IN THE IOWA DISTRICT COURT FOR CARROLL COUNTY

STATE OF IOWA, Plaintiff, vs. **BRENT WOOD WILSON**, Defendant.	Case No. SRCR009489 **MOTION TO SUPPRESS**

COMES NOW, the defendant through counsel and pursuant to the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article I, sections 6, 8, 9, and 10 of the Iowa Constitution, Rules 2.11(1), 2.11(2)(c), 2.2(g) of the Iowa Rules of Criminal Procedure, Rule 5.104(a) of the Iowa Rules of Evidence, and Iowa Administrative Code section 680-7(2)(I) and Iowa Code Chapter 321J and for his Motion to Suppress, states the following to the Court:

1. The Carroll Police Department allegedly received information in January and February 2009 concerning possible drug activity involving Michael Heard, living at 23695 Hwy 30 East, Carroll, Iowa.
2. On March 9, 2009, Deputy Tom Fransen, accompanied by Crawford County Deputy Scott Girard and his K-9 Dingo, conducted a walk-thru of the apartment complexes located at 23695 Hwy 30 East in Carroll, Iowa.
3. The Deputies stopped at apartment number 3 when the K-9 allegedly alerted on the door, knocked, and asked for admittance.
4. The occupants of the apartment, informed the officers to obtain a search warrant.
5. The officers entered apartment 3, searching the occupants and the apartment.
6. The officers then later obtained a search warrant to search the apartment.

7. The Defendant then later gave written consent to search his own apartment, apartment 1, where additional evidence was located.

ISSUES

1. The Police Presence Conducting a Walk Through Was An Illegal Search.

The Fourth Amendment assures "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The Fourteenth Amendment of the United States Constitution makes the Fourth Amendment binding on the states. *State v. Freeman,* 705 N.W.2d 293, 297 (Iowa 2005). In addition, article I, section 8 of the Iowa Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated." Iowa Const. art. I, § 8.

Absent a recognized exception to the search warrant requirement, searches and seizures conducted without a warrant are per se unreasonable. *Freeman,* 705 N.W.2d at 297. These exceptions include "`searches based on consent, plain view, probable cause coupled with exigent circumstances, searches incident to arrest, and those based on the emergency aid exception.'" *Id*. The State must prove by a preponderance of the evidence that such a recognized exception applies. *Id.* In making this determination, we must assess a police officer's conduct based on an objective standard. *Id, (quoted in State v. Nitcher*, 720 N.W.2d 547,554 (Iowa, 2006)).

The Iowa Supreme Court has established a two-step approach in analyzing the constitutionality of a search under the Fourth Amendment. First, the person challenging the search must show that he or she had a legitimate expectation of privacy in the area searched. *State v. Halliburton*, 539 N.W.2d 339, 342 (Iowa 1995); *State v. Becker*, 458 N.W.2d 604, 608

(Iowa 1990); *State v. Eis*, 348 N.W.2d 224, 226 (Iowa 1984). If the court concludes that a person has a legitimate expectation of privacy with respect to a certain area, the court must then decide whether the search was unreasonable; in other words, the court must consider whether the State unreasonably invaded that protected interest. See *Halliburton*, 539 N.W.2d at 342; *Becker*, 458 N.W.2d at 608.

The Fourth Amendment does not protect against all government searches. *State v. Breuer*, 577 N.W.2d 41, 45 (Iowa, 1998). Rather, the law is well established in Iowa that the Fourth Amendment protects only against unreasonable government intrusion upon a person's legitimate expectation of privacy. *State v. Fox*, 493 N.W.2d 829, 831 (Iowa 1992); *State v. Becker*, 458 N.W.2d 604, 608 (Iowa 1990); *State v. Flynn*, 360 N.W.2d 762, 764-65 (Iowa 1985). Thus a Fourth Amendment violation is said to have occurred when the government unreasonably intrudes upon an individual's reasonable or legitimate expectation of privacy. *United States v. Karo*, 468 U.S. 705, 712, 104 S. Ct. 3296, 3302, 82 L. Ed. 2d 530, 539 (1984); *State v. Winkler*, 552 N.W.2d 347, 351 (N.D. 1996). Under this rule, the government must obtain a search warrant prior to searching, or entering, an area where a person possesses a reasonable expectation of privacy, subject to certain well-established exceptions. *State v. Kitchen*, 572 N.W.2d 106, 108 (N.D. 1997). Evidence obtained in violation of the Fourth Amendment is inadmissible at trial under the exclusionary rule. *State v. Ahart*, 324 N.W.2d 317, 318 (Iowa 1982) (citing *Wong Sun v. United States*, 371 U.S. 471, 484-85, 83 S. Ct. 407, 415-16, 9 L. Ed. 2d 441, 453-54 (1963)). In determining whether a law enforcement officer's actions unlawfully infringed upon a person's reasonable expectation of privacy, the Eighth Circuit Court of Appeals stated a court should consider the following:

> [F]irst, whether the agents' observation was made in a place to which [defendant's]

> expectation of privacy would reasonably be said to extend; and, second, if so, whether the agents' intrusion was justified "by some ... legitimate reason for being present unconnected with a search directed against the accused."

United States v. Anderson, 552 F.2d 1296, 1299-1300 (8th Cir.1977) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 466, 91 S.Ct. 2022, 2038, 29 L.Ed.2d 564, 583 (1971)).

While the court has ruled that interior hallways and stairways in apartment complexes normally have no reasonable of privacy (see *State v. Booth*, 670 N.W.2d 209 (Iowa, 2003); *State v. Breuer*, 577 N.W.2d 41 (Iowa, 1998)), the determination is on a case by case basis concerning the unique circumstances of each particular situation. *State v. Edgeberg*, 188 Wis.2d 339, 524 N.W.2d 911, 915 (Wis.Ct.App.1994). In this case, the apartment complex is isolated at the edge of town with no reasonable traffic around the apartment complex. Only visitors to two specific apartments would be in the hallway. The apartment complex is protected by an exterior door which must be opened to enter into the interior stairway. The apartment complex consists of only a small number of apartments (totaling 4). The hallway leading to the apartment 3 is extremely short and only consists of the area between apartments 3, 4, and the washroom and the stairway down from the exterior door.

In this case, Police Officers with the drug dog, entered the Apartment complex through an exterior door into the stairway and entered the hallway between apartments 3 and 4. The drug dog alerted on the door to apartment 3 in the interior hallway. The Apartment occupants had a reasonable expectation of privacy in the interior hallway of the apartment complex. The Apartment hallway is not visible until after a person enters the exterior door. The exterior door must be opened to enter into the interior stairway, then walks down the stairway and is then

standing in an approximately 3 foot square hallway between apartments 3 and 4.

None of the well-established exceptions were indicated by Police Officers as a reason for their presence in the hallway. The presence of the drug dog plus unsubstantiated allegations of drug activity indicate that the primary purpose of the police officers were to search for drugs. No search warrant was obtained prior to the drug dog sniff.

Since there was a reasonable expectation of privacy for the occupants of the apartment complex, officers had no search warrant or exception to the search warrant requirement, then the Police Officers conducted an unreasonable search by entering into the apartment complex with a drug dog and all evidence obtained in the search or through leads uncovered by that search should be barred, *State v. Swartz*, 244 N.W.2d 553, 555 (Iowa 1976); *Wong Sun* at 484-85, since the officers unreasonably invaded the reasonable expectation of privacy.

2. Once the Drug Dog Alerted, A Search Warrant Should Have Been Obtained

As stated in issue 1, the Fourth Amendment assures "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The Fourteenth Amendment of the United States Constitution makes the Fourth Amendment binding on the states. *Freeman,* 705 N.W.2d at 297. In addition, article I, section 8 of the Iowa Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated." Iowa Const. art. I, § 8.

As stated in issue 1, absent a recognized exception to the search warrant requirement, searches and seizures conducted without a warrant are per se unreasonable. *Freeman,* 705 N.W.2d at 297. No exception to the search warrant requirement was indicated as to why a

warrant was not immediately obtained in this case. Officers conducted a "Knock and Talk" investigation in lieu of immediately obtaining a search warrant. A "Knock and Talk" investigation involves officers knocking on the door of a house, identifying themselves as officers, asking to talk to the occupant about a criminal matter, and eventually requesting permission to search. This technique depends upon the voluntariness of a consent to search and depends upon the totality of the circumstances for the voluntariness of the consent. *United States v. Miller*, 933 F. Supp. 501, 505 (D.N.C. 1996). If successful, it allows officers who lack probable cause to gain access to a house and conduct a search. *Id.* The "knock and talk" procedure has generally been upheld as a consensual encounter and a valid means to request consent to search a house. *United States v. Cormier*, 220 F.3d 1103, 1110-09 (9th Cir. 2000); *United States v. Taylor*, 90 F.3d 903, 909 (4th Cir. 1996); *United States v. Kim*, 27 F.3d 947, 951 (3d Cir. 1994); *United States v. Tobin*, 923 F.2d 1506, 1511-12 (11th Cir. 1991); *Cruz*, 838 F. Supp. at 543; *State v. Green*, 598 So. 2d 624, 626 (La. Ct. App. 1992); *State v. Land*, 806 P.2d 1156, 1157-59 (Or. Ct. App. 1991). *United States v. Jerez*, 108 F.3d 684, 691-93 (7th Cir. 1997).

However, in this case, consent was not given. Officers were clearly informed to obtain a search warrant. After being informed that officers could not search, the officers entered into the apartment anyway "to secure it and patted down Anthony Minor, Brentwood Wilson, and Michael Heard." Entering into the apartment after being informed to obtain a search warrant, and having no legitimate reason to secure the apartment without a warrant constitutes an unreasonable reason for police officers to be inside the apartment.

All occupants of the apartment had a reasonable expectation of privacy while inside the apartment, and officers conducted an unreasonable search of the apartment by entering the apartment "to secure it" after being denied a consensual search, thus unreasonably invading the

occupants' reasonable expectation of privacy.

3. Officers Conducted a Pat-Down of Suspects Inside Apartment 3

Police are allowed to pat down a suspect if they have reasonable suspicion that a crime is being or is about to be committed. *Terry v. Ohio*, 392 U.S. 1, 30-31, 88 S. Ct. 1868, 1884-85, 20 L. Ed. 2d 889, 991 (1968). They may also do a pat down if there is a reasonable suspicion that the person is armed and the officer's safety is in danger. Id. at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909. Two cases are instructive here given our facts. *Illinois v. Wardlow*, 528 U.S. 119, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000); *State v. Cline*, 617 N.W.2d 277 (Iowa 2000). Both cases hold that mere presence in a known narcotics-dealing area does not give police reasonable suspicion of wrongdoing to conduct a pat down. However, when coupled with other factors like flight upon seeing police, nervousness, evasiveness or lying, past experience with the suspect, etc., reasonable suspicion may be justified. See *Wardlow*, 528 U.S. at 124-25, 120 S. Ct. at 676, 145 L. Ed. 2d at 576; Cline, 617 N.W.2d at 282-83.

In determining whether the particular search or seizure is reasonable, the court judges the facts against an objective standard. *State v. Kreps,* 650 N.W.2d 636, 641 (Iowa 2002). Whether reasonable suspicion exists for an investigatory pat down must be determined in light of the totality of the circumstances confronting a police officer, including all information available to the officer at the time the decision to search is made. *Id.*

In this case, there was no indication that Brentwood Wilson was armed and dangerous. While there were possible indications that Michael Heard might have carried weapons in the past, there was no such indication for Brentwood Wilson and no indications that anyone was currently a reasonable threat at the time. There were no indications that a reasonably prudent man would

believe that the officers' safety or the safety of others was in danger.

Additionally, a pat-down for a weapon is just that—a pat-down for weapons for reasonable officer safety. Allegedly located in Brentwood Wilson's pocket was a baggy. A baggy in no way feels like a weapon during a pat-down. This pat-down extended beyond a cursory pat-down for weapons into a search for drug evidence. As discussed in issue 1, no exception for a search warrant was indicated.

There is no indication that the apartment was a "known narcotics-dealing area". A drug dog sniff does not give a prudent reasonable person belief that the apartment was a "known narcotics-dealing area." Even if the apartment could be determined to be a "known narcotics-dealing area", these defendants were inside an apartment with a reasonable expectation of privacy inside the apartment. A search occurs under the Fourth Amendment any time the government intrudes upon a person's legitimate expectation of privacy. *State v. Breuer*, 577 N.W.2d 41, 45 (Iowa 1998). *State v. Reinier*, 2001 IA 470 (IA, 2001). Officers had time and opportunity to obtain a search warrant and no exceptions for a warrant were indicated.

Mr. Wilson was allegedly asked for permission to pat-down. He replied that he didn't care. *State v. Lane,* 726 N.W.2d 371 (Iowa 2007), makes clear that consent itself can be the fruit of a prior illegality and thus involuntary. Without voluntary consent, the officers had no reasonable suspicion to pat-down Mr. Wilson.

A person has a reasonable expectation of privacy in his person. Police Officers had no legitimate reason for being inside the apartment at the time as discussed in issues 1 and 2. Therefore, the officers unreasonably invaded that reasonable expectation of privacy in his person, and a pat-down or search of Mr. Wilson was unreasonable.

4. Search of Apartment 1

Mr. Wilson allegedly gave permission to search his apartment following his arrest subsequent to the above searches. *State v. Lane,* 726 N.W.2d 371 (Iowa 2007), makes clear that consent itself can be the fruit of a prior illegality and thus involuntary. The request for the search was made following the searches in issues 1 and 2 and following the pat-down of Mr. Wilson in issue 3, and thus was involuntary according to *Lane.*

5. All Evidence and Leads Uncovered Should be Suppressed

It is axiomatic that the chief evil sought to be addressed by the Fourth Amendment was the physical entry of the home. *United States v. United States Dist. Ct*., 407 U.S. 297, 313, 92 S. Ct. 2125, 2134, 32 L. Ed. 2d 752, 764 (1972). Although the Fourth Amendment protects the privacy of an individual in a variety of settings, none is "more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home." *Payton v. New York*, 445 U.S. 573, 589, 100 S. Ct. 1371, 1381-82, 63 L. Ed. 2d 639, 653 (1980). The special sanctity of the home has deep roots in our history, and "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion" lies at the very core of the Fourth Amendment. Id. at 589-90, 100 S. Ct. at 1382, 63 L. Ed. 2d at 653 (citation omitted). Thus, "[i]t is a 'basic principle of Fourth Amendment law' that [all] searches and seizures inside a home without a warrant are presumptively unreasonable." Id. at 586, 100 S. Ct. at 1380, 63 L. Ed. 2d at 651 (citation omitted); *Welsh v. Wisconsin*, 466 U.S. 740, 749, 104 S. Ct. 2091, 2097, 80 L. Ed. 2d 732, 742 (1984).

Evidence obtained in violation of the Fourth Amendment guarantees against unreasonable searches and seizures is inadmissible in a criminal prosecution. *State v. Manna,*

534 N.W.2d 642, 643-44 (Iowa 1995).

All evidence and leads obtained in this case should be considered "fruit of the poisonous tree", obtained in violation of the Fourth Amendment guarantees against unreasonable searches and seizures and should be suppressed.

WHEREFORE, defendant prays for a hearing on this motion, and pursuant to hearing, for a ruling suppressing all evidence, confessions, and leads obtained as a result of the search and seizure following the initial search of apartment 3.

Dated this 5th day of May, 2009.

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CERTIFICATE OF SERVICE
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on _____

[ ] U.S. Mail [ ] Hand Delivery
[ ] Federal Express [ ] Fax
[ ] Certified Mail [ ] Other: _____

Signed: _____