

MAR 07 2014

FILED

**No. A13-0445
STATE OF MINNESOTA
IN SUPREME COURT**

Daniel Garcia-Mendoza,

Appellant,

vs.

One 2003 Chevy Tahoe, etc.

Respondent.

**AMICUS BRIEF ON BEHALF OF MINNESOTA SOCIETY OF
CRIMINAL JUSTICE**

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STATEMENT OF LEGAL ISSUES AND APPLICABLE CASES

Did the district court and the court of appeals err as a matter of law in refusing to apply the exclusionary rule to civil forfeiture cases in Minnesota state court?

The district court: was not asked to rule, and did not rule, on this issue.

The court of appeals held: that the exclusionary rule does apply in forfeiture cases.

Minn. Stat. Sec. 626.21 (illegally obtained evidence not admissible in any proceeding)

Minn. Stat. Sec. 609.5315, subd. 5 (law enforcement and prosecuting authority together keep 90% percent of the proceeds of forfeiture)

Ascher v. Commissioner of Pub. Safety, 519 N.W.2d 183 (Minn. 1994)

One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965)

STATEMENT OF THE CASE¹

This is an appeal from a court of appeals decision affirming the district court's grant of summary judgment awarding Defendant property to Hennepin County. On March 19, 2012, Appellant was arrested by the Plymouth Police Department for felony drug possession (possession of methamphetamine) and served a forfeiture notice seeking to forfeit the Defendant property (a vehicle and \$611 in cash). Appellant timely filed a petition in district court to challenge the forfeiture of his property. He had originally been charged with felony drug possession in state court, but, after he was federally indicted for drug possession on May 21, 2012, the state charges were dismissed in favor of the federal prosecution.

On August 21, 2012, Appellant pleaded guilty to Count II of the federal indictment against him, which involved a different date of offense from the state charges stemming from his March 19, 2012 arrest referenced above which led to the instant forfeiture case. On November 15, 2012, Hennepin County moved for summary judgment in the instant forfeiture case. In an Order filed January 11, 2013, Judge Sipkins granted the County's motion for summary judgment. The district court found that Appellant's vehicle was illegally stopped, but held that Appellant's guilty plea in federal court referencing a different date of offense resulted in a forfeiture of Defendant property in this state court forfeiture action.

¹ Certification is hereby made pursuant to Minn. R. Civ. App. Pro. 129.03 that no person or entity has paid for or authored this brief other than undersigned counsel and the Minnesota Society for Criminal Justice.

Appellant filed a timely appeal of the district's court's Order granting summary judgment and thus forfeiture of Appellant's property to Hennepin County. On November 25, 2013, the court of appeals affirmed the district court's grant of summary judgment, but on different grounds. The court of appeals upheld the forfeiture of Appellant's property based on a theory, briefed by neither party and apparently raised sua sponte by the court of appeals itself at oral argument, that the exclusionary rule does not apply to civil forfeiture cases in Minnesota state court. On January 29, 2014, this court granted Appellant's Petition for Further Review. On February 28, 2014, Appellant timely filed his brief in this Court.

FACTS

The following facts are undisputed for the purposes of this appeal: On March 19, 2012, the vehicle Appellant was driving was stopped by police, allegedly because the registered owner (who was not Appellant) either did not have a driver's license or had no driver's license on record in Minnesota. Methamphetamine was found in a subsequent search of Appellant's vehicle. Appellant was later given an administrative forfeiture notice for his vehicle and cash found therein. He timely challenged the forfeiture.

State criminal charges against Appellant were filed and later dismissed when he was federally indicted on similar charges. He plead guilty in federal court to drug possession upon a factual basis not involving the incident herein. The County then moved for summary judgment and a summary judgment hearing was held.

The district court found that there was no lawful basis to stop Appellant's vehicle.

The district court's conclusion of law that Appellant was illegally stopped was not appealed by Hennepin County. Therefore, it is a fact for the purposes of this appeal that Appellant was illegally stopped and illegally arrested, as that is what the district court concluded. The district court, however, found that illegal stop and arrest of Appellant was irrelevant because he had plead guilty in federal court and his federal plea agreement called for forfeiture of property involved in the offense. The district court was not asked to, and did not decide, whether the exclusionary rule applies to civil forfeiture cases in state court.

After the district court granted summary judgment to Hennepin County, thereby awarding the Defendant property to the County, appellant appealed to the court of appeals. Finding that the exclusionary rule does not apply to civil forfeiture cases, the court of appeals affirmed the district court grant of summary judgment, but on a different basis. This appeal followed.

ARGUMENT

I. STANDARD OF REVIEW.

Here, the material facts for the purposes of summary judgment and the appeal therefrom are undisputed. In the court of appeals, the County did not appeal the district court's determination that Appellant's vehicle was illegally stopped, so that legal determination is unchallengeable before this Court.

The question presented here is whether the exclusionary rule applies to suppress evidence upon which a forfeiture in state court was based. Therefore, a resolution of the question requires an application of the law to undisputed facts. Questions of law are

reviewed de novo. See, e.g., State v. Zeimet, 696 N.W.2d 791, 793 (Minn. 2005); (statutory construction of sentencing guidelines is legal question reviewed de novo by appellate courts); State v. Othoudt, 482 N.W.2d 218, 221 (Minn. 1992) (on undisputed facts, appellate court conducts de novo review of legal questions).

II. WHEN THE DISTRICT COURT AND THE COURT OF APPEALS REFUSED TO APPLY THE EXCLUSIONARY RULE TO CIVIL FORFEITURE CASES IN STATE COURT, THEY ERRED AS A MATTER OF LAW BASED ON STATE COURT PRECEDENT, FEDERAL PRECEDENT, AND THE POLICIES BEHIND THE EXCLUSIONARY RULE.

As explained in more detail below, there are at least three important reasons the exclusionary rule should apply to civil forfeiture cases in Minnesota state court. **First**, the Supreme Court (which has recognized the punitive nature of forfeitures) held almost fifty years ago that the exclusionary rule applies to “civil” forfeitures in state court. **Second**, this Court and the court of appeals have applied the exclusionary rule to civil implied consent cases in the past. **Third**, the policy rationale behind the exclusionary rule, to punish and deter police misconduct favors application of the exclusionary rule to civil forfeiture cases stemming from criminal arrests, investigations, and seizures (i.e. this is a civil forfeiture case stemming from a criminal case). Indeed, the case for the exclusionary rule may be greater here than in a criminal prosecution since here the County and the police both stand to gain financially if the forfeiture is upheld.²

² See Minn. Stat. Sec. 609.5315, subd. 5 (dictating that law enforcement gets 70%, and the prosecuting authority 20%, of proceeds from selling forfeited property).

A. For Five Decades, Supreme Court Precedent Has Held That The Exclusionary Rule Applies To Forfeitures In Federal And State Courts.

Federal appellate courts that have considered the applicability of the exclusionary rule to civil in rem forfeiture cases stemming from police/State action have consistently applied the exclusionary rule to forfeiture cases. Indeed, almost fifty years ago, in 1965, the Supreme Court applied the Fourth Amendment and the exclusionary rule to civil forfeitures in One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 696 (1965).

Since Plymouth Sedan, the federal courts have continued to apply the exclusionary rule in forfeitures for roughly the last fifty years. See, e.g., United States v. \$291,828, 536 F.3d 1234, 1236-38 (11th Cir. 2008) (“The Fourth Amendment exclusionary rule applies to civil forfeiture actions”); United States v. \$493,850, 518 F.3d 1159, 1164 (9th Cir. 2008) (“the exclusionary rule applies in civil forfeiture cases...”); United States v. Riverbend Farms Inc., 847 F.2d 553, 558 (9th Cir. 1988); United States v. \$191,919 in U.S. Currency, 788 F. Supp. 1090 (N.D. Cal. 1992). Moreover, the federal courts’ application of the Fourth Amendment and the exclusionary rule to forfeiture cases is consistent with Minnesota case law and statutory law in at least three ways.

First, the Minnesota Legislature has enacted a statute which makes illegally obtained evidence inadmissible in ALL court proceedings—not just in criminal cases. See Minn. Stat. Sec. 626.21 (illegally obtained evidence “shall not be admissible in evidence at any hearing or trial.”). Therefore, under section 626.21, illegally obtained

evidence is inadmissible in a civil case—including civil forfeitures and civil implied consent driver's license revocation hearings.

Second, the United States Supreme Court, the Minnesota Supreme Court and the Minnesota Court of Appeals have consistently held that forfeitures are at least in part punitive and therefore must be construed narrowly and in favor of the claimant and against forfeiture. See, e.g., Austin v. United States, 509 U.S. 602, 621-22 (1993) (forfeitures of real property under federal law are “fines” that fall with the scope of the Excessive Fines Clause of the Constitution); Riley v. 1987 Station Wagon, 650 N.W.2d 441, 443 (Minn. 2002) (“To the extent that the forfeiture law at issue here is, in part, “punishment,” and therefore, disfavored generally, we strictly construe its language and resolve any doubt in favor of the party challenging it.”)

Accordingly, since forfeitures are in part punitive, and are disfavored, and thus must be narrowly construed, it is only logical, fair and reasonable that the police **may not** illegally stop a vehicle or illegally detain someone, or illegally arrest someone, or otherwise violate a person’s rights, and then stand to directly profit by the illegality by taking title to forfeited property.

Third, this Court has previously recognized that the exclusionary rule applies in “civil” implied consent driver’s license revocation hearings, which of course stem from police action/State action including seizure and arrest of a person and his property—just as is the case in a “civil” forfeiture case similarly stemming from a

State action—a criminal arrest. See e.g., Ascher v. Commissioner of Public Safety, 519 N.W.2d 183 (Minn. 1994), (applying exclusionary rule, suppressing evidence of DWI test refusal, and therefore rescinding the implied consent driver's license revocation, based on an illegal stop because suspicionless DWI roadblocks are unconstitutional under the Minnesota Constitution, Art. I, sec. 10); Shane v. Commissioner of Public Safety, 587 N.W.2d 639 (Minn. 1998) (applying exclusionary rule, suppressing alcohol test result, and rescinding driver's license revocation under the implied consent law where appellant was illegally arrested due to a lack of probable cause to believe he was in physical control of a motor vehicle).

Indeed, the Supreme Court has also noted that the Fourth Amendment applies in civil cases other than just forfeitures. In Skinner v. Railway Labor Execs. Ass'n., 489 U.S. 602, 616-17 (1989), a case about warrantless testing of train engineers for drugs or alcohol after train accidents, the Supreme Court held that the Fourth Amendment and the exclusionary rule applied even though it was reviewing civil safety regulations, not a criminal prosecution, a forfeiture, or a driver's license revocation.

B. Even If Federal Precedent Applying The Exclusionary Rule To Forfeitures Did Not Exist, There Is Ample State Court Precedent Applying The Exclusionary Rule In Non-Forfeiture Civil Cases.

As noted above, this Court applied the Fourth Amendment exclusionary rule in Ascher v. Commissioner of Public Safety, 519 N.W.2d 183 (Minn. 1994). In Ascher, police had set up suspicionless DWI roadblocks where all drivers were stopped and checked to see if they had a valid driver's license and if they showed signs of impaired driving. Ascher, however, was **not a criminal case**, it was a **civil** driver's license revocation case under the implied consent law. In spite of the fact that it was reviewing a "civil" case (stemming, of course, from police action and a criminal case and arrest) this Court had no hesitancy in applying the Fourth Amendment and Article I, section 10 of our state constitution, and the exclusionary rule.

Similarly, in Shane v. Commissioner of Public Safety, 587 N.W.2d 639 (Minn. 1998), this Court applied the Fourth Amendment exclusionary rule to another civil implied consent driver's license revocation case. In Shane, the appellant was not the driver of the vehicle. He was a passenger who was told to remain in the car while the police investigated the driver for a possible DWI. Shane's driver's license was later revoked under the implied consent law because the police believed he was in physical control of a motor vehicle while intoxicated because he revved the engine while sitting in the front passenger's seat. This Court found no probable cause for the arrest and test request under the implied consent law because Shane was not in a position to exercise dominion or control over the vehicle any more than any passenger would have been, and because he was ordered by police to remain in the vehicle. Accordingly, this Court

applied the exclusionary rule to the illegal arrest of Mr. Shane and suppressed his test result and rescinded the resulting driver's license revocation under the implied consent law.

In cases too numerous to recite, the court of appeals has also applied the exclusionary rule in civil implied consent driver's license cases. For example, in Harrison v. Commissioner of Public Safety, 781 N.W.2d 918 (Minn. App. 2010) the court of appeals held:

The Fourth Amendment to the United States Constitution provides, in relevant part, that the right of the people to be secure in their persons against unreasonable searches and seizures shall not be violated, and no warrants shall issue without probable cause. Article I, Section 10, of the Minnesota Constitution contains a parallel provision. Generally, evidence seized in violation of the constitution is inadmissible for criminal prosecution in a court of law. State v. Jackson, 742 N.W.2d 163, 177-78 (Minn.2007) (citing Weeks v. United States, 232 U.S. 383, 398, 34 S.Ct. 341, 346, 58 L.Ed. 652 (1914) and Mapp v. Ohio, 367 U.S. 643, 648, 81 S.Ct. 1684, 1686-87, 6 L.Ed.2d 1081 (1961)). The exclusionary rule has been applied to implied-consent license-revocation proceedings. *See, e.g., Haase v. Comm'r of Pub. Safety*, 679 N.W.2d 743, 748 (Minn.App.2004) (concluding that an officer's warrantless entry into Haase's garage was an unreasonable search and that district court erred by declining to suppress evidence seized pursuant to the warrantless entry, and reversing the district court's order sustaining revocation of Haase's driver's license).

Harrison, 781 N.W.2d at 920. Thus ample state court precedent exists, independent of the also-existing federal precedent, applying the exclusionary rule in civil implied consent cases, which supports applying the rule to civil forfeiture cases.

C. Public Policy, Including The Rationale Or Purpose Behind The Exclusionary Rule, Supports Applying The Rule In Civil Forfeiture Cases.

As a matter of good public policy, the Fourth Amendment³ and Article I, section 10 of the Minnesota Constitution, and the exclusionary rule **should** apply to civil driver's license implied consent cases and to civil forfeiture cases. Both types of “civil” cases stem from police action or State action, and the Fourth Amendment is a prohibition against illegal State action.

Moreover, the loss of a driver's license may actually be a greater penalty than the weekend in jail typically doled out to first time DWI offenders who test below the .20 threshold for being charged with a gross misdemeanor DWI under Minn. Stat. Sec. 169A.03, subd. 3 (2). Indeed, the minimum loss of a driver's license under the implied consent law for first time offender is 30 to 90 days. See 169A.54, subd. 1. A first time offender who tests a .16 or more, however, faces a one year driver's license revocation with no work permit available, and a year on Ignition Interlock (which costs over \$1300) is the only alternative to a year with no driving. See 169A.54, subd. 1(3)(iii) (one year revocation of driver's license for first-time offender testing .16 or more).

A thirty-day to one year revocation of one's driver's license is much more important than a weekend in jail. A weekend in jail does not typically cause one to lose a

³ By its terms, the Fourth Amendment extends to all State action (all government searches) unlike the Fifth and Sixth Amendments, which apply only to criminal cases.

job, since most people don't officially work on the weekend anyway. In contrast, if a driver is without a driver's license for 30 to 365 days, especially in rural Minnesota, then there is no way to get to work, and the driver loses his/her job. Accordingly, it would not make sense to apply the exclusionary rule in a criminal DWI case but NOT apply the exclusionary rule in a implied consent driver's license case. Arguably, a driver has a greater interest in avoiding a one year loss of license than in avoiding a criminal conviction, a weekend in jail, or a fine. Thus, to subject a driver to a lengthy revocation of a driver's license based on an illegal stop, illegal arrest, etc. would actually be MORE of an injustice than to just jail the person for a weekend or fine him \$300, etc.

Accordingly, the high value placed on maintaining one's driving privileges, (which are a property right once granted) is why this Court applied the exclusionary rule in implied consent cases in Shane and Ascher, amongst others. In neither a criminal case nor a civil implied consent case, however, do the police or the State stand to directly financially gain, as they do in a forfeiture case where both the prosecuting agency and the police get to keep a portion of the proceeds from selling the forfeited property. See Minn. Stat. Sec. 609.5315, subd. 5 (70% of forfeiture proceeds go to law enforcement agency, 20% to the prosecuting agency, and 10% to the state general fund).

Thus, the public policy rationale for applying the exclusionary rule in forfeitures is actually greater than it is in criminal cases and greater than in civil driver's license revocation hearings, because the value of the "property" at stake is higher (for example a \$20,000 car with no lien is arguably more valuable than a 90 day driver's license revocation, which in turn is more valuable than losing a

weekend of one's life or freedom by spending a weekend in jail or picking up trash on STS (sentenced to serve) in lieu of jail time).

Were this Court to hold to the contrary, that the exclusionary rule does not apply to civil forfeitures, then law enforcement will have open season on the Fourth Amendment and private property. This is so because the police then could stop anyone, without cause, and seize anything in a forfeiture action, confident that the exclusionary rule does not apply in civil forfeiture actions. **Wait, you say, that would never happen here!** Well actually, that is actually what **has happened in the recent past in Minnesota.**

The abuses of the Metro Gang Strike Force (“MGSF” or “Strike Force”) have been well documented.⁴ These included making illegal stops and arrests, which did not lead to successful prosecutions but were nevertheless fruitful for the Gang Strike Force because they got to forfeit all the goodies (cash, vehicles, etc.) they could get their hands on.⁵ Why? Because even if the exclusionary rule applies to civil forfeitures, the Strike Force knew that most of the people from whom they stole property under the guise of forfeiture were poor or unsophisticated. Moreover, even if the police Strike Force members gave the property owner an administrative forfeiture notice, the police Strike

⁴ See **Report of the Metro Gang Strike Force Review Panel (“Review Panel Report”)**, Aug. 20, 2009 (available at https://dps.mn.gov/divisions/co/.../final_report_mgsf_review_panel.pdf (last accessed on March 6, 2014).

⁵ See **Review Panel Report** at 4-5 (summarizing illegal seizures of property under guise of “forfeiture” including that funds were seized, “regardless of any intent to file charges against the people stopped...”

Force members knew that the property owners often lacked the means, (time, money, etc.) to hire an attorney to fight the forfeiture. It is also documented that in many cases the Strike Force seized property allegedly pursuant to the forfeiture laws and did not even serve administrative forfeiture notices on the owners of the property.⁶

Before one dismisses a concern about law enforcement violating the Fourth Amendment and illegally seizing property for forfeiture, we must remember this has happened very recently, on a systematic basis, in Minnesota. So, this is hardly a “slippery slope” argument, because we already know, as evidenced by the illegalities of the MGSF, we have slipped all the way down the slope in the recent past. The only remedy against such abuses in the context of the issue presented here is to apply the exclusionary rule in civil forfeiture cases to punish police misconduct and to deter future police misconduct, which are the very purposes of the exclusionary rule. Accordingly, public policy dictates that citizens should not be wrongfully deprived of their private property. Thus, the exclusionary rule should apply to all forfeitures in Minnesota state courts.

CONCLUSION

As argued above, at least three separate reasons support the application of the exclusionary rule to civil forfeiture cases stemming from State action. **First**, federal court precedent has applied the exclusionary rule to forfeitures in state and federal courts for five decades. **Second**, Minnesota state court precedent from this Court already applies the exclusionary rule to other civil cases stemming from police/State action, such

⁶ See generally, Review Panel Report.

as implied consent driver's license revocation hearings. **Third**, public policy supports the application of the rule to forfeiture cases because (1) large amounts of money or extremely valuable property may be at stake, (2) the police and prosecuting authority stand to gain financially if a forfeiture is successful, and (3) past police abuses in this context have been well documented in the recent past. Thus, because of these important interests at stake, public policy demands that police misconduct be sanctioned and deterred in the context of property forfeitures by applying the exclusionary rule to such forfeitures.

For the foregoing reasons, Amicus respectfully requests that court of appeals decision in this case be reversed, the trial court's grant of summary judgment reversed, and the Defendant property returned to Appellant.

Dated: 3-7-14

Respectfully submitted,



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JUSTICE

Daniel Garcia-Mendoza,

AFFIDAVIT OF SERVICE BY MAIL

Appellant,

Appellate Court File No.: **A13-0445**

vs.

One 2003 Chevy Tahoe,

OFFICE OF
APPELLATE COURTS

MAR 07 2014

Respondent.

STATE OF MINNESOTA)

) SS.

COUNTY OF HENNEPIN)

FILED

Shaleen Torjesen, swears that on March 7, 2014, she served a true and correct copy of the attached:

Two copies of [REDACTED] Amicus Brief on Behalf of Minnesota Society of Criminal Justice

upon the following entities in the above entitled matter, by placing them in an envelope, U. S. mail, postage prepaid, and depositing the same with the United States Post Office at Minneapolis, Minnesota, addressed as follows:

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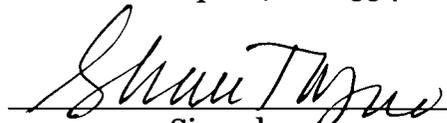
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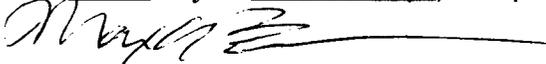
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Signed

Subscribed and sworn to before me
this 7 day of MARCH, 2014.



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OFFICE OF
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MAR 07 2014

FILED

March 7, 2014

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RE: Daniel Garcia-Mendoza v. One 2003 Chevy Tahoe
Appellate Court File No.: **A13-0445**
District Court File No.: 27-CR-10889

Dear Supreme Court Clerk:

Enclosed for filing please find the following regarding the above-referenced matter:

- 1) Amicus Brief on Behalf of Minnesota Society of Criminal Justice (original and seven (7) bound copies and two (2) unbound copies; and
- 2) Affidavit of Service

By copy of this letter we have served two copies upon, Minnesota Attorney General Lori Swanson; Julie Bowman Assistant Hennepin County Attorney, Counsel for Respondent; Minnesota Civil Liberties Union, Institute for Justice, Minnesota County Attorney Association; and Kirk Anderson, Counsel for Appellant.

Sincerely,

Max A. Keller
Attorney at Law

Encl.

Cc: As state above