and benefits of applying the exclusionary rule outside of the criminal process. These decisions strongly suggest that if there is a violation of the Fourth Amendment in a criminal case, the application of the exclusionary rule to the related civil *in rem* forfeiture would provide little, if any, additional deterrence. That is particularly evident in the present case. Clearly the interest of the investigating officers was in obtaining a criminal conviction against the Appellant for the possession of over 225 grams of methamphetamine, an extremely serious crime. He was convicted of this crime, which carried a mandatory minimum of ten years in prison. After the criminal conviction, there would be little, if any, deterrence to the officers who arrested the Appellant if the application of the exclusionary rule prevented the forfeiture of a ten year-old vehicle and $600.

D. The Supreme Court decisions in *One 1958 Plymouth Sedan* and *Boyd v. United States* have been limited by later opinions; those two decisions do not control this case.

This background of Supreme Court decisions illustrates the reluctance of the Supreme Court to expand the exclusionary rule to cases other than an actual criminal trial. These decisions are also important for the analysis of the 1965 opinion of the Court in *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 85 S. Ct. 124, 614 L.Ed.2d 170 (1965), since the described cases, beginning with *Calandra* in 1974, were issued after *One Plymouth Sedan* in 1965. The opinion in *One Plymouth Sedan* rests almost exclusively on a much earlier decision of the Supreme Court in *Boyd v. United States,* 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746 (1886). The *Plymouth Sedan* opinion quotes extensively from *Boyd*, and refers to it as the leading case on the subject of search and seizure. 380 U.S. at 696, 85 S. Ct. at 1248. In fact, the Court in *Plymouth Sedan* stated that the holding in *Boyd* seemed dispositive of the case before it. 380 U.S. 698, 85 S.Ct. 1249. Any discussion of *One Plymouth Sedan* must therefore begin with an examination of *Boyd*.

The *Boyd* case arose in New York, where the United States Attorney sought to forfeit a number of cases of plate glass that had been imported without payment of the customs duty. The United States Attorney obtained a subpoena *duces tecum* to force the responsible company to produce the invoice for the glass, in order to prove that the duty had not been paid. Under protest, the company produced the invoice. With that evidence, forfeiture was ordered. The United States Supreme Court reversed. The *Boyd*

court ruled that the compulsory process violated the owner's Fifth Amendment privilege and that such privilege was inextricably bound to the Fourth Amendment. The Court concluded that the compulsory process also constituted a Fourth Amendment violation, and that the invoice should never have been received in evidence at trial

The ruling in *Boyd* has been severely criticized by subsequent opinions of the Supreme Court, including *United States v. Ward,* 448 U.S. 242, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980). Ward involved the assessment of a civil penalty to a company after a required self-report of an oil discharge. The company appealed the penalty, but the Supreme Court upheld it, holding that the proceeding was not criminal in nature and the Fifth Amendment privilege did not apply. The Court stated,

> Read broadly, *Boyd* might control the present case. This Court has declined, however, to give full scope to the reasoning and dicta in *Boyd*, noting on at least one occasion that several of *Boyd's* express or implied declarations have not stood the test of time. 448 U.S. at 253, 100 S.Ct. at 2643.

Similarly, in *Allen v. Illinois,* 478 U.S. 364, 106 S.Ct. 2988, 92 L.Ed.2d 296 (1986), the Supreme Court criticized the *Boyd* decision. That case involved the Illinois Sexually Dangerous Persons Act, and required that the subject of a petition be interviewed. After being interviewed, Allen was committed. He appealed, claiming that the proceeding was criminal and that the process violated his Fifth Amendment rights. In upholding the commitment, the Supreme Court ruled,

> The question whether a particular proceeding is criminal for the purposes of the Self-Incrimination Clause is first of all a question of statutory construction.

> ... As petitioner correctly points out, however, the civil label is not always dispositive. Where a defendant has provided "the clearest proof" that "the statutory scheme [is] so punitive either in purpose or effect as to negate [the State's] intention" that the proceeding be civil, it must be considered criminal and the privilege against self-incrimination must be applied. We think that petitioner has failed to provide such proof in this case. 478 U.S. at 368-69, 106 S.Ct. at 2992.

Some proceedings exhibit both civil and criminal characteristics. *Boyd* simply placed the label "quasi criminal" on the forfeiture in that case, a mixed proceeding, and then applied a criminal process. More recent jurisprudence of the Supreme Court clearly distances itself from the *Boyd* approach and places significant emphasis on legislative intent in deciding whether a proceeding should be deemed civil or criminal. Only when the clearest proof shows that the proceeding's purpose or effect is so punitive that it trumps legislative intent does the Court impose the exclusionary rule.

Boyd took another blow from *Warden of the Maryland Penitentiary v. Hayden,* 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967). There the Supreme Court overruled *Boyd's* other, antiquated holding that a search warrant could not issue for "mere evidence."

Finally, *Boyd* appeared to rely significantly on the fact that the forfeiture in that case was part of the statute that created the criminal penalty in announcing that the forfeiture was "quasi-criminal", a point stressed in *United States v. Ward,* 448 U.S. 242, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980) , when the Court stated,

> Moreover, the statute under scrutiny in *Boyd* listed forfeiture along with

> fine and imprisonment as one possible punishment for customs fraud, a fact of some significance to the *Boyd* Court. Here, as previously stated, the civil remedy and the criminal remedy are contained in separate statutes enacted 70 years apart. 448 U.S. at 254, 100 S.Ct. at 2644.

Thus the critical basis for the 1965 opinion in *One Plymouth Sedan*, specifically its strict adherence to the rationale and dicta of *Boyd,* has been supplanted by more refined jurisprudence in the intervening years. The 1889 opinion in *Boyd* was a fact-specific ruling, dependent on the fact that the applicable forfeiture statute was part and parcel of the criminal statute establishing the offense. The Court thus labeled the forfeiture "quasi-criminal," in a pronouncement and with a rationale which have since been disapproved in subsequent decisions of the Supreme Court. With the foundations of *Boyd* extinguished, the complete reliance on it by *One 1958 Plymouth Sedan* makes manifest that its holding has also been undermined by more recent decisions.

Moreover, the ruling in *One Plymouth Sedan* stressed the fact that the maximum penalty that could be imposed was a $500 fine, while the forfeiture involved an automobile worth $1,000. The Court stated that the fact that the forfeiture could result in an even greater penalty than the criminal offense meant that the forfeiture was clearly a penalty. 380 U.S. at 700-01, 85 S.Ct. at 1251.

It is worth restating that within 11 years of the *One 1958 Plymouth Sedan* decision, the Supreme Court in *United States v. Janis,* 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976), did not interpret *One 1958 Plymouth Sedan* as having established a requirement to apply the exclusionary rule to all crime-related forfeiture cases. It is fair to

say that the Supreme Court treated *One 1958 Plymouth Sedan* as having held only that the exclusionary rule applies to those forfeiture proceedings that may fairly be characterized as criminal rather than civil. 428 U. S. 447, 96 S. Ct. 3029.

In a concurring opinion in *United States v. Ursery,* 518 U.S. 267, 293, 116 S.Ct. 2135, 2150, 135 L.Ed.2d 549, 571 (1996), Justice Kennedy echoed that view that the statements in both *Boyd* and *One 1958 Plymouth Sedan* that forfeiture proceedings were punitive in nature were no longer authoritative:

> Although there is language in our cases to the contrary, *see One 1958 Plymouth Sedan v. Pennsylvania,* 380 U.S. 693, 700, 85 S.Ct. 1246, 1250, 14 L.Ed.2d 170 (1965); *Boyd v. United States,* 116 U.S. 616, 634, 6 S.Ct. 524, 534, 29 L.Ed. 746 (1886), civil in rem forfeiture is not punishment of the wrongdoer for his criminal offense.

This distinction is articulated in *United States v. Ward,* 448 U.S. 242, 248, 100 S.Ct. 2636, 2641, 65 L.Ed.2d 742 (1980):

> This Court has often stated that the question whether a particular statutorily-defined penalty is civil or criminal is a matter of statutory construction. Our inquiry in this regard has traditionally proceeded on two levels. First, we have set out to determine whether Congress, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.

The Court went on to state in *Ward*,

> Second, where Congress has indicated an intention to establish a civil penalty, we have inquired further whether the statutory scheme was so punitive either in purpose or effect as to negate that intention. In regard to this latter inquiry, we have noted that "only the clearest proof could suffice to establish the

unconstitutionality of a statute on such a ground." 448 U.S. at 248-49, 100 S.Ct. at 2641.

The forfeiture statute at issue here, Minn. Stat. Section 609.5314, was first enacted in 1988, Act of Apr. 26, 1988, c. 665, § 11, 1988 Minn. Laws 941, 946, *See, Torgelson v. Real Prop. Known as 17138 880th Ave., Renville County*, 749 N.W.2d 24, 30, n. 3 (Minn. 2008) (Gildea, J., concurring). It was not enacted as part of the controlled substance statutes, when Minnesota adopted much of the Uniform Controlled Substances Act, in 1971. L.1971 c. 937, § 4. See, *State v. Vail,* 274 N.W.2d 127, 131 (Minn. 1979). Nor was the forfeiture statute incorporated into Minnesota's drug statutes when those statutes were revised and standardized in 1990, L. 1990 c. 602, art. 7, s. 2. The forfeiture statute has never been incorporated into the criminal penalty in Minnesota's controlled substance laws, and could not be pled as part of the charging process, as was possible under the statutes in *Boyd*. In light of the statutory separation and different dates of enactment of the controlled substance and forfeiture statutes under Minnesota law, *Boyd* and *One 1958 Plymouth Sedan* are distinguishable, and should not be applied to this civil *in rem* forfeiture.

The Minnesota Legislature has expressed its intent underlying the statutes in Section 609.531 as follows:

Subd. 1a. Construction. Sections 609.531 to 609.5318 must be liberally construed to carry out the following remedial purposes:
(1) to enforce the law;
(2) to deter crime;
(3) to reduce the economic incentive to engage in criminal enterprise;
(4) to increase the pecuniary loss resulting from the detection of criminal activity; and

(5) to forfeit property unlawfully used or acquired and divert the property to law enforcement purposes.

The Minnesota Legislature made a point to add this subdivision to the statute to express its legislative intent that the forfeiture laws were enacted for remedial purposes. In addition, Minn. Stat. Section 609.531, Subd. 6a(a) states that a forfeiture is a civil *in rem* action. Clearly, the sections that follow this language describe the civil processes to accomplish a forfeiture. A 609.5314 forfeiture is clearly separate from the criminal charge or indictment. See, Minn. Stat. Section 609.5314, Subd. 3(a) and (c), and Section 609.531, Subd. 6a.

Given the curtailment of the *Boyd* pronouncements and the verbatim iterations of them in *One 1958 Plymouth Sedan*, the foundations of both decisions have been substantially eroded, if not implicitly overruled, by later decisions of the Supreme Court. In the instant case the expressed legislative intent, the civil process required, the remedial purposes of the statute, and the effect of the forfeiture laws do not make forfeitures under this Minnesota statute "quasi-criminal." Nor are these forfeiture statutes intended as punishment of the wrongdoer for a criminal offense. In fact, a criminal conviction is not required by statute for the forfeiture at bar, although the Appellant was convicted of a federal drug crime. For these reasons, it is respectfully suggested that *Boyd* and *One Plymouth Sedan* are no longer viable. Even if they were, they are distinguishable and do not mandate the application of the Fourth Amendment exclusionary rule to this civil forfeiture.

E. Minnesota's statutory framework for implied consent hearings does not require the application of the exclusionary rule to other civil proceedings.

Amicus Curiae Minnesota Society of Criminal Justice argues that the Court should apply the exclusionary rule to the civil forfeiture in this case because this Court and the Court of Appeals have applied the exclusionary rule in implied consent proceedings. (Brief of Amicus Minnesota Society of Criminal Justice, hereafter MSCJ, p. 10). MSCJ cites this Court's decisions in *Ascher v. Commissioner of Public Safety*, 519 N.W.2d 183 (Minn. 1994) and *Shane v. Commissioner of Public Safety*, 587 N.W.2d 639 (Minn. 1998) for this proposition. The application of the exclusionary rule in civil cases in Minnesota is more nuanced than the argument of MSCJ would suggest. In addition, there are unique aspects to implied consent hearings and the statutory authorization for challenging license revocations that separate implied consent rulings from those in other civil or criminal proceedings.

In *Ascher v. Commissioner of Public Safety*, 519 N.W.2d 183 (Minn. 1994), in a license revocation review, the Court ruled that DWI roadblocks were unconstitutional under Article 1, Section 10 of the Minnesota Constitution. After that decision, the Commissioner canceled Ascher's license under the "inimical to public safety" provision of Section 171.04 Subd. 1(8), and Ascher again appealed. In that appeal, *Ascher v. Commissioner of Public Safety*, 527 N.W.2d 122, 125-26 (Minn. Ct. App. 1995), *review denied* (Minn. March 21, 1995) the Court of Appeals, noting the line of cases from the United States Supreme Court, including *Calandra* through *Leon*, stated that the Supreme Court had limited the application of the exclusionary rule, and that Minnesota had

followed its example in *Tucker v. Pahkala*, 268 N.W.2d 728 (Minn. 1978). It quoted *Tucker*, *Id.* at 730, saying that by extending the exclusionary rule, concededly relevant and reliable evidence would be rendered unavailable. The Court of Appeals also cited *United States v. Janis,* stating that the primary purpose, if not the sole purpose of the exclusionary rule is to deter future unlawful police conduct. 527 N.W.2d at 125-26. The Court of Appeals then held that the unlawful police conduct in establishing illegal checkpoints had been adequately deterred by the prior *Ascher* decisions, and that applying the exclusionary rule to exclude evidence showing that Ascher was inimical to public safety would not deter police to any significant degree. The Court therefore refused to apply the exclusionary rule. That rationale echoes the reasoning of the United States Supreme Court in the cases discussed above, and logically applies to the current case. The application of the exclusionary rule to the present forfeiture case would not serve the primary purpose of the exclusionary rule, and would not provide any significant deterrence under the facts of this case.

This Court in *Davis v. Commissioner of Public Safety*, 517 N.W.2d 901, 905 (Minn. 1994) declined the invitation by Davis to hold that an implied consent proceeding was a critical stage in a *de facto* criminal proceeding, and therefore due process rights associated with a criminal trial should apply, including the right to a jury trial, the presumption of innocence, and proof beyond a reasonable doubt. The Court ruled that the Court of Appeals properly rejected that argument. The Court of Appeals followed the *Davis* ruling in *Ruffenach v. Commissioner of Public Safety*, 528 N.W.2d 254, 256 (Minn. Ct. App. 1995) (holding that an implied consent hearing is not a de facto criminal

proceeding and that due process rights associated with criminal trials do not apply), and *Steinburg v. State Dept. of Pub. Safety*, 357 413, 415 (Minn. Ct. App. 1984) (holding that the exclusionary rule of *Miranda* does not apply to implied consent hearings because no Fifth Amendment right attaches to a civil proceeding with a remedial purpose).

In addition, a unique aspect to implied consent proceedings is that by statute, a driver is entitled to raise certain, specified issues set forth in Minn. Stat. Section 169A.53 Subd. 3(b). Those include the issues whether the driver was lawfully placed under arrest and whether the officer had probable cause to believe the person was driving while impaired. The statute therefore specifically provides for a determination of constitutional issues, after which the court either upholds or rescinds the revocation of the driver's license. There is no similar statutory framework in the forfeiture statutes under Minn. Stat. 609.531 et seq., and the fact that this statutory scheme exists in the implied consent laws doesn't require the application of the exclusionary rule to civil forfeitures. The legislative intent, as expressed in Section 609.531 Subd. 1a, that the forfeiture statutes be liberally construed to carry out to their remedial purposes, suggests the converse, namely that the forfeiture statutes are not punitive or criminal in nature and that the exclusionary rule should not be applied.

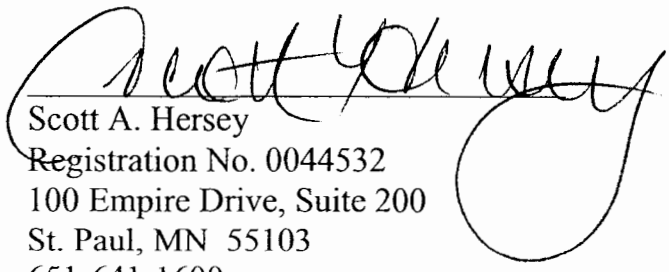
Minnesota has chosen not to follow the majority of states when it applies the exclusionary rule, through the describe framework, to implied consent/driver's license revocation cases. See, *Miller v. Toler*, 229 W.Va. 302, 729 N.E. 2d 137 (2012) and the cases collected therein. Conversely, even if a significant number of other jurisdictions have applied the exclusionary rule to civil forfeiture cases that is no reason for Minnesota

to follow suit. Indeed, there is good reason not to rule as those cases did, particularly since a notable number of such cases have uncritically cited *Boyd* or *One 1958 Plymouth Sedan,* or both, assuming they are binding precedent, without any analysis of the subsequent and dramatic shift in Supreme Court jurisprudence. But as the Respondent points out in its brief, there is a growing number of courts alert to the shift of the Supreme Court on this issue, and those courts have refused to apply the exclusionary rule to civil *in rem* forfeitures, or have questioned the applicability of *One Plymouth Sedan*. See Respondent's brief, pp. 34-35.

CONCLUSION

Based on the foregoing, the Court is strongly urged to consider the United States Supreme Court's present position as to the application of the exclusionary rule to civil *in rem* forfeitures, apply the legislative intent underlying the Minnesota forfeiture statutes, and weigh the significant costs of applying the exclusionary rule in the present case against what deterrence, if any, would be effected by precluding the forfeiture of a 10 year-old vehicle and $600. The Court is therefore respectfully requested to affirm the Court of Appeals and deny the Appellant's request to apply the exclusionary rule under the federal or state constitutions.

Dated: 4-11-14



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CERTIFICATE OF COMPLIANCE

This brief contains 6,999 words (exclusive of the Table of Contents and the Table of Authorities) as computed by the word processing program used to prepare this brief, Microsoft Word 2010, and it complies with the type face provisions of Minnesota Rule of Civil Appellate Procedure 132.01, Subd. 3.

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APPELLATE COURTS

APR 11 2014

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AFFIDAVIT OF SERVICE

RE: Daniel Garcia-Mendoza, a/k/a Ricardo Cervantes-Perez v. 2003 Chevy Tahoe, VIN: 1GNEC13V23R143453, Plate # 235 JBM, $611 in U.S. Currency
APPELLATE COURT FILE NO.A13-445

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

Scott A. Hersey, in the City of St. Paul, County of Ramsey, State of Minnesota, being first duly sworn, states that on the 11th of April, 2014, he served the brief of *Amicus Curiae* Minnesota County Attorneys Association upon the individuals listed below, by mailing to each two copies thereof, enclosed in an envelope, postage prepaid, and by depositing the same at a pick-up point for U.S. Postal Service in St. Paul, Minnesota, directed to the named individuals at their last known addresses as follows:

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Subscribed and sworn before me this 11th day of April, 2014.

Notary public

THE MINNESOTA
COUNTY ATTORNEYS
ASSOCIATION

April 11, 2014

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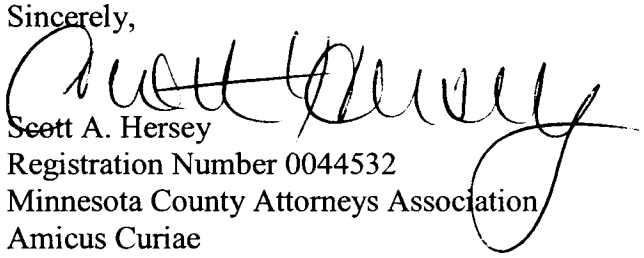
File number A13-445

Clerk of Appellate Courts:

Enclosed for filing please find the brief of Amicus Curiae Minnesota County Attorneys Association (12 bound and 2 unbound) and the original affidavit of service.

Sincerely,



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