

A13-445

OFFICE OF  
APPELLATE COURTS

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State of Minnesota  
**In Supreme Court**

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

*Appellant-Petitioner,*

v.

2003 Chevy Tahoe,  
VIN # 1GNEC13V23R143453  
Plate # 235JB; \$611.00 in U.S. Currency

*Respondent-Respondent.*

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**APPELLANT'S BRIEF  
AND APPENDIX.**

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## TABLE OF CONTENTS

Table of Authorities .....	ii
Legal Issues on Appeal .....	iv
Statement of the Case .....	1
Statement of the Facts .....	2
Argument	
I. <u>The Court of Appeals Erred in Determining that the Constitutional Exclusionary Rule Does Not Apply to Civil Forfeitures</u> .....	7
Conclusion .....	16
Index to Appendix .....	v

## TABLE OF AUTHORITIES

### Cases

<u>Ascher v. Comm. of Pub. Safety</u> , 519 N.W.2d 183 (Minn. 1994) . . . . .	13
<u>Austin v. United States</u> , 509 U.S. 602 (1993) . . . . .	7, 8, 13
<u>Boyd v. United States</u> , 116 U.S. 616 (1886) . . . . .	10
<u>Garcia-Mendoza v. 2003 Chevy Tahoe</u> , 2013 WL 6152304 (Minn.Ct.App.) . . . . .	2, 5, 6, 9, 14
<u>In re Welfare of E.D.J.</u> , 502 N.W.2d 779 (Minn. 1993) . . . . .	13
<u>Jacobson v. \$55,900 in U.S. Currency</u> , 728 N.W.2d 510 (Minn. 2007) . . . . .	7, 8, 13
<u>Katz v. United States</u> , 389 U.S. 347 (1967). . . . .	8
<u>One 1958 Plymouth Sedan v. Pennsylvania</u> , 380 U.S. 693 (1965) . . . . .	8-11, 14
<u>Rife v. One 1987 Chevrolet Cavalier</u> , 485 N.W.2d 318 (Minn.Ct.App. 1992), <u>rev. denied</u> . . . . .	6, 9, 13, 14
<u>Riley v. 1987 Station Wagon</u> , 650 N.W.2d 441 (Minn. 2002) . . . . .	7, 8, 13, 14
<u>Star Tribune Co. v. Univ. of Minn. Bd. Of Regents</u> , 683 N.W.2d 274 (Minn. 2004). . . . .	7
<u>State v. Wiegand</u> , 645 N.W.2d 125 (Minn. 2002) . . . . .	13
<u>Torgelson v. Real Property known as 17138 880<sup>th</sup> Ave., Renville County</u> , 749 N.W.2d 24 (Minn. 2008) . . . . .	7, 8, 13
<u>U.S. v. Riverbend Farms Inc</u> , 847 F.2d 553 (9 <sup>th</sup> Cir. 1988). . . . .	12
<u>United States v. Blank</u> , 261 F.Supp. 180 (N.D. Ohio 1966) . . . . .	11, 12
<u>United States v. \$7,850.00 in U.S. Currency</u> , 7 F.3d 1355 (8 <sup>th</sup> Cir. 1993). . . . .	8, 11
<u>United States v. \$31,828</u> , 760 F.2d 228 (8 <sup>th</sup> Cir. 1985). . . . .	11
<u>U.S. v. \$191,919 in U.S. Currency</u> , 788 F. Supp. 1090 (N.D. Ca. 1992) . . . . .	12

U.S. v. \$291,828.00 in U.S. Currency, 536 F.3d 1234 (11th Cir. 2008) . . . . . 12

U.S. v. \$493,850.00 in U.S. Currency, 518 F.3d 1159 (9th Cir. 2008) . . . . . 12

United States v. Eighty-Eight Thousand, Five Hundred Dollars,  
671 F.2d 293 (8<sup>th</sup> Cir. 1982) . . . . . 12

United States v. One Harley Davidson Motorcycle, 508 F.2d 351 (9<sup>th</sup> Cir. 1974) 12

Vance v. United States, 676 F.2d 183 (5<sup>th</sup> Cir. 1982) . . . . . 11

**Constitutions, Statutes and Rules**

Minn.Stat. § 609.531. . . . . 7

Minn.Stat. § 626.21 . . . . . 9, 15

Minn.Const. Art. I § 7. . . . . 8

Minn. Const. Art. I, § 10. . . . . 8, 13

U.S. Const. Art. VI, Clause 2 . . . . . 9, 14

U.S. Const. Amend. IV . . . . . 8, 10, 14

U.S. Const. Amend. V. . . . . 8

U.S. Const. Amend. XIV . . . . . 8, 10, 14

**Other Authorities**

James Madison, Speech in the Virginia Constitutional Convention, (Dec. 2, 1829),  
in 9 The Writings of James Madison 358, 361 (Gaillard Hunt ed. 1910) . . . . . 7

## LEGAL ISSUES ON APPEAL

- I. Whether the Court of Appeals erred in determining that the Fourth Amendment's Exclusionary Rule does not apply to civil forfeitures and affirming the district court's grant of summary judgment?

The Court of Appeals held: The exclusionary rule does not apply to civil forfeitures, thus the State was entitled to forfeit Appellant's property despite the fact that it was illegally obtained. Thus, the State were permitted to rely on statutory presumptions that the Property was subject to forfeiture, and summary judgment was proper.

The district court held: The district court did not address whether the exclusionary rule applied to civil forfeitures, although it did specifically hold that the stop and search of Appellant's vehicles was unlawful. However, the district court granted the State's motion for summary judgment.

## STATEMENT OF THE CASE

This is an appeal to the Minnesota Supreme Court from the Minnesota Court of Appeals' decision affirming Respondent's motion for summary judgment and ordering Appellant Daniel Garcia-Mendoza's ("Appellant"), 2003 Chevy Tahoe and \$611.00 in U.S. Currency, forfeited to the Plymouth Police Department.

On March 19, 2012, Appellant was arrested in the City of Minneapolis, and was subsequently charged with Possession of a Controlled Substance, in the First Degree. [Complaint; App's Appdx. at A-8]. The Plymouth Police Department served Appellant a Notice of Seizure and Intent to Forfeit his vehicle a 2003 Chevy Tahoe and \$611.00 in U.S. Currency. [Notice of Seizure and Intent to Forfeit; App's Appdx. at A-14]. On May 7, 2012, Appellant filed a Petition for Judicial Determination of Forfeiture.

On May 21, 2012, Appellant was indicted in United States District Court – District of Minnesota. On June 6, 2012, the State of Minnesota dismissed its Complaint. [State's Dismissal; App's Appdx. at A-11]. On August 21, 2012, Appellant entered a guilty plea to Count II of the Federal Indictment.

On November 15, 2012, the State brought a motion for summary judgment before the Hon. Thomas Sipkins. In an Order dated January 11, 2013, the district court granted the State's motion and forfeited the vehicle to the State of Minnesota. [Order Granting Summary Judgment; App's Appdx. at A-1 ("Order")].

Appellant sent a request for reconsideration of the district court's order, which was denied. Judgment was entered on January 16, 2013, and Appellant appealed to the Court of Appeals.

In an opinion filed November 25, 2013, the Minnesota Court of Appeals affirmed the summary judgment. Garcia-Mendoza v. 2003 Chevy Tahoe, 2013 WL 6152304 (Minn.Ct.App.). [Court of Appeals Opinion; App's Appdx. at A-24]. Appellant filed a Petition for Review, which was granted by this Court on January 27, 2014.

### STATEMENT OF THE FACTS

It is undisputed that Appellant is the sole of owner of the vehicle and U.S. Currency at issue in this matter. On March 19, 2012, Appellant was stopped by the Plymouth Police Department, in Minneapolis, MN, while driving the Respondent vehicle. Officer Ryan Peterson's police report describes the stop as follows:

I first noticed [the Respondent vehicle] traveling in the Left lane (Lane 1) of Southbound I-94 traffic. I was traveling in lane 3 and then moved to lane 2. At this time, I noticed the vehicle went past me. I noticed there were two occupants in the vehicle and neither of the occupants were looking at me. I noticed the driver had both hands on the steering wheel and was looking straight ahead. I performed a registration check on the vehicle. The check came back to a registered owner listed as Ricardo Cervantes Perez DOB 11/01/1982. There was no driver's license information associated with the registration check.

[Report attached as Exhibit A to Affidavit of Kirk M. Anderson; App's Appdx. at A-19]. Based upon this, Off. Peterson believed that Appellant 'may' not have a valid driver's license, so he initiated the stop.

Conversely, in his affidavit submitted in support of the State's motion for summary judgment, Off. Peterson testified that the reason Appellant was stopped was because a registration check showed that Appellant did not have a valid driver's license.

[Affidavit of Officer Ryan Peterson at ¶ 2; App's Appdx. at A-12]. Off. Peterson's testimony here is in direct conflict with his police report. The registration check did not reveal that Appellant's license was invalid, suspended or revoked. In fact, it did not reveal anything.

Off. Peterson then stopped Appellant's vehicle and later learned that Appellant did not have a Minnesota driver's license. Off. Peterson also made observations that he claimed were suspicious, such as the fact that the vehicle was clean, there was only 1 key in the ignition, and there were air fresheners in the vehicle. [Peterson Report; App's Appdx. at A-19-20].

After Appellant could not produce a MN driver's license, Off. Peterson issued a citation. Off. Peterson stated in his report that he decided to tow the vehicle because the passenger did not have a driver's license either. [Peterson Report; App's Appdx. at A-19-20]. However, prior to making this decision, Off. Casey Landherr of the Northwest Drug Task Force had *already* initiated a warrantless search of Appellant's vehicle and found alleged signs of criminal activity. [Peterson Report; App's Appdx. at A-20].

Off. Peterson then said that he asked Appellant for consent to search the vehicle. In another conflicting report, Off. Landherr stated in his report that he did not search the vehicle until after receiving the consent to search. [Exhibit B attached to Affidavit of Kirk M. Anderson; App's Appdx. at A-22-23]. Upon searching the vehicle, Off. Landherr found the suspected methamphetamine.

Following this stop, Appellant was arrested and subsequently charged by the State of Minnesota with First Degree Possession of Methamphetamine. Court File No. 27-CR-

12-8593. The Complaint alleged that on March 19, 2012, Appellant was in possession of 25 grams or more of methamphetamine. [Complaint; App's Appdx. at A-8].

Appellant was also issued a Notice of Intent to Seize and Forfeit Vehicle for the Respondent vehicle that Appellant was driving at the time of the stop, as well as \$611.00 in U.S. Currency that was recovered from Appellant's person. On May 7, 2012, Appellant filed a Petition for Judicial Determination of Forfeiture.

On May 21, 2012, Appellant was indicted in U.S. District Court – Minnesota. The indictment charged Appellant with four (4) counts of Distribution of Methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A), from:

- Count I: November 3, 2011, 50 grams or more;
- Count II: December 22, 2011, 50 grams or more;
- Count III: February 1, 2012, 5 grams or more;
- Count IV: March 19, 2012, 50 grams or more.

[Indictment; App's Appdx. at A-15-16]. Count IV of the Indictment was based on the same incident that was the subject of the charges Appellant faced in State Court, as well as the State's basis for this forfeiture action.

Upon the filing of the Indictment, the State dismissed the charges against Appellant. [Dismissal; App's Appdx. at A-11]. On August 8, 2012, Appellant entered a guilty plea to Count II of the Indictment. As part of Appellant's agreement to plead guilty to Count II of the Indictment, the remaining charges were dismissed.

On November 15, 2012, the State brought a motion for summary judgment in this matter. The State argued that since Appellant had pled guilty in U.S. District Court, that the vehicle was deemed forfeited. Appellant argued that the State's motion should be

denied because his plea in Federal Court had no bearing on this case because the United States were not a party to the forfeiture action, Minnesota law applied to this action, and the forfeiture was based on an unlawful search and seizure.

In an Order dated January 11, 2013, the district court agreed with Appellant that the stop of his vehicle and subsequent search on March 19, 2012, violated his constitutional rights. Indeed, the district court specifically found “there was neither a reasonable or articulable suspicion for the stop, nor a legitimate basis for the expansion of it. Indeed, in this Court’s view, this appears to be a case of a stop based only on “driving while Latino.” [Order; App’s Appdx. at A-2-3]. The district court went on to hold that “[b]ased on the blatant disregard for any Police Department policies and, more importantly, complete disregard for the laws of the United States, including the Fourth Amendment to the United States Constitution, this Court would have suppressed any evidence obtained in violation of fundamental rights including the bag allegedly containing methamphetamine.” [Order; App’s Appdx. at A-2-3].

However, despite the fact that law enforcement violated Appellant’s constitutional rights, the district court granted the motion for summary judgment because Appellant had pled guilty and agreed to forfeit “property used, or intended to be used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the [Appellant’s] violation” in his plea agreement with the United States of America. [Order; App’s Appdx. at A-7]. Appellant appealed.

On November 25, 2013, the Minnesota Court of Appeals affirmed the District Court’s decision granting summary judgment. Garcia-Mendoza v. 2003 Chevy Tahoe,

2013 WL 6152304 (Minn.Ct.App.). First, the Court of Appeals found it was irrelevant that the stop and search of Appellant's vehicle was unlawful because the exclusionary rule does not apply to civil forfeitures. The Court of Appeals relied entirely on Rife v. One 1987 Chevrolet Cavalier, 485 N.W.2d 318, 322 (Minn.Ct.App. 1992), rev. denied., in making this decision. The Court of Appeals did not analyze any federal precedent (nor did Rife), to address this issue, and it also did not address Minn.Stat. § 626.21.

Next, the Court of Appeals correctly determined that Minnesota law applied to this matter and the district court erred in granting summary judgment based upon the federal forfeiture statute. Garcia-Mendoza, 2013 WL 6152304 at \*4. In making holding, the Court of Appeals held that whether Appellant was convicted of the offense from March 19, 2012 (which is the offense for which this forfeiture is based), was not relevant to this forfeiture matter because in Minnesota a conviction is not required for forfeiture. Garcia-Mendoza, 2013 WL 6152304 at \*4.

Finally, since the Court of Appeals would not apply the exclusionary rule, it affirmed the district court's grant of summary judgment because the money and vehicle were presumed forfeited since the money was found in proximity to drugs, and the vehicle was considered a conveyance device. Garcia-Mendoza, 2013 WL 6152304 at \*4. The Court of Appeals ordered the property forfeited to the Plymouth Police Department. Appellant filed a Petition for Review that was subsequently granted by this Court.

## ARGUMENT

### I. THE COURT OF APPEALS ERRED IN DETERMINING THAT THE CONSTITUTIONAL EXCLUSIONARY RULE DOES NOT APPLY TO CIVIL FORFEITURES.

#### a. Standard of Review

Issues of constitutional interpretation are issues of law this Court reviews de novo. Star Tribune Co. v. Univ. of Minn. Bd. Of Regents, 683 N.W.2d 274, 283 (Minn. 2004).

#### b. Applicable Law

“The personal right to acquire property, which is a natural right, gives to property, when acquired, a right to protection, as a social right.” James Madison, Speech in the Virginia Constitutional Convention, (Dec. 2, 1829), in 9 *The Writings of James Madison* 358, 361 (Gaillard Hunt ed. 1910).

Vehicle forfeiture is a civil *in rem* action, independent of any criminal prosecution. Minn.Stat. § 609.531, subd. 6a. This Court, as well as the United States Supreme Court, has long recognized that civil *in rem* forfeiture is at least in part a penalty, and accordingly is disfavored and should be strictly construed. Torgelson v. Real Property known as 17138 880<sup>th</sup> Ave., Renville County, 749 N.W.2d 24, 26-27 (Minn. 2008); Jacobson v. \$55,900 in U.S. Currency, 728 N.W.2d 510, 521 (Minn. 2007); see also Austin v. United States, 509 U.S. 602, 621-22 (1993) (holding that forfeitures of real property pursuant to federal law are fines that fall within the scope of the Excessive Fines Clause of the United States Constitution); Riley v. 1987 Station Wagon, 650 N.W.2d 441, 443 (Minn. 2002) (“[T]o 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.”).

The Fourth Amendment of the United States Constitution and Article I, Section 10, of the Minnesota Constitution guarantees:

The right of the people to be secure in their *persons, houses, papers, and effects*, against unreasonable searches and seizures, *shall not be violated* . . .

(emphasis added).

Both the U.S. Constitution and the Minnesota Constitution protect individuals from being deprived of their property without due process of law. U.S. Const. Amend. V, XIV; Minn.Const. Art. I, Sect. 7. Again, this Court has consistently held for years that civil forfeiture is a penalty, is disfavored, and is to be strictly construed in favor of the party challenging the forfeiture. Torgelson, 749 N.W.2d at 26-27; Jacobson, 728 N.W.2d at 521; see also Austin, 509 U.S. at 621-22; Riley, 650 N.W.2d at 443. Civil forfeitures are quasi-criminal, therefore the exclusionary rule applies. United States v. \$7,850.00 in U.S. Currency, 7 F.3d 1355, 1357 (8th Cir. 1993).

Subject to only a few exceptions, searches conducted outside the judicial process are *per se* unreasonable. Katz v. United States, 389 U.S. 347, 357 (1967). For nearly 50 years, the United States Supreme Court has held that the Fourth Amendment’s exclusionary rule applies to civil forfeitures. One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 694 (1965).

The United States “Constitution, and the Laws of the United States which shall be made in Pursuance thereof. . . *shall be the supreme Law of the Land*; and the Judges in

every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. Art. VI, Clause 2 (emphasis added).

c. Analysis.

In this case the Court of Appeals affirmed the district court’s grant of summary judgment because the Exclusionary Rule does not apply to civil forfeitures. Garcia-Mendoza, 2013 WL 6152304 at \*3. In support of this finding, the Court of Appeals relied entirely upon its own decision in Rife.<sup>1</sup>

The problem with the Court of Appeals reliance on Rife in this case is that it completely ignores longstanding Federal precedent that the Fourth Amendment does apply in civil forfeitures. One 1958 Plymouth Sedan, 380 U.S. at 694. Additionally, the Court of Appeals ignored Minn.Stat. § 626.21, which says that if any evidence is illegally seized “it *shall not* be admissible in evidence at *any* hearing or trial.” (emphasis added).

1. One 1958 Plymouth Sedan v. Pennsylvania.

The issue of whether the exclusionary rule, or more importantly the Fourth Amendment, applies to civil forfeitures was determined long ago by the United States Supreme Court. In One 1958 Plymouth Sedan, officers conducted a warrantless search of a car and trunk where they discovered thirty-one (31) cases of liquor not bearing Pennsylvania tax seals. 380 U.S. at 694. The car and liquor were seized and the State sought forfeiture. One 1958 Plymouth Sedan, 380 U.S. at 694.

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<sup>1</sup> It is important to note the issue of whether the exclusionary rule is applicable to civil forfeitures was raised for the first time by the Court of Appeals at the oral argument. The State did not argue at the district court nor at the Court of Appeals that the exclusionary rule did not apply to civil forfeitures, and the State did not appeal the district court’s holding that the search violated Appellant’s constitutional rights.

Initially, the Pennsylvania Supreme Court held the exclusionary rule is not applicable to forfeiture proceedings and affirmed the forfeiture. One 1958 Plymouth Sedan, 380 U.S. at 695. The United States Supreme Court granted certiorari “to consider the important question of whether the constitutional exclusionary rule . . . applies to forfeiture proceedings . . . a question on which there has been conflict in both state and federal decisions.” One 1958 Plymouth Sedan, 380 U.S. at 696.

In answering this question, the United States Supreme Court unanimously held that “the constitutional exclusionary rule *does* apply to such forfeiture proceedings, and consequently reverse the judgment of the Pennsylvania Supreme Court.” One 1958 Plymouth Sedan, 380 U.S. at 696 (emphasis added). The Supreme Court also held that since the Fourth Amendment is applicable to the States through the Fourteenth Amendment that the exclusionary rule applies to civil forfeiture actions in State courts as well. One 1958 Plymouth Sedan, 380 U.S. at 702; U.S. Const. Amend. IV, XIV.

In One 1958 Plymouth Sedan, the United States Supreme Court mentioned that the leading authority for the issue of search and seizure is Boyd v. United States, 116 U.S. 616 (1886), which was not a criminal matter. 380 U.S. at 696. The Supreme Court quoted Justice Bradley from the Boyd decision, “[w]e are also clearly of opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal . . .” One 1958 Plymouth Sedan, 380 U.S. 697; quoting Boyd, 116 U.S. at 633-34.

Further, there have been numerous cases since One 1958 Plymouth Sedan, that have also held that civil forfeitures are quasi-criminal and that the exclusionary rule applies. In United States v. \$7,850.00 in United States Currency, 7 F.3d at 1357, the Eight Circuit Court of Appeals held that forfeiture proceedings are quasi-criminal in nature and the exclusionary rule applies barring evidence obtained in violation of the Fourth Amendment. The Eight Circuit held that the fact monies have been illegally seized does not automatically immunize them from forfeiture; however, the government must show with untainted evidence a basis to forfeit. United States v. \$7,850.00 in United States Currency, 7 F.3d at 1357, citing United States v. \$31,828, 760 F.2d 228, 230 (8<sup>th</sup> Cir. 1985).

In Vance v. United States, 676 F.2d 183, 184 (5<sup>th</sup> Cir. 1982), the Fifth Circuit Court of Appeals held that the forfeiture was entirely predicated upon tainted evidence and the forfeiture of the district court is to be vacated. Vance, 676 F.2d at 190.

In United States v. Blank, 261 F.Supp. 180, 181 (N.D. Ohio 1966), the government argued that the Fourth Amendment only protects against the rights of an accused in a criminal action, not a civil action. Blank, 261 F.Supp. at 181. The court found no distinguishable difference between the two forms of punishment that excuses the government from complying with constitutional mandates when prosecuting their action in a civil forum. Blank, 261 F.Supp. at 181.

The purpose of the exclusionary rule is to put teeth into the Fourth Amendment; the rule is the only efficacious sanction whereby courts may deter the unbridled plunder of private property by law enforcement officials. Blank, 261 F.Supp. at 181. If the

government's assessment of the boundaries of the Fourth Amendment were to be correct, then the government may take the accused down a civil avenue to impose its penalties while keeping itself free from the impinging requirement of reasonableness, which the Fourth Amendment imposes. Blank, 261 F.Supp. at 181.

The Federal courts have continued to apply the Fourth Amendment to civil forfeitures in recent cases. See, e.g., U.S. v. \$291,828.00 in U.S. Currency, 536 F.3d 1234, 1236-38 (11th Cir. 2008) ("The Fourth Amendment exclusionary rule applies to civil forfeiture actions."); U.S. v. \$493,850.00 in U.S. Currency, 518 F.3d 1159, 1164 (9th Cir. 2008) ("The exclusionary rule applies in civil forfeiture cases.... It bars the admission of evidence obtained in violation of the U.S. Constitution, as well as 'fruits of the poisonous tree.'"); U.S. v. \$191,919 in U.S. Currency, 788 F. Supp. 1090 (N.D. Ca. 1992), citing U.S. v. Riverbend Farms Inc., 847 F.2d 553, 558 (9<sup>th</sup> Cir. 1988).

Thus, the issue to be decided in this case, whether the Fourth Amendment's exclusionary rule applies to civil forfeitures, is a very easy one. Based upon the United States Supreme Court and other Federal courts interpretation of the Fourth Amendment, which is applicable to the State's through the Fourteenth Amendment, the answer clearly is "yes."<sup>2</sup>

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<sup>2</sup> Appellant will acknowledge that there have been cases where the forfeiture was upheld, even though an unlawful search or seizure had occurred. United States v. Eighty-Eight Thousand, Five Hundred Dollars, 671 F.2d 293, 294 (8<sup>th</sup> Cir. 1982); United States v. One Harley Davidson Motorcycle, 508 F.2d 351 (9<sup>th</sup> Cir. 1974). However, in all of these cases, there was independent and untainted evidence that could be used to justify the forfeiture. That is not the case here.

Additionally, this Court has never addressed whether Article I, Section 10 of the Minnesota Constitution applies to civil forfeiture (and the Court of Appeals has never addressed this either). This Court has a long history of giving more rights to individuals under the Minnesota Constitution than is provided by the United States Constitution. See State v. Wiegand, 645 N.W.2d 125, 136 (Minn. 2002); Ascher v. Comm. of Pub. Safety, 519 N.W.2d 183, 186 (Minn. 1994); In re Welfare of E.D.J., 502 N.W.2d 779, 780, 783 (Minn. 1993).

And, since this Court has a long history of disfavoring civil forfeitures, and construes the forfeiture statutes strictly in favor of the party challenging the forfeiture, Torgelson, 749 N.W.2d at 26-27; Jacobson, 728 N.W.2d at 521; see also Austin, 509 U.S. at 621-22; Riley, 650 N.W.2d at 443, there is no reason why the additional protections afforded to individuals under Article I, Section 10, in a criminal matter would not be applicable in a civil forfeiture as well.

2. Rife v. One 1987 Chevrolet Cavalier.

In this matter, the Court of Appeals based its determination that the exclusionary rule does not apply to civil forfeitures entirely on its previous decision in Rife. However, as will be more fully stated below, the Court of Appeals reliance on this case is misplaced and is in direct conflict with Federal and Minnesota law.

In Rife, the registered owner's daughter and her boyfriend were involved in a controlled buy of narcotics where they were observed operating the Chevrolet Cavalier in question. Rife, 485 N.W.2d at 319. An unsigned search warrant was later obtained for the search of the vehicle. Rife, 485 N.W.2d at 319. Law enforcement executed the unsigned

search warrant, seized the vehicle and initiated forfeiture proceedings. The owner of the vehicle challenged the forfeiture based on an illegal seizure because the warrant was never signed. Rife, 485 N.W.2d at 320.

The Court of Appeals held that since law enforcement had independent and untainted evidence to prove its case that forfeiture was appropriate. Essentially what the Court of Appeals was really saying was that even if the evidence obtained as a result of the illegal search was suppressed, that did not automatically render the purported forfeiture invalid because the State was still be able to prove its case based upon the controlled buys alone. Rife, 485 N.W.2d at 322. This part of the Rife decision is consistent with some of the prior Federal cases referenced above.

However, instead of stopping there, the Court of Appeals went on to state that “forfeiture is a civil proceeding, and there is no exclusionary rule whereby an unlawful seizure impairs the state’s ability to demonstrates its case.” Rife, 485 N.W.2d at 322.<sup>3</sup> The Court of Appeals relied on this portion of the Rife decision to support its holding that the exclusionary rule does not apply to civil forfeitures. Garcia-Mendoza, 2013 WL 6152304 at \*3. As stated above, this decision was in error and must be reversed by this Court. U.S. Const. Art. VI, Clause 2; Amend. IV, XIV; One 1958 Plymouth Sedan, 380 U.S. at 702.

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<sup>3</sup> It is important to note that there is absolutely no mention of the United States Supreme Court’s decision in One 1958 Plymouth Sedan in Rife or in the Court of Appeals decision in is case.

3. Minn.Stat. § 626.21.

Further, the Court of Appeals decision in this case does not mention Minn.Stat. § 626.21, which states in relevant part:

A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized or the district court having jurisdiction of the substantive offense for the return of the property and to suppress the use, as evidence, of anything so obtained on the ground that (1) the property was illegally seized, or (2) the property was illegally seized without warrant . . . The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property *shall* be restored unless otherwise subject to lawful detention, and it *shall not* be admissible in evidence at *any* hearing or trial.

(emphasis added).

Pursuant to the clear and unambiguous language of this statute, the Minnesota Legislature has already ordained that any evidence obtained unlawfully “shall” be excluded from any hearing or trial. Minn.Stat. § 626.21. For the reasons stated above, Appellant respectfully requests that this Court reverse the Court of Appeals and hold that the exclusionary rule applies to civil forfeitures.

Finally, after applying the exclusionary rule, the State does not have an independent and untainted basis to seek forfeiture of Appellant’s property in this case. Appellant has never been convicted of anything relating to the offense for which this forfeiture is based, thus the State is not entitled to any statutory presumptions that the Property at issue is subject to forfeiture. Further, the Court of Appeals correctly held that the United States forfeitures statutes are not applicable in this case. And, since the State

of Minnesota was not a party to the plea agreement in federal court, it does not have standing to challenge and/or enforce it.

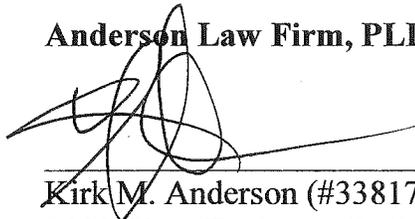
Thus, Appellant respectfully requests this Court reverse the grant of summary judgment and order the Respondent Property be returned to Appellant.

### CONCLUSION

For the reasons stated above, Appellant respectfully asks this Court reverse the Court of Appeals and order his property be returned to him.

Dated: February 28, 2014

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State of Minnesota  
**In Supreme Court**

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

*Appellant-Petitioner,*

v.

2003 Chevy Tahoe,  
VIN # 1GNEC13V23R143453  
Plate # 235JB; \$611.00 in U.S. Currency

*Respondent-Respondent.*

---

**APPENDIX.**

---

**Anderson Law Firm, PLLC**

Kirk M. Anderson (#338175)  
7000 Flour Exchange Building  
310 Fourth Avenue South  
Minneapolis, MN 55415  
(612) 355-2723

*Attorney for Appellant*

**Hennepin County Attorney**

Michael O. Freeman (#31860)  
Toni A. Beitz (#6245)  
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Minneapolis, MN 55487  
(612) 348-8533

*Attorney for Respondent*

**INDEX TO APPENDIX**

Order Granting Summary Judgment . . . . . A-1

Complaint . . . . . A-8

State’s Dismissal . . . . . A-11

Affidavit of Officer Ryan Peterson . . . . . A-12

Affidavit of Kirk M. Anderson . . . . . A-18

Court of Appeals Opinion . . . . . A-24

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Daniel Garcia-Mendoza,

Plaintiff,

v.

2003 Chevy Tahoe; VIN#  
1GNEC13V23R143453; Plate# 235JBM;  
\$611.00 in U.S. Currency,

Defendant.

Judge Thomas M. Sipkins  
Case Type: Forfeiture  
File No. 27-CV-12-10889

**ORDER GRANTING  
SUMMARY JUDGMENT**

The above-entitled matter came before the Honorable Thomas M. Sipkins, Judge of District Court, on November 15, 2012, in District Court, Division I, Hennepin County Government Center, Minneapolis, Minnesota, upon Defendant's Motion for Summary Judgment.

Kirk Anderson, Esq., appeared on behalf of Plaintiff. Christopher Tolbert, Esq., appeared on behalf of Defendant.

Based upon the evidence adduced, the arguments of counsel, and all of the files, records, and proceedings herein,

**IT IS HEREBY ORDERED:**

1. Defendant's Motion for Summary Judgment is **GRANTED**.
2. The attachment memorandum is incorporated herein.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

BY THE COURT:

Dated: January 11, 2013

  
The Honorable Thomas M. Sipkins  
Judge of District Court

A-1

MEMORANDUM

INTRODUCTION

This civil forfeiture matter comes before this Court as a result of a criminal charge against Plaintiff, subsequent plea, and conviction.

Officer Peterson ("Peterson") saw Plaintiff driving the 2003 Chevy Tahoe and decided to run a registration check merely because Plaintiff had "both hands on the steering wheel and was looking straight ahead." The registration check on the vehicle revealed no driver's license information for the registered owner of the vehicle. In other words, without knowing if the driver was the registered owner, the registration check did not create a reasonable suspicion of a motor vehicle violation or criminal activity justifying a stop. Despite the absence of a reasonable suspicion of a motor vehicle violation or criminal activity by the driver, Peterson decided to stop Plaintiff's vehicle.

While Peterson was asking Plaintiff for his license and registration, he "noticed the vehicle was very well kept on the outside, it had newer looking oversized tires and rims, had several air fresheners, and [a] card with [a] reference to Santa Muerta." Luckily for Peterson, perhaps, neither Plaintiff nor the passenger had a valid Minnesota Driver's license. For this reason, Peterson decided to tow the vehicle and perform an inventory search. Without any indication that law enforcement followed an inventory policy, or that such a policy even existed, law enforcement decided to inventory a Pringles can that was "covered up in a bag of clothes" on the backseat of the car by "remov[ing] the cover and [pulling] out a paper towel stuffed in the top of the can." At the bottom of the can appeared to be a bag containing methamphetamine.

From the Court's perspective, there was neither a reasonable or articulable suspicion for the stop, nor a legitimate basis for the expansion of it. Indeed, in this Court's view, this appears

to be a case of a stop based only on "driving while Latino." Based on the blatant disregard for any Police Department policies and, more importantly, complete disrespect for the laws of the United States, including the Fourth Amendment to the United States Constitution, this Court would have suppressed any evidence obtained in violation of fundamental rights including the bag allegedly containing methamphetamine. In the final analysis, however, Plaintiff pled guilty to distribution of 50 grams or more of actual methamphetamine, a controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A).

In the Court's judgment, the legality of the stop and subsequent seizure are not the issues before this Court. This Court has the limited duty to determine whether genuine issues of material fact exist as to whether the property is subject to forfeiture pursuant to the Plea Agreement and applicable statutes. Since no genuine issues of material fact exist as to whether the subject property is subject to forfeiture, Defendant's motion for summary judgment is granted.

### FINDINGS OF FACTS

Plaintiff, Daniel Garcia-Mendoza, owns the Defendant vehicle. On March 19, 2012, Officer Ryan Peterson ("Peterson") of the Plymouth Police Department stopped Plaintiff in Minneapolis, Minnesota. According to Peterson's report, he

first noticed [the Defendant vehicle] traveling in the left lane (Lane 1) of Southbound I 94 traffic. I was traveling in lane 3 and then moved to lane 2. At this time, I noticed the vehicle went past me. I noticed there were two occupants in the vehicle and neither of the occupants were looking at me. I noticed the driver had both hands on the steering wheel and was looking straight ahead. I performed a registration check on the vehicle. The check came back to a registered owner listed as Ricardo Cervantes Perez DOB 11/01/1982. There was no driver's license information associated with the registration check. This is common when the driver does not possess a valid driver's license.

(Aff. Kirk M. Anderson, Ex. A). Peterson activated his emergency lights and stopped the

vehicle. (*Id.*). Peterson asked Plaintiff for a driver's license and insurance. (*Id.*). Plaintiff produced two insurance cards with different names, a Mexican identification card, and told Peterson that he did not have a Minnesota Driver's License. (*Id.*).

Peterson asked Plaintiff to accompany him to his squad car to discuss the license issue. (*Id.*). Plaintiff went with Peterson and had a seat in the front of the squad car. (*Id.*). Peterson was able to locate two listings for Plaintiff in his computer system but neither listing had driver's license information. (*Id.*).

Officer Casey Landherr ("Landherr") was helping Peterson with the stop. (Aff. Kirk M. Anderson, Ex. A). Peterson asked Landherr to speak with the passenger of the vehicle to see if the passenger had a valid driver's license. (*Id.*). The passenger informed Landherr that he had a passport card and a Texas identification card. (Aff. Kirk M. Anderson, Ex. B). Peterson decided to issue Plaintiff a citation for driving without a Minnesota Driver's License and to have the vehicle towed. (Aff. Kirk M. Anderson, Ex. A). Peterson gave Plaintiff his citation and had him exit the squad car. (*Id.*).

In his report, Landherr indicated that Peterson obtained consent to search the vehicle and the vehicle needed to be inventoried for towing. (Aff. Kirk M. Anderson, Ex. B). While Landherr was searching the car he located a Pringles can on the rear seat which contained a plastic baggie containing a clear, crystal-like substance. (*Id.*). This substance later tested positive for methamphetamines. (Aff. Kirk M. Anderson, Ex. A). In Peterson's report, he indicated that while Landherr was conducting an inventory search, he asked Plaintiff to have a seat again in his squad car. (*Id.*). Peterson explained that Plaintiff's vehicle was already being searched since it would be towed but asked Plaintiff for verbal consent to search his vehicle. (*Id.*). Plaintiff was provided with, and signed, a consent form. (*Id.*).

Landherr showed Peterson the Pringles can upon which Peterson “immediately walked over and placed [Plaintiff] under arrest, searched him, and placed him in the back of [the] squad.” (*Id.*). While searching Plaintiff, Peterson found “two cell phones and several items of religious paraphernalia on his person. . . . \$129 cash was located in [Plaintiff’s] wallet and \$482 was located in [Plaintiff’s] person.” (Aff. Kirk M. Anderson, Ex. A).

Plaintiff was initially charged in state court but the matter was removed to U.S. District Court for the District of Minnesota where Plaintiff was indicted. Plaintiff was indicted with four counts of Possession and Distribution of Methamphetamine. (Def. Memo. in Support of Summ. Judgment, Ex. 2). On or about August 8, 2012, Plaintiff entered in to a Plea Agreement and plead guilty “to Count 2 of the Indictment which charged Plaintiff with distribution of 50 grams or more of actual methamphetamine, a controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841 (b)(1)(A).” (*Id.* at Ex. 3, ¶ 1). Pursuant to this Plea Agreement, statutory penalties require a minimum of ten years imprisonment. (*Id.* at ¶ 3) The Plea Agreement also contained a provision requiring Plaintiff to forfeit “property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the Defendant’s violation” pursuant to law. (*Id.* at ¶ 8). The remaining counts were dismissed. (*Id.* at ¶ 1). On May 7, 2012, Plaintiff filed a Demand for Judicial Determination of the forfeiture. Defendant filed this motion for summary judgment.

## CONCLUSIONS OF LAW

### I. Summary Judgment Standard

Minnesota Rule of Civil Procedure 56.03 allows for summary judgment when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party

is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. “A party opposing a motion for summary judgment cannot rely on general facts, but must present specific facts in existence which create a genuine issue for trial.” *Foley v. Honeywell, Inc.*, 488 N.W.2d 268, 272 (Minn. 1992) (citing *Moundsview Indep. Sch. Dist. No. 621 v. Buetow & Assocs.*, 253 N.W.2d 836, 838 (Minn.1977)). The moving party has the burden of proving the absence of any genuine issue of material fact. *Ritter v. M.A. Mortenson Co.*, 352 N.W.2d 110, 112 (Minn. Ct. App. 1984). When determining if there are genuine issues of material fact, the Court must view all the evidence in the light most favorable to the non-moving party. *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955).

## II. Forfeiture of Defendant Property

Minnesota law provides that “[a]n unqualified promise made as part of a plea agreement must be honored.” *State v. Meredyk*, 754 N.W.2d 596, 603 (Minn. Ct. App. 2008) (citing *Kochevar v. State*, 281 N.W.2d 680, 687 (Minn.1979)). Paragraph 8 of the Plea Agreement and Sentencing Stipulations is entitled “Forfeiture” and states

Pursuant to 21 U.S.C. § 853(a), the Defendant agrees to forfeit any and all property constituting, or derived from, any proceeds the Defendant obtained, directly or indirectly, as the result of Defendant’s violation, as well as any and all of Defendant’s property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the Defendant’s violation.

(Def. Memo. in Support of Summ. Judgment, Ex. 3).

Additionally, 21 U.S.C. § 853(a) provides

Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, *irrespective of any provision of State law--*

- (1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;
- (2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation. . . .

21 U.S.C. § 853(a)(1)-(2) (emphasis added). “A plea of guilty differs in purpose and effect from a mere admission or an extrajudicial confession; it is itself a conviction. Like a verdict of a jury it is conclusive.” *Machibroda v. U.S.*, 368 U.S. 487, 493 (1962) (quoting *Kercheval v. United States*, 274 U.S. 220, 223 (1927)).

Plaintiff argues that summary judgment is inappropriate in this matter because the stop and subsequent search of the vehicle was unlawful. As discussed above, the Court agrees that the stop and subsequent search were unlawful. The issue before this Court, however, is whether genuine issues of material fact exist as to whether the property is subject to forfeiture pursuant to the Plea Agreement and applicable statutes. Irrespective of the legality of the stop and search, Plaintiff subsequently entered into a Plea Agreement pleading guilty to Count 2 of the Indictment and agreeing to forfeit the property. Moreover, 21 U.S.C. § 853(a) requires that anyone convicted of a crime under this subchapter, which includes 21 U.S.C. § 841, shall forfeit property “used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.” Plaintiff does not argue, and the Court does not find, that genuine issues of material fact exist regarding the Plea Agreement or whether the property falls within the scope of 21 U.S.C. § 853(a). Based on the parties’ Plea Agreement and applicable statutory provision, there are no genuine issues as to any material facts. Therefore, Defendant’s motion for summary judgment is granted.

CCT	LIST CHARGE STATUTE ONLY	MOC	GOC	CTY ATTY FILE NO.	CONTROLLING AGENCY	CONTROL NO
1	152.021	DD5C0	N	12-0752	MN0271700	12012399

COURT CASE NO.                      DATE FILED

Amended     Tab Charge Previously Filed

If more than 6 counts (see attached)     If Domestic Assault as defined by MS 518B01, sub2a,b

State of Minnesota,

PLAINTIFF,

VS.

<input type="checkbox"/> SERIOUS FELONY	<input type="checkbox"/> SUMMONS
<input checked="" type="checkbox"/> FELONY	<input type="checkbox"/> WARRANT
<input type="checkbox"/> GROSS MISDM DWI	<input checked="" type="checkbox"/> ORDER OF DETENTION
<input type="checkbox"/> GROSS MISDM	<input type="checkbox"/> EXTRADITION

NAME: first, middle, last  
DANIEL GARCIA-MENDOZA

Date of Birth	MNCIS #:	27-CR-
6/23/82	LE#:	12-14440
	SILS ID:	698505
	TRACK ID:	2559975

DEFENDANT,

3433 BLOOMINGTON AVE S APT 714  
MINNEAPOLIS, MN 55407

### COMPLAINT

*The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant committed the following offense(s). The complainant states that the following facts establish PROBABLE CAUSE.*

Complainant, Casey Landherr, of the Robbinsdale Police Department, has investigated the facts and circumstances of this offense and believes the following establishes probable cause:

On March 19, 2012, at approximately 1:45 p.m., officers were on routine patrol on Interstate 94 in Hennepin County, Minnesota. Officers performed a routine registration check on a vehicle and learned that the vehicle registered to a man named Ricardo Cervantes Perez, but there was no driver's license information associated with Perez, which is common when the party does not have a driver's license. He stopped the vehicle and asked the driver for insurance and his license. The driver, who was later identified as DANIEL GARCIA-MENDOZA, Defendant herein, provided two different insurance cards with two different named insureds, and a Mexican ID card with the name of "RICARDO CERVANTES PEREZ." He said he didn't have a driver's license. He stated that the car does belong to him and that the clothing in the vehicle belonged to his wife.

Officers were unable to verify Defendant's identity at the scene. Defendant stated he was unsure of his exact address. The passenger of the vehicle was unable to drive, as he also did not possess a driver's license.

During a search of the vehicle officers located a Pringle's potato chip can in a bag of clothes in the back seat of the vehicle. Inside the Pringle's can was a plastic baggie containing a clear crystal-like substance which was later field-tested and weighed and found to be 225.90 grams of methamphetamine.

The Defendant is currently in custody for this offense.

A-8

COMPLAINT SUPPLEMENT

CCT	SECTION/Subdivision	M.O.C.	GOC

OFFENSE

COUNT 1: CONTROLLED SUBSTANCE CRIME FIRST DEGREE-POSSESSION (FELONY)  
 MINN. STAT. § 152.021, SUBD. 2(a)(1), SUBD. 3(a); § 609.101, SUBD. 3; § 152.01, SUBD. 16a  
 PENALTY: 0-30 YEARS AND/OR \$300,000-\$1,000,000

That on or about March 19, 2012, in Hennepin County, Minnesota, DANIEL GARCIA-MENDOZA unlawfully possessed one or more mixtures of a total weight of 25 grams or more containing methamphetamine.

**NOTICE:** You must appear for every court hearing on this charge. A failure to appear for court on this charge is a criminal offense and may be punished as provided in Minn. Stat. § 609.49.

*THEREFORE, Complainant requests that said Defendant, subject to bail or conditions of release be:*  
 1) *arrested or that other lawful steps be taken to obtain defendant's appearance in court; or*  
 2) *detained, if already in custody, pending further proceedings*  
*and that said Defendant otherwise be dealt with according to law.*

COMPLAINANT'S NAME:

Casey Landherr

COMPLAINANT'S SIGNATURE:

*Being duly authorized to prosecute the offense(s) charged, I hereby approve this Complaint.*  
 PROSECUTING ATTORNEY'S SIGNATURE:

DATE:

March 21, 2012

jaa

PROSECUTING ATTORNEY

NAME/TITLE:

JENNIFER INZ (211096)

Assistant County Attorney

FORM 1-2

ADDRESS/TELEPHONE:

C2100 Government Center, Minneapolis, MN 55487

Telephone: 612-348-3136

Rev. 3/94

A-9

Court Case # \_\_\_\_\_  
This COMPLAINT was subscribed and sworn to before the undersigned this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
NAME \_\_\_\_\_ SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

**FINDING OF PROBABLE CAUSE**

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant(s) arrest or other lawful steps be taken to obtain Defendant(s) appearance in Court, or his detention, if already in custody, pending further proceedings. The Defendant(s) is/are thereof charged with the above-stated offense.

**SUMMONS**

THEREFORE YOU, THE ABOVE NAMED DEFENDANT(S), ARE HEREBY SUMMONED to appear on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ AM/PM before the above named court at \_\_\_\_\_ to answer this complaint.  
 IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

**WARRANT**

EXECUTE IN MINNESOTA ONLY

To the sheriff of the above-named county; or other person authorized to execute this WARRANT; I hereby order, in the name of the State of Minnesota, that the above-named Defendant(s) be apprehended and arrested without delay and brought promptly before the above-named Court (if in session, and if not, before a Judge or Judicial Officer of such Court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial Officer is available) to be dealt with according to law.

**ORDER OF DETENTION**

Since the above-named Defendant(s) is already in custody, I hereby order, subject to bail or conditions of release, that the above named Defendant(s) continue to be detained pending further proceedings.  
Bail: \$75,000

Conditions of Release:

This COMPLAINT \_\_\_\_\_ ORDER OF DETENTION \_\_\_\_\_ duly subscribed and sworn to, is issued by the undersigned Judicial Officer this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

NAME:

SIGNATURE

TITLE: JUDGE OF DISTRICT COURT

Sworn testimony has been given before the Judicial Officer by the following witnesses: \_\_\_\_\_

<p>STATE OF MINNESOTA      COUNTY OF HENNEPIN</p> <p><b>STATE OF MINNESOTA</b></p> <p>Plaintiff</p> <p>vs.</p> <p><b>DANIEL GARCIA-MENDOZA</b></p> <p>Defendant(s).</p>	<p>Clerk's Signature or File Stamp:</p> <p><b>RETURN OF SERVICE</b></p> <p>I hereby Certify and Return that I have served a copy of this COMPLAINT – SUMMONS, WARRANT, ORDER OF DETENTION upon Defendant(s) herein-named.</p> <p>Signature of Authorized Service Agent:</p>
---	---

A-10

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

State of Minnesota, )  
 )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Daniel Garcia-Mendoza, )  
 )  
 )  
 Defendant. )

**STATE'S DISMISSAL PURSUANT  
TO MINN. R. CRIM. P. 30.01**

MNCIS No: 27-CR-12-8593  
C.A. File No: 12-0752

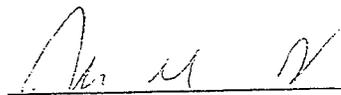
\*\*\*\*\*

The State of Minnesota hereby dismisses the above-captioned case on the following grounds:

Defendant has been indicted in federal court with charges arising from the same incident.

Respectfully submitted,

MICHAEL O. FREEMAN  
Hennepin County Attorney

By:   
Jennifer Inz (#211096)  
Assistant County Attorney  
C2300 Government Center  
Minneapolis, MN 55487  
Telephone: (612) 348-3136  
FAX: (612) 317-6113

Dated: June 6, 2012

A-11

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

Forfeiture  
DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

\_\_\_\_\_  
Daniel Garcia-Mendoza a.k.a. Ricardo Cervantes Perez,  
Plaintiff,

vs.

2003 Chevrolet Tahoe – Lic.#235JBM and  
\$611.00 in U.S. Currency,

Defendants.  
\_\_\_\_\_

**AFFIDAVIT OF  
OFFICER RYAN PETERSON**  
D.C. File No. 27-CV-12-10889  
C.A. File No. 2012-0231

STATE OF MINNESOTA)  
                                  )ss.  
COUNTY OF HENNEPIN)

Ryan Peterson, being first duly sworn, deposes and states as follows:

1. I am employed by the Plymouth Police Department and at the time of the incident involving Daniel Garcia-Mendoza a.k.a. Ricardo Cervantes Perez, I was assigned to traffic.
2. On March 19, 2012, Plymouth Police officers stopped a white Chevrolet tahoe – Lic.#235JBM after a registration check revealed the driver did not have a valid license. The driver of the car was identified as Ricardo Cervantes Perez, Plaintiff herein. There were two addresses listed in DVS for Plaintiff and an alias of Daniel Mendoza-Garcia.
3. The passenger of the car also did not have a driver's license. It was also determined that both Plaintiff and the passenger had been deported from the United States in the past. Therefore, the Plymouth police decided to tow the vehicle, rather than leaving it sitting on side of the road.
4. Officers began to perform an inventory search prior to towing the vehicle. During this search, the officers noted signs of criminal activity. Plaintiff signed a consent to search the vehicle. While searching the back seat of the vehicle, a red Pringles can was found in a pile of

A-12

clothes. What was later determined to be methamphetamine was located in the Pringles can. Plaintiff was then placed under arrest for narcotics.

5. Police located \$611.00, defendant property, on Plaintiff's person. The white substance was field tested and found to be methamphetamine with an unpackaged weight of 225.90 grams. Plaintiff was issued a Notice of Seizure and Intent to Forfeit (Exhibit 1).

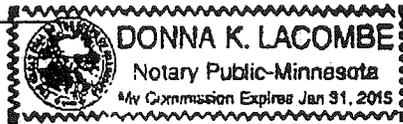
6. Plaintiff Perez a.k.a. Garcia-Mendoza was indicted in federal court with four counts of Possession and Distribution of Methamphetamine (Exhibit 2).

FURTHER YOUR AFFIANT SAITH NOT.

Subscribed and sworn to before me this  
9th day of October, 2012.

  
\_\_\_\_\_  
Officer Ryan Peterson  
Plymouth Police Department

  
\_\_\_\_\_  
Notary Public



A-13

NOTICE OF SEIZURE AND INTENT TO FORFEIT PROPERTY CONTROLLED SUBSTANCE CRIME

TO: Ricardo Cervantes Perez 11/01/1982 AKA Daniel Garcia Mendez
3334 Bloomington Ave #714 Minneapolis, 55408
(Name of person given notice)
(Address)

YOU ARE NOTIFIED THAT pursuant to Minnesota Statutes Section 609.5314, on 03/19/2012 (yr), the following property was seized by the undersigned law enforcement agency at: (location of seizure) 3400 Plymouth Blvd Plymouth MA in Hennepin County, and is being held for forfeiture: \$611 US Currency and 2003 Chev Tahoe MA 735633A VIN 1GNEC13U23R143453 235JOM RXP #11 3-20-1

(Include plate number and VIN number for vehicles; attach Property Receipt)

Forfeiture of this property is automatic unless within 60 days of receipt of this form you demand a judicial determination of this matter, as described on the reverse side.

La confiscación de esta propiedad es automática, a menos que dentro de los 60 días de haber recibido este formulario, usted demande una determinación judicial en este caso, como se describe al reverso.

Qhov yuav poob lub tsev no yeej poob yam tsis muaj kev txwv txwv hlo yuav tsum yog hais tias koj thov kom tus neeg txlav txim los nrog soj ntsuam xyuas yam tsis pub dhau 60 hnub tom qab koj tau txais dalm ntauwv no, raws li nyob plav nyob sab nraum dalm ntauwv no.

Hantiden oo lala wareegaa waa mid markkiba dhacaan galeyaa haddii aadan mudda lixdan 60 masimood gudahood ah laga bilaabo maalinta aad foomkan hesho aadan ku codsan in maxkamaddu go'aan ka gaarto arrintan sida bogga dambe (dhabarka) lagu faahfaahiyey.

If you do not demand judicial review exactly as prescribed in Minnesota Statutes, section 609.5314, subdivision 3, you lose the right to a judicial determination of this forfeiture and you lose any right you may have to the above described property. You may not have to pay the filing fee for the demand if determined you are unable to afford the fee. If the property is worth \$15,000 or less, you may file your claim in conciliation court. You do not have to pay the conciliation court filing fee if the property is worth less than \$500.

Si usted no demanda una revisión judicial exactamente como lo indica la sección 609.5314, subdivisión 3 de los Estatutos de Minnesota, usted perderá el derecho a una determinación judicial por esta confiscación, y perderá cualquier derecho que pueda tener en la propiedad descrita con anterioridad. Puede ser que usted no tenga que abonar las tasas por presentación de una instancia de demanda, si se determina que usted no puede costearla. Si la propiedad vale \$15,000 o menos, usted puede entablar su reclamo en el tribunal de conciliación. Usted no tiene que abonar las tasas por presentación de una instancia en el tribunal de conciliación, si la propiedad vale menos de \$500.

Yog hais tias koj tsis thov kom tus neeg txlav txim los soj ntsuam xyuas raws li txoj kev txoj cai hauv lub lav Minnesota, section 609.5314, subdivision 3, tes koj yuav tsis muaj cai los kom tus neeg txlav txim los pab soj ntsuam xyuas thlab koj yuav poob tag rho koj cov cai ua koj yeej muaj txog lub tsev ntauwv. Koj tsis tas them nqi ntauwv yog hais tias koj them tsis taus tus nqi ntauwv. Yog hais tias koj lub tsev ntauwv muaj nqis li \$15,000 los yog tsawg tshaj, koj muaj cai cojmus rau hauv tsev hais plaub conciliation. Koj yuav tsis tau them nqi ntauwv hauv tsev hais plaub conciliation yog hais koj lub tsev muaj nqis tsawg tshaj \$500.

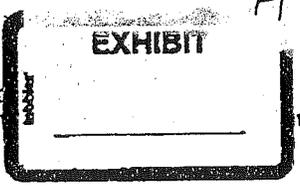
Haddii aadan codsan in maxkamaddu ay aminan dib u eegto sida lagu faahfaahiyey Xeerka Minnesota ee lambarkiisu yahay 609.5314, ee qeyb hoosaadka 3, waxa aad waayaysaa xaqa aad u leedahay in maxkamaddu go'aan ka gaarto hantida lala wareegay ee kor ku xusan. Waxa suurto gal ah in aan lagaa dooneyn in aad bixiso lacagta aad codeigaaga kaga diiwaangelin lehayd maxkamadda haddii aadan awoodi karin. Haddii hantida qiimaha ay u dhiganto uu gaarayo \$15,000 ama ka yar, waxa aad dawadaada ka diiwan geliin kartaa maxkamadaha dhageysta daawadaha dhexdhexaadinta. Lagaama doonayo in aad bixiso lacagta diiwaan gelinta maxkamadda haddii qiimaha ay u dhiganto hantida uu ka yar yahay \$500.

Certificate of Service

I certify that on Mar 19th 2012 (yr), I gave a true copy of this notice to the person named above at 3400 Plymouth Blvd and have seized the above described property for forfeiture. Ryan Peters 113 3-19-12 Plymouth PD Signature of Officer Badge No. Date Law Enforcement Agency

Notice of Seizure Received by: Ricardo Cervantes Perez Check

ORIGINAL to COUNTY ATTORNEY I.C.R. 12012399 PINK COPY to LAW ENFORCEMENT AGENCY YES 8/2010 Minn



UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

CR 12-133 DSD/TNL

UNITED STATES OF AMERICA,	)	INDICTMENT
	)	
Plaintiff,	)	(21 U.S.C. § 841)
	)	(21 U.S.C. § 853)
v.	)	
	)	
RICARDO CERVANTES-PEREZ,	)	
a/k/a Daniel Garcia-Mendoza,	)	
	)	
Defendant.	)	

THE UNITED STATES GRAND JURY CHARGES THAT:

COUNT 1

(Distribution of Methamphetamine)

On or about November 3, 2011, in the State and District of Minnesota, the defendant,

RICARDO CERVANTES-PEREZ,  
a/k/a Daniel Garcia-Mendoza,

knowingly and intentionally distributed and possessed with the intent to distribute 50 grams or more of methamphetamine (actual), a controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A).

COUNT 2

(Distribution of Methamphetamine)

On or about December 22, 2011, in the State and District of Minnesota, the defendant,

RICARDO CERVANTES-PEREZ,  
a/k/a Daniel Garcia-Mendoza,

knowingly and intentionally distributed and possessed with the intent to distribute 50 grams or more of methamphetamine (actual), a controlled substance, in violation of Title 21, United States

SCANNED  
MAY 21 2012  
U.S. DISTRICT COURT MPLS

EXHIBIT

FILED MAY 21 2012  
RICHARD D. SLETTEN  
JUDGMENT ENTD \_\_\_\_\_  
DEPUTY CLERK \_\_\_\_\_

A-15

CASE 0:12-cr-00133-DSD-TNL Document 1 Filed 05/21/12 Page 2 of 3

U.S. v Ricardo Cervantes-Perez

Code, Sections 841(a)(1) and 841(b)(1)(A).

COUNT 3

(Distribution of Methamphetamine)

On or about February 1, 2012, in the State and District of Minnesota, the defendant,

RICARDO CERVANTES-PEREZ,  
a/k/a Daniel Garcia-Mendoza,

knowingly and intentionally distributed and possessed with the intent to distribute 5 grams or more of methamphetamine (actual), a controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B).

COUNT 4

(Possession With Intent to Distribute Methamphetamine)

On or about March 19, 2012, in the State and District of Minnesota, the defendant,

RICARDO CERVANTES-PEREZ,  
a/k/a Daniel Garcia-Mendoza,

possessed with intent to distribute 50 grams or more of a mixture and substance containing a detectable amount of methamphetamine, a controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A).

FORFEITURE ALLEGATIONS

Counts 1 through 4 of this Indictment are hereby realleged and incorporated as if fully set forth herein by reference, for the purpose of alleging forfeitures pursuant to Title 21, United States

A-16

CASE 0:12-cr-00133-DSD-TNL Document 1 Filed 05/21/12 Page 3 of 3

U.S. v Ricardo Cervantes-Perez

Code, Section 853(a).

If convicted of any Count of this Indictment, the defendant shall forfeit to the United States, pursuant to Title 21, United States code, Section 853(a), any and all property constituting or derived from any proceeds the defendant obtained, directly or indirectly as a result of said violation(s), and any and all property used or intended to be used in any manner or part to commit or facilitate the commission of such violation(s).

If any of the above-described forfeitable property is unavailable for forfeiture, the United States intends to seek the forfeiture of substitute property as provided for in Title 21, United States Code, Section 853(p).

A TRUE BILL

UNITED STATES ATTORNEYFOREPERSON

A-17



## Supplemental Report

ICR: 12012399

03-20-2012 1152

Title: Main #113

Created By: Ryan Peterson

On 03/19/12 at approximately 1345 hours I, Officer Ryan Peterson, was on patrol on I-94 in Hennepin County. I was traveling South on I-94 in the area of the exit to West Broadway. I was working with Officer Casey Landherr of the Northwest Drug Task Force. Officer Landherr was my partner in a criminal interdiction detail we were both working in Hennepin County.

I first noticed a white Chevy Tahoe traveling in the left lane (Lane 1) of Southbound I 94 traffic. I was traveling in lane 3 and then moved to lane 2. At this time, I noticed the vehicle went past me. I noticed there were two occupants in the vehicle and neither of the occupants were looking at me. I noticed the driver had both hands on the steering wheel and was looking straight ahead. I performed a registration check on the vehicle. The check came back to a registered owner listed as Ricardo Cervantes Perez DOB 11/01/1982. There was no driver's license information associated with the registration check. This is common when the driver does not possess a valid driver's license.

I activated my emergency lights and stopped the vehicle just South of Olson Memorial Hwy in the median where 94 splits to go East on I 94 and West on I 394. I noticed that when the vehicle came to a stop the right hand turn signal was left in the on position. The vehicle was bearing MN license plate 235JBM. I got out of my squad and approached the vehicle on the passenger side. Because of the positioning of the vehicle and my concern for our general safety, I asked the driver to move forward to the median barricade directly in front of his vehicle about 100 feet ahead. While speaking briefly with the driver, I noticed a small card sitting by the center armrest with the words "Santa Muerta" on it. I also noticed the driver had one single key in the ignition, with no other typical keys. I also noticed several air fresheners near the front seat area.

I returned to my squad and the driver then pulled forward and moved across all lanes of traffic to the right and pulled onto the right shoulder of the highway leading to the entrance of I-394. I approached the driver's side of the vehicle and spoke with the driver. I explained why I was stopping the vehicle and asked for the driver's insurance and driver's license. The driver provided two insurance cards with two different insured names on them and a Mexican identification card. The driver said he did not have a MN driver's license. The Mexican ID card identified the driver as Ricardo Cervantes Perez DOB 11/01/1982. I asked Mr. Perez, if he wouldn't mind stepping back to my squad car so I could speak with him further about his license situation. Mr. Perez said it was ok and I told him he could have a seat in the front of my squad.

While I was up at the vehicle, I noticed the vehicle was very well kept on the outside, it had newer looking oversized tires and rims, had several air fresheners, and the card with the reference to Santa Muerta.

While I was working on seeing if Mr. Perez had a MN driver's license, I engaged Mr. Perez in general conversation. I was able to locate two different file names for Mr. Perez in DVS which included the same birthdate Mr. Perez was providing me. The following were file numbers located in DVS along with the listed addresses:

DVS File #P620738112841 6624 134TH CT W PO BOX 541511 Apple Valley MN  
DVS File #P620738112842 3326 NICOLLET AVE S #108 Minneapolis MN

Both listings did not have any data attached to them. According to DVS, this indicates that the queried party has a vehicle registered in the state, but does not have any driver's license information. While talking with Mr. Perez, Trooper Zach Hill #187 arrived onscene. While speaking with Mr. Perez about where he had lived and where he currently was living, Mr. Perez produced a citation which had been issued to him by the MN State Patrol. I had Trooper Hill check his system for past contacts with State Patrol. Trooper Hill later informed me that the citation issued on 12/14/11 had been the only contact State Patrol has had with Mr. Perez and that he was cited for No MN DL. Mr. Perez confirmed that one of the listings was him at that he had previously lived at the listed address in Apple Valley.

\*\*\*Mr. Perez was later identified by fingerprint at the Hennepin County Jail as Daniel Garcia-Mendoza DOB 06/23/1982. A check of DVS showed a file number of G625135014480 with no information. The address listed was 6545 HIGHWAY 10 #116 in Anoka.\*\*\*

Exhibit A

A-19

I asked Mr. Perez where he was currently living. Mr. Perez said that he was living in apartment 712 on Bloomington Ave in Minneapolis. When I asked him for the house number, he seemed to have a difficult time remembering what the number was. Mr. Perez finally told me that the house number was 3334. Mr. Perez continually went between speaking Spanish and English during my conversations with him. I noticed Mr. Perez's chest rising up and down and he seemed to appear uncomfortable and confused when asked about where he lived. I also noticed Mr. Perez seemed to be breathing rapidly. Mr. Perez said that the passenger was a good friend and that he knew him from work. Mr. Perez said he worked as a carpenter. Mr. Perez also told me that his friend only had a Mexican driver's license.

I had Ofc. Landherr to go speak to the passenger to see if he would be able to drive the vehicle. See Ofc. Landherr's statement for further details. Ofc. Landherr returned and showed me the passenger's Texas ID card and a US passport card. I have never seen a US passport card. While Mr. Perez was speaking with Ofc. Landherr, Mr. Perez stated that the vehicle was his car and the clothing in the vehicle belonged to his wife. Mr. Perez told Ofc. Landherr that he had come from Anoka and was on the way to Minneapolis to eat. Mr. Perez also mentioned something about picking up/dropping off kids at school.

After completing my computer work, I issued Mr. Perez a citation for driving without a MN DL. Due to the location of the vehicle and it's potential as a traffic, I decided to tow the vehicle. I had dispatch start Plymouth Auto to the scene. I gave Mr. Perez his citation, explained it to him, and then had him exit my squad and wait on the side of the road.

While Ofc. Landherr was doing the inventory search, he saw further signs of criminal activity. At this time I asked Mr. Perez if he wouldn't mind sitting back in the front seat of my squad car. Mr. Perez agreed and took a seat in the front passenger seat. I explained to Mr. Perez that the vehicle was already being searched due to the vehicle being towed. I asked Mr. Perez for verbal consent to search his vehicle. I provided Mr. Perez with a consent form written in both English and Spanish. Mr. Perez said he wanted to read the form in Spanish. Mr. Perez said it was ok to search the vehicle and signed the form. While Mr. Perez was reading and signing the consent form, I could see Mr. Perez's chest was moving up and down and his breathing was heavy. I had Mr. Perez exit my squad and wait on the side of the road with his passenger and Trooper Hill.

Because of the following indicators, I believed Mr. Perez and Mr. Silva were involved in some type of criminal activity, specifically relating to narcotics activity:

- Traveling 62-63 mph in a 60 mph zone
- Clean looking vehicle
- New tires and rims
- Looking forward, making no visual contact with me
- No driver's license
- Passenger with no driver's license
- Single ignition key
- Several air fresheners
- Several items of religious paraphernalia
- Insurance on vehicle listed to a third party and also to registered owner at same time.
- Uncomfortable nervous behavior appearing to not be able to remember address
- Heavy breathing and chest rise not normally seen
- My prior training
- My prior experience

Trooper Hill provided me with information from EPIC on both the driver and passenger showing that both Mr. Perez and Mr. Silva had been deported from the United States in the past. The printout from Trooper Hill's squad is attached to the case. The report shows Mr. Perez had been deported in August 2008 from the San Francisco office. Mr. Perez's alien registration number is 0881313. Mr. Silva shows an alien registration number of 205148089 and was deported on 12/20/2011 through the Phoenix Office. It appears that Mr. Silva reentered the US through El Paso, TX on 02/04/2012.

A-20

While searching in the back seat, Ofc. Landherr showed me a red Pringles can he had located covered up in a bag of clothes. Ofc. Landherr removed the cover and inside pulled out a paper towel stuffed in the top of the can. Underneath this paper towel, there was a plastic ziplock bag which appeared to contain methamphetamine. After finding this, I immediately walked over and placed Mr. Silva under arrest, searched him, and placed him in the back of my squad. Mr. Silva's handcuffs were double locked and checked for tightness. Trooper Hill arrested Mr. Perez and placed him in the back of his Patrol Unit.

While searching Mr. Silva, I located two cell phones and several items of religious paraphernalia on his person. A search of Mr. Perez, located several items of religious paraphernalia inside his wallet, including several pictures of Santa Muerta. \$129 cash was located in Mr. Perez's wallet and \$482 was located in Mr. Perez's person. Mr. Perez also was wearing a gold necklace with a Santa Muerta figure attached to it.

I continued to assist Ofc. Landherr search the vehicle. We located numerous documents throughout the vehicle. Two envelopes were located near the back seat with the name Elsy Felipe and appeared to be a 2011 tax return. We located a valvoline receipt for service in the glove box with Mr. Perez's name on it. In the passenger door, a hidden compartment was located. Photos of these documents and there locations where all photographed. During a search incident to arrest of the phones, pictures of shrines to Jose Malverde were located on the phone.

Sgt. Hunt arrived onscene and drove the vehicle to a secure location, as per standard DTF procedure.

Both Mr. Perez and Mr. Silva were transported to the Plymouth Police Department. Mr. Perez was placed into holding cell number 5. When I had Mr. Perez remove his Santa Muerta necklace, I saw him kiss it prior to placing it into the personal belongings bag. Mr. Silva was placed in holding cell number 1. A detention cell observation form was kept for each individual.

Mr. Perez was brought to Booking Room A. I used the language line to translate the Miranda Interview. Mr. Perez understood his rights and did not want to provide a statement. Mr. Perez was provided copies of the required seizure paperwork.

Mr. Silva was brought to Booking Room A. Mr. Silva said he did not need an interpreter. Mr. Silva was read his Miranda rights and understood them. Mr. Silva did not wish to provide a statement. Both parties were later transported to the Hennepin County Jail by Ofc. Dave Anderson.

All items found inside the vehicle were brought to the Plymouth Police Department and inventoried according to the procedures and policies of the Plymouth PD. The meth was field tested again by Sgt. Hunt and it produced a positive test for the presence of methamphetamines. Sgt. Hunt is certified in field testing of Narcotics/NIK testing. The meth was weighed with a unpackaged weight of 225.90 grams.

No further information.

Peterson #113

A-21

Plymouth 12012399

ROBBINSDALE POLICE DEPARTMENT

FOLLOW UP/CONTINUATION REPORT

CASE NO. 12012399

TYPE OF OFFENSE: Narcotics

COMPLAINANT:

ADDRESS:

INVESTIGATING OFFICER: Inv. C Landherr

DATE: 03/19/2011

SUPERVISOR'S SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

THIS OFFENSE IS DECLARED:

Unfounded	<input type="checkbox"/>
Cleared by Arrest	<input type="checkbox"/>
Exceptionally Cleared	<input type="checkbox"/>
Inactive (Not Cleared)	<input type="checkbox"/>
Refer to Other Agency	<input type="checkbox"/>

ADDITIONAL DETAILS OF OFFENSE, PROGRESS OF INVESTIGATIONS, ETC.

PRELIMINARY PARAGRAPH

On 03/19/2012 I was working a traffic enforcement detail with Officer Peterson with the Plymouth Police Department in conjunction with the MN State Patrol. Officer Peterson preformed a traffic stop on MN plate 235JBM a 2003 Chevy Tahoe.

ID Passenger

Officer Peterson asked for my assistance to see if the passenger of the vehicle, a Leonardo Silva DOB 01/23/1992, had a valid driver's license. Silva stated that he had a passport card and a Texas identification card. While talking to Silva he informed me that they were travelling from Anoka to Lake Plaza in South Minneapolis. Based on my training and experience I know that Lake Plaza is common area fro narcotics activity. Silva stated that he is from El Paso Texas and visiting his brother and had been in Minnesota for about 3 weeks. Silva also stated that he had known the driver, a friend of his brother, for a short amount of time.

Driver Statements

While talking to the driver of the vehicle, Ricardo Cervantes Perez, he informed me that he works construction and that he was coming from the northern suburbs in the Hwy 169 area. Perez stated that they were travelling to South Minneapolis to eat.

*Exhibit B*

*A-22*

Vehicle Search

Officer Peterson had obtained consent to search the vehicle from Perez and the vehicle needed to be inventoried for towing. While doing a systematic search of the vehicle I located a Pringles can in the rear seat underneath clothing in a basket. I could see a paper towel through the clear lid of the can. I opened the can and emptied the contents. A plastic baggie containing a clear crystal like substance came out of the can. Through my training and experience recognized this to be several ounces of methamphetamines. I advised Officer Peterson to place both the driver and passenger under arrest. Additional religious cards commonly used by drug traffickers, air fresheners, and documents were located inside of the vehicle.

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0445**

Daniel Garcia-Mendoza,  
Appellant,

vs.

2003 Chevy Tahoe, Vin #1GNEC13V23R143453,  
Plate #235JBM, et al.,  
Respondents.

**Filed November 25, 2013  
Affirmed  
Rodenberg, Judge**

Hennepin County District Court  
File No. 27-CV-12-10889

Kirk M. Anderson, Anderson Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Michael O. Freeman, Hennepin County Attorney, Julie K. Bowman, Assistant County  
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Rodenberg, Judge; and  
Hooten, Judge.

**UNPUBLISHED OPINION**

**RODENBERG, Judge**

On appeal, appellant Daniel Garcia-Mendoza argues that the district court erred in  
granting Hennepin County's motion for summary judgment and ordering forfeiture of the  
respondent property. We affirm.

A-24

## FACTS

On March 19, 2012, appellant was stopped by police in Minneapolis while driving respondent 2003 Chevrolet Tahoe. Police Officer Ryan Peterson noticed that appellant “had both hands on the steering wheel and was looking straight ahead.” The Tahoe had been travelling 62 to 63 miles per hour in a 60-mile-per-hour zone, according to Officer Peterson. A registration check on the Tahoe revealed that it was owned by Ricardo Cervantes-Perez, a name used by appellant, and that no driver’s license was associated with the vehicle’s owner. Officer Peterson stopped appellant on suspicion that he was driving without a valid driver’s license.

Neither appellant nor his passenger had a driver’s license that was valid in Minnesota. As a result, Officer Peterson issued appellant a citation for driving without a license, and he decided to have the Tahoe towed. Prior to the tow, Northwest Drug Task Force Officer Casey Landherr conducted an inventory search of the Tahoe. During this inventory search, Officer Landherr found a plastic bag with 225.90 grams of methamphetamine inside a Pringles can “covered up in a bag of clothes.” Appellant was arrested and respondent \$611.00 in United States currency was seized from his person. Appellant was given a notice of seizure and intent to forfeit the Tahoe and the \$611.00.

The state of Minnesota later charged appellant with first-degree possession of methamphetamine. On May 7, 2012, appellant timely filed a petition for judicial determination of forfeiture under Minn. Stat. § 609.5314, subd. 3 (2010). On May 21, appellant was charged in United States District of Minnesota with three counts of distribution of methamphetamine and one count of possession with intent to distribute

methamphetamine. Count 4, the count of possession, related to the methamphetamine seized in the March 19 traffic stop. The state of Minnesota dismissed its criminal case against appellant after the federal charges were filed. The forfeiture action in state court was stayed pending resolution of the federal criminal charges.

On July 21, a federal magistrate judge determined that the March 19 traffic stop was lawful and recommended denial of appellant's motion to suppress the evidence resulting from the search. A federal district court judge later adopted that recommendation. Shortly after the magistrate judge's report, appellant agreed to plead guilty to Count 2 of the federal indictment. Count 2 charged appellant with distribution of 50 grams or more of methamphetamine on or about December 22, 2011. Under the plea agreement, the federal government dismissed the other counts in the indictment and appellant agreed

to forfeit any and all property constituting, or derived from, any proceeds [appellant] obtained, directly or indirectly, as the result of [appellant's] violation, as well as any and all of [appellant's] property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of [appellant's] violation.

The federal plea agreement set forth a factual basis for the guilty plea, stating that appellant distributed 180 grams of methamphetamine from November 3, 2011 to March 19, 2012. Appellant also admitted possessing 162 additional grams of methamphetamine with the intent to distribute during that same time period. It is unclear from the record whether the quantities of methamphetamine referenced in the factual basis include the 225.90 grams recovered in the March 19 stop.

After appellant's federal conviction, respondent Hennepin County moved for summary judgment in the state forfeiture action. On January 11, 2013, the district court granted the motion for summary judgment, reasoning that appellant agreed to forfeit the property under the federal plea agreement and that 21 U.S.C. § 853(a) (2006) requires forfeiture of the Tahoe and the money. The district court also determined, however, that "there was neither a reasonable or articulable suspicion for the [March 19] stop, nor a legitimate basis for the expansion of it." As a result, the district court stated that it "would have suppressed any evidence obtained" (in a criminal case), but the district court determined that the legality of the stop was not at issue in the forfeiture action. The only issue was "whether genuine issues of material fact exist as to whether the property is subject to forfeiture pursuant to the plea agreement and applicable statutes." The district court determined that "no issues of material fact exist as to whether the subject property is subject to forfeiture." It therefore granted summary judgment in favor of respondent Hennepin County. This appeal followed.

#### DECISION

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. "On appeal, we review a grant of summary judgment to determine (1) if there are genuine issues of material fact and (2) if the district court erred in its application of the law." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quotation omitted). "We view the evidence in the

light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). But “when the nonmoving party bears the burden of proof on an element essential to the nonmoving party’s case, the nonmoving party must make a showing sufficient to establish that essential element.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

“[F]orfeiture is a civil in rem action and is independent of any criminal prosecution.” Minn. Stat. § 609.531, subd. 6a(a) (2012). Because a forfeiture action is punitive in nature and generally disfavored, a district court strictly construes the language of a forfeiture statute and resolves any doubts in favor of the party challenging forfeiture. *Riley v. 1987 Station Wagon*, 650 N.W.2d 441, 443 (Minn. 2002). Appellant argues that summary judgment was improper because the March 19 traffic stop was unconstitutional and, therefore, the evidence resulting from the search cannot be forfeited. The district court agreed with appellant that the stop and search were unlawful, but it determined that the legality of the stop was irrelevant to the forfeiture proceeding. We agree.

Article I, section 10, of the Minnesota Constitution protects against unreasonable searches and seizures. Minn. Const. art I, § 10. In a criminal case, “evidence discovered as a result of a violation of article I, section 10 must be excluded.” *State v. Askerooth*, 681 N.W.2d 353, 370 (Minn. 2004). However, “forfeiture is a civil proceeding, and there is no exclusionary rule whereby an unlawful seizure impairs the state’s ability to demonstrate its case. Even if the seizure was flawed, the cause for forfeiture was duly proven.” *Rife v. One 1987 Chevrolet Cavalier*, 485 N.W.2d 318, 322 (Minn. App. 1992), review denied (Minn. June 30, 1992). In *Rife*, we applied the state forfeiture statutes

because the lawfulness of the seizure is “immaterial.” *Id.* Appellant argues that we should now extend the exclusionary rule to civil forfeiture cases.

No Minnesota case applies the exclusionary rule to a civil forfeiture action. “This court, as an error correcting court, is without authority to change the law.” *Lake George Park, L.L.C. v. IBM Mid-America Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *review denied* (Minn. June 17, 1998). “[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.” *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). Therefore, we decline to change the law and extend the exclusionary rule to civil forfeiture actions. Because we decline to extend the exclusionary rule to this civil forfeiture case, we need not reach respondent Hennepin County’s argument that appellant is collaterally estopped from relitigating the March 19 stop and search.

Having declined to extend the exclusionary rule to this civil forfeiture action, we next turn to the application of the state forfeiture statutes to the facts of the case to determine whether the district court’s grant of summary judgment was appropriate. *See Rife*, 485 N.W.2d at 322 (applying forfeiture statute after rejecting exclusionary rule argument). Here, appellant filed a complaint seeking a judicial determination of forfeiture in state court before he was indicted in federal court. “Under the rule of exclusive jurisdiction, if a federal and state court each has the power to proceed against the res, the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other.” *Strange v. 1997 Jeep Cherokee*, 597 N.W.2d 355, 357 (Minn. App. 1999) (quoting *Penn Gen. Cas. Co. v. Pennsylvania*, 294

U.S. 189, 195, S. Ct. 386, 389 (1935)) (other citations omitted). Therefore, the Minnesota state court maintains jurisdiction over the respondent property.

In granting summary judgment in favor of respondent Hennepin County, the district court relied on the federal forfeiture statute cited in appellant's plea agreement. 21 U.S.C. § 853(a). However, because the state court retained jurisdiction over the respondent property on account of appellant having sought judicial determination of forfeiture in state court before his federal indictment, *Strange*, 597 N.W.2d at 357-58, the district court should have applied the state forfeiture statutes. The federal statute authorizes forfeiture only "to the United States." 21 U.S.C. § 853(a). No provision of this federal statute permits forfeiture to any state or local government unit. The federal statute has no application to this action seeking forfeiture to respondent Hennepin County. Nevertheless, "we may affirm a grant of summary judgment if it can be sustained on any grounds." *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

For controlled substances forfeitures in Minnesota, there is "an evidentiary presumption that all money 'found in proximity' to drugs is subject to forfeiture." *Jacobson v. \$55,900 in U.S. Currency*, 728 N.W.2d 510, 519 (Minn. 2007) (quoting Minn. Stat. § 609.5314, subd. 1(a)(1)(i) (2006)). This evidentiary presumption also applies to "all conveyance devices containing controlled substances with a retail value of \$100 or more if possession or sale of the controlled substance would be a felony." Minn. Stat. § 609.5314, subd. 1(a)(2) (2012). The party opposing forfeiture "bears the burden to rebut this presumption." *Id.*, subd. 1(c) (2012). "[A] claimant rebuts the statutory

presumption of forfeitability by producing evidence sufficient to justify a finding that (1) he or she owns the defendant property; and (2) the defendant property is not connected to drug trafficking.” *Jacobson*, 728 N.W.2d at 522. If the claimant meets the burden to rebut the evidentiary presumption, “the prosecuting agency, in order to prevail, must meet its burden of persuasion by producing clear and convincing evidence that the defendant property is connected to drug trafficking.” *Id.*

Appellant argues that he has never been convicted of any crime related to the March 19 traffic stop because he pleaded guilty only to Count 2 in the federal indictment. Although the plea agreement recites March 19 as included in the course of illegal conduct, whether the federal conviction included the March 19 incident is of no legal significance. Controlled substances forfeitures under Minnesota’s statutes do not require a conviction before property is forfeited. *See* Minn. Stat. § 609.5311, subd. 2(a) (2012) (stating simply that such property is “subject to forfeiture” without requiring a prior conviction). Instead, property in proximity to controlled substances and vehicles used to transport controlled substances are presumed forfeited. Minn. Stat. § 609.5314, subd. 1 (2012).

Here, the evidentiary presumption applies to both the Tahoe and the \$611.00. As a result, appellant bears the burden to rebut the presumption in favor of forfeiture. He must show that he owns the property and that it is not connected to drug trafficking. Appellant owns the property. But appellant has provided no evidence or argument that the respondent property is unconnected to drug trafficking other than that his federal felony-drug conviction is not specifically based on the March 19 incident. There is no

fact issue regarding whether the illegal drugs were in the Tahoe or whether the cash was on appellant's person when he was arrested for possessing and transporting the methamphetamine. In his federal plea agreement, appellant admitted possessing methamphetamine over a course of conduct that included March 19. Appellant has failed to raise any genuine fact issue sufficient to rebut the evidentiary presumption in favor of forfeiture. Therefore, the respondent property is properly subject to forfeiture, and the district court did not err in granting summary judgment in favor of respondent Hennepin County.

In sum, we decline to extend the exclusionary rule to forfeitures in Minnesota and conclude that there is no genuine issue of material fact as to whether the respondent property is subject to forfeiture under the Minnesota forfeiture statutes. Minn. Stat. § 609.5311, .5314 (2012). The district court did not err in granting summary judgment to respondent Hennepin County.

**Affirmed.**



# Anderson Law Firm, PLLC

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February 28, 2014

OFFICE OF  
APPELLATE COURTS

MAR 03 2014

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Clerk of Appellate Courts  
Minnesota Supreme Court  
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St. Paul, MN 55101

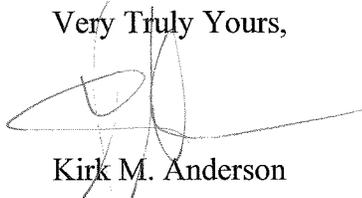
Re: Daniel Garcia-Mendoza v. 2003 Chevy Tahoe, et al.  
Court File No. A13-445

Dear Clerk:

Please find enclosed with this letter for filing, the following:

1. Original and twelve (12) bound copies of Respondent's Brief;
2. Two (2) unbound copies of Respondent's Brief; and
3. Affidavit of Service.

Very Truly Yours,



Kirk M. Anderson

Cc: Hennepin County Attorney (via U.S. Mail)  
Max Keller, Minnesota Society for Criminal Justice (via U.S. Mail)  
Scott Hersey, Minnesota County Attorney's Association (via U.S. Mail)  
Teresa Nelson, American Civil Liberties Union of Minnesota (via U.S. Mail)  
Lee McGrath, Institute for Justice – Minnesota (via U.S. Mail)