NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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February 15, 2024

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Re: *Commonwealth of Virginia v. Michael Vincent Vaughn*
Case Nos. FE-2023-392, FE-2023-393

Dear Counsel:

This matter came before the Court for hearing February 2, 2024, on the Defendant Michael Vincent Vaughn's Motion to Suppress evidence taken as a result of two searches of his vehicle. For the reasons stated below, the Court now denies Defendant's Motion.

BACKGROUND

This matter arose from an incident on February 15, 2022. On that day, Fairfax County Police Officers Trevor Jones and Isabella Mullen responded to a call reporting a suspicious vehicle parked on the side of Fitt Court, a suburban cul-de-sac. When the officers arrived, they discovered a white van with North Carolina plates parked by the side of the road. The windows of the van were obscured, but the officers were able to observe the front seats through the windshield. Officer Jones testified he saw a gas can, a partially eaten sandwich, and a generally messy environment. The van had no visible occupant and did not appear to be parked improperly.

Officer Jones knocked on the windows and called out for any occupant to identify himself but received no response. The officers discussed the possibility the van belonged to someone visiting a friend or relative in the neighborhood. After returning to the police cruiser,

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the officers ran the plates, and discovered they were reported stolen off another vehicle. Shortly thereafter, the officers opened the unlocked trunk of the vehicle and began removing items from a disorganized heap, announcing their presence as they did so. The officers did not appear to make any effort to record the items observed or removed. Officer Jones then contacted the registered owner of the van, who reported she had recently sold the vehicle and did not know it to be stolen.

Officers repeatedly stated they believed the vehicle to be unoccupied, although the earliest such comment was made after the officers had begun searching the trunk. The officers then called a tow truck to have the vehicle impounded. When the tow truck arrived, Officer Mullen had the truck operator assist her in breaking open the locked doors on either side of the van. Immediately after doing so, the officers were confronted by the Defendant, who emerged from his vehicle holding a rifle. The Defendant brandished his firearm at Officer Mullen, and Officer Jones shot him. The Defendant was taken, in custody, to the hospital. The vehicle was secured, and a search warrant was obtained.

Initially, the Defendant was charged with Possession of a Controlled Drug, two counts of Assault on a Police Officer, and Possession of a Firearm by a Convicted Felon (FE-2022-392). In this earlier proceeding, Defendant (then represented by different counsel) moved to suppress the drug evidence from the searches of his van on the basis police officers did not have probable cause. Judge Thomas Mann denied the motion to suppress on June 24, 2022. On September 9, 2022, the Defendant entered a guilty plea to the first count of Assault on a Police Officer, and the Commonwealth dropped the other charges.

Prior to the plea, in early March of 2022, Fairfax County Police Department (FCPD) detectives obtained search warrants for the Defendant's vehicle and the Defendant's phone, which had been seized from his person after the February 15th confrontation. Police discovered a computer in Defendant's vehicle, and incriminating messages and images on Defendant's phone. The Commonwealth did not bring charges based on this information at the time. In November of 2022, after the Defendant was sentenced on the initial charges, officers sought a search warrant for the contents of the computer and discovered alleged images of child pornography therein. Defendant was then arrested on the twenty-four child pornography charges currently pending before the Court, based on the evidence taken from his phone and computer.

Defendant now moves to suppress evidence taken from his phone and computer as fruit of the poisonous tree, arguing the February 15th searches of his vehicle were in violation of the Fourth Amendment to the Constitution, and any confrontation and subsequent search were a result of the original, unconstitutional search. Defendant argued the same before Judge Mann, but now expands his argument to address many more issues than his first motion. The Commonwealth argues this Court is bound by the doctrine of collateral estoppel from reconsidering the motion to suppress previously argued before Judge Mann on June 24, 2022, that the search was constitutional as a lawful and legitimate inventory search, and the Virginia "Community Caretaker" exception to the Fourth Amendment applies. In the alternative, the Commonwealth argues the contents of the computers and phone are admissible even if the initial vehicle searches were unconstitutional.

The questions before the Court are (1) may criminal defendants be collaterally estopped from relitigating pre-trial suppression motions; (2) if not, was either search justified constitutionally under the community caretaker and inventory search exception; and (3) if not, is the evidence gained as a fruit of those searches nevertheless constitutionally admissible?

ANALYSIS

I. Standard of Review

"Searches and seizures conducted without a warrant are presumptively invalid." Cantrell v. Commonwealth, 65 Va. App. 53, 59 (2015). "The Commonwealth has the burden of proving the legitimacy of a warrantless search and seizure." Reittinger v. Commonwealth. 260 Va. 232 (2000).

II. Collateral Estoppel

Before addressing the application of the Fourth Amendment to the searches in question, the collateral estoppel argument asserted by the Commonwealth must be addressed. This appears to be a case of first impression in Virginia.

The Commonwealth asserts it has already argued and won this motion, in the previous prosecution of the Defendant, and to now reconsider the arguments in favor of suppression would be unfair and prejudicial to the Commonwealth. The Commonwealth emphasizes the common application of the "mutuality" requirement in both civil and criminal estoppel, suggesting by inference the traditional requirements for collateral estoppel in the civil context are applicable to criminal defendants, and no more.

The Defendant argues applying collateral estoppel to a criminal defendant has never been endorsed in Virginia, and there is no caselaw from the Fourth Circuit Court of Appeals or the United States Supreme Court suggesting its applicability. In addition, Defendant emphasizes doing so would violate the Defendant's Sixth Amendment right to a trial by jury, the right to confront witnesses against him, and his Fifth Amendment right to due process, incorporated against the states through the Fourteenth Amendment.

This is a case of first impression in Virginia, but other courts have dealt with this issue and provide guidance for this Court's analysis.

A. Standard of Review

Collateral estoppel means once a factual issue has been determined, the issue cannot again be litigated between the same parties in any future case.[1] In a subsequent prosecution for an offense arising out of the same transaction, collateral estoppel bars re-litigation of facts which have been actually decided in the first prosecution, rendered by a court of competent

[1] *Simon v. Commonwealth*, 220 Va. 412, 415 (quoting *Ashe v. Swenson*, 397 U.S. 436 (1970)).

jurisdiction.[2] However, these are statements of the law of collateral estoppel asserted by criminal defendants against the state. The Supreme Court, in *Ashe v. Swenson*, declared the use of collateral estoppel against the state to be constitutionally mandated by the prohibition of Double Jeopardy.[3] No such constitutional right prescribes the use of collateral estoppel by the state against a defendant, and in *Ashe* Chief Justice Burger's dissent noted collateral estoppel could not be applied the same way against the defendant.

Whether criminal collateral estoppel is violative of the right to trial by jury is irrelevant here, despite the Defense's arguments to the contrary: Defendant would never, under any circumstances, have the right or opportunity to try his motion to suppress before a jury of his peers. The purpose of the motion to suppress is to keep matters from ever reaching those peers in the first place. The Commonwealth's allusions to mutuality in estoppel are likewise unpersuasive in deciding this novel matter.

B. Other Jurisdiction Approaches

Per *Ashe*, collateral estoppel cannot be applied in the criminal context with a "hypertechnical and archaic approach … but with realism and rationality."[4] Both the Eighth and Eleventh Circuits have ruled clearly on pre-trial motion criminal collateral estoppel against defendants and come to opposite conclusions. State courts have also come to an array of answers, none quite identical to any other.

The Eighth Circuit first addressed the issue in 1989. In *United States v. Rosenberger*, the district court denied the defendant's motion to suppress on grounds of estoppel, as he had litigated the validity of the warrant in question once before, and the defendant appealed.[5] That Circuit enumerated the test for civil collateral estoppel:

> a party is generally estopped from re-litigating an issue decided against him or her in a prior lawsuit when (1) the issue is identical to one presented in the prior adjudication; (2) the prior adjudication resulted in a final judgment on the merits; (3) the estopped party was a party or in privity with a party in the prior adjudication; and (4) the estopped party had a full and fair opportunity to litigate the issue in the prior suit.[6]

The Court found the defendant was, in fact, estopped, despite the need for additional scrutiny when estoppel was applied against criminal defendants, because all four civil elements had been shown and the defendant had "done nothing more … than reargue the assertions he made in his prior civil action. No new evidence or changed circumstances [were] presented."[7] This test was reiterated and established definitively twenty-three years later, in *United States v. McManaman*:

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[2] *Id.* at 416
[3] 397 U.S. at 443-44.
[4] *Id.* at 444.
[5] 872 F.2d 240, 242 (8th Cir. 1989)
[6] *Id.*
[7] *Id.*

the additional question a court must ask in applying collateral estoppel against a criminal defendant, with this test, is simply whether the defendant has come up with anything new.[8]

This test is not persuasive to the Court. If a defendant were able to merely dig down and present one additional argument, or one new scrap of evidence, he might be able to game the determination, presenting new, weaker, and weaker arguments *ad infinitum* until he came across a judge more sympathetic to his claims. To allow as much would clearly offend the goals of finality and judicial economy central to the doctrine of collateral estoppel. At the same time, this simple test may not be protective enough of the constitutional due process interests of a defendant: even if a determination has been reached and new evidence or arguments have not been presented, there may be problems caused by preventing re-argument off-hand.

A more strict approach was taken by the Eleventh Circuit in 1992 which in *United States v. Harnage* refused to endorse a weighted test applied by the trial court to estop the defendant.[9] After addressing the history of collateral estoppel in the criminal context, the Eleventh Circuit barred collateral estoppel against criminal defendants entirely. "We are not convinced," stated Judge Hatchett, "that allowing the government to bar a defendant from relitigating an unfavorable determination of facts in a prior proceeding would serve the original goal of collateral estoppel – judicial economy."[10] Because estoppel of a criminal defendant might require adjudication of so many more issues than in the civil context – particularly whether there was ineffective assistance of counsel in the prior proceeding – it would be more efficient, and avoid constitutional due process concerns, to allow the defendant to relitigate.

This is an understandable approach, comfortingly simple in its application, but raises issues of its own. A defendant might be allowed too many bites at the apple if collateral estoppel is only ever applicable against the state in criminal cases, and once a defendant achieves a favorable result, in front of perhaps his third or fourth judge, the state would be estopped from ever challenging such a ruling. In some cases, certainly, judicial economy would be enhanced by allowing estoppel: if a single search or evidentiary issue became central to numerous prosecutions, the court may be saved valuable time and resources by preventing a defendant from filing frivolous, repetitive pre-trial motions which have already been heard. In the context of this case, under this approach the Defendant would presumably be entitled to twenty-four separate suppression motions if the trials for each charge were bifurcated. As such, the Court does not believe this is the correct approach to be taken in Virginia.

The test applied by the trial court in *Harnage* is of more interest. Originally devised by the District of Massachusetts in *United States v. Levasseur*,[11] it has not been adopted by any of the Circuit Courts of Appeals, but neither did it disappear entirely into the pages of the Federal Supplement: it was later adopted by the Massachusetts courts in *Commonwealth v. Ringuette*.[12] The thorough, detailed test from our sister Commonwealth captures what the Court believes to

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[8] 673 F.2d 841, 847 (8th Cir. 2012).
[9] 976 F.2d 633, 634 (11th Cir. 1992).
[10] *Id.* at 635.
[11] 699 F.Supp. 965, 981 (D.Mass. 1988).
[12] 60 Mass.App.Ct. 351, 357 (Middlesex 2004).

be the prime considerations in the use of collateral estoppel against criminal defendants.

In the *Levasseur* case itself, seven defendants were tried in both the Eastern District of New York and the District of Massachusetts. In the subsequent Massachusetts prosecution, the government argued the defendants should be collaterally estopped from relitigating a motion to suppress evidence heard in the previous proceeding in New York. Under its newly-devised test the District Court found six of the seven defendants could be estopped, but the seventh could not. The factors are as follows:

> First, there obviously must be an identity of issues in the two proceedings. Second, a defendant must have had sufficient incentive to have vigorously and thoroughly litigated the issue in previous proceedings.... Third, the defendant estopped must have been a party to the previous litigation. Fourth, the applicable law must be identical in both proceedings.... Fifth and finally, the first proceeding must result in a final judgment on the merits that provides the defendant not only the opportunity to appeal, but also sufficient incentive.[13]

The seventh defendant, Patricia Gros Levasseur, did not meet these criteria because a mistrial had been declared as to her after the motion to suppress hearing was held, and thus she was not afforded opportunity to appeal the ruling.

This is not unlike the approach taken by Illinois courts. In *People v. Hopkins*, the Supreme Court of the state noted collateral estoppel could not be invoked lightly against a criminal defendant, but in lieu of new evidence becoming available or a showing the defendant was unable to appeal, he could be so estopped.[14] Maine, as well, emphasizes a criminal defendant cannot be estopped from re-arguing his motion if the charges in the second prosecution are significantly more serious, as the incentive to litigate the issue fully has increased.[15] The Maine Court also addressed that the defendant had the same counsel, and was presenting the same arguments, before concluding the defendant could be estopped.

C. Adoption

Comporting this with Virginia's requirements for collateral estoppel, the Court adds one additional element to the Virginia civil test: a full and fair opportunity to litigate the issue. This captures both additional concerns described by the District Court in *Levasseur*: whether the defendant had sufficient incentive to fully and fairly litigate the issue in the first proceeding, and whether the defendant had practical opportunity and incentive to appeal. This also reflects the approach taken by New York to this issue, which reduced the test to one of fundamental fairness in *People v. Plevy*.[16] Application of this test will prevent a defendant from filing repetitive unsuccessful motions but ensure a defendant's right to due process and right to confront the witnesses against him are appropriately preserved. A defendant cannot argue a dozen identical

[13] 699 F.Supp. at 981.
[14] 52 Ill..2d 1, 4 (1972).
[15] *See State v. Moulton*, 481 A.2d 155, 161-62 (1984)
[16] 417 N.E.2d 518, 522-23 (1980).

motions to suppress in identical cases, and the prosecution cannot tactically charge and retry a defendant successively to gain advantage.

Therefore, the Court adopts the following test for prosecutorial collateral estoppel in pre-trial motions: (1) the parties to the two proceedings must be the same; (2) the factual issue sought to be litigated must have been actually litigated in the prior proceeding; (3) the factual issue must have been essential to the judgment rendered in the prior proceeding; (4) the prior proceeding must have resulted in a valid, final judgment against the party to whom the doctrine is sought to be applied; and (5) the defendant must have had a full and fair opportunity to litigate the issue in the prior proceeding.[17] Whether a defendant had such opportunity is determined in part by whether the charges related to the pre-trial motion were severe enough to incentivize the defendant to litigate the issue fully, and whether the defendant had the opportunity and incentive to appeal the ruling.

D. Application

In the case currently before the Court, it is clear Defendant Michael Vincent Vaughn is not estopped from arguing his motion to suppress evidence derived from the searches of his vehicle. As collateral estoppel applies to factual matters, and not just conclusions of law, the failure of the Commonwealth to produce a transcript of the prior hearing suggests it has not met its burden of proving the Defendant actually litigated the specific fact issue in question. Judge Mann's order denying the motion to suppress, as well as the briefs for and against suppression in the prior proceeding, do not convincingly establish actual litigation of the factual issue.

However, even assuming the motions and order are enough, the argument for collateral estoppel fails under application of the above test. The charge to which Defendant argued his motion to suppress, possession of a controlled substance, was far less severe than the twenty-four counts of possession of child pornography he now faces. In addition, the charge to which the prior motion to suppress was related was dropped by the Commonwealth. The Defendant's prior motion was heard, his guilty plea entered, and his entire case adjudicated, without further opportunity for appeal, before he was arrested on the charges he now faces. It is clear the Defendant did not have the incentive to fully litigate the issue, and the Defendant never had the opportunity to appeal necessary for collateral estoppel against him. Applying the test to the facts of this case, Defendant may not be collaterally estopped from relitigating his motion to suppress, as he was not afforded a full and fair opportunity to litigate the issue in his previous prosecution.

Finding the Defendant is entitled to have a hearing on the constitutionality of the searches, the Court must now turn to the arguments brought forward at the suppression hearing. The Commonwealth concedes these two searches of the vehicle – first opening the trunk, then breaking open the sliding door – were warrantless searches and an exception to the Fourth Amendment is required.

[17] *Whitley v. Commonwealth*, 260 Va. 482, 489 (2000) (enumerating the elements of traditional collateral estoppel).

III. Community Caretaker and the Inventory Exception

The Commonwealth asserts the searches were constitutional under the inventory search exception to the Fourth Amendment, and impoundment was proper either because the vehicle was parked in violation of the law, or because police were acting in their role as community caretakers. The Defense challenges the propriety of impoundment as the vehicle was not parked in violation of the law, and the vehicle did not pose any danger to the community. Additionally, as the officers did not follow FCPD procedure for inventory searches, the search was unconstitutional even if impoundment was proper.

A. Standard of Review

The United States Supreme Court has stated a warrantless search of a vehicle may be upheld as constitutional when (1) the state did not wrongfully take possession of the vehicle, and (2) the search was conducted in order to compile an inventory of the vehicle's contents.[18] The state may take possession of, or impound, a vehicle when necessary to the police department's role as a community caretaker, or if the vehicle is in violation of any law as would subject it to impoundment.[19] The inventory search exception to the Fourth Amendment is based upon the need to protect the owner's property, to protect the police against claims of lost or stolen property, to protect the police from physical danger, and to protect the public from dangerous instrumentalities or substances which may be stolen from an impounded vehicle. The inventory exception does not apply when the inventory search is merely a pretext concealing an investigatory police motive. The reasonableness (and thus, constitutionality) of such search is determined by examining the totality of the facts and circumstances surrounding the search, in particular whether the individuals conducting the search did so according to well-developed standards and procedures "designed to produce an inventory."[20]

B. Propriety of Impoundment

The Supreme Court laid out the reasoning for the community caretaker exception in *Cady v. Dombrowski*, in which an officer left his vehicle by the side of the road after an accident.[21] There did not exist any particular legal justification for having the vehicle impounded, and no probable cause existed to search the vehicle, but the officers performing the search were concerned the vehicle-operator's service weapon was still inside, and might be recovered and used by children or criminals. The Court ruled the subsequent inventory search was constitutional, because, although the vehicle was not subject to impoundment under any particular law, the police were acting validly in their role as caretakers of the community. The thus-derived community caretaker exception acts as a free-standing license to perform an inventory search and have a vehicle impounded if not doing so would threaten public safety.

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[18] *See South Dakota v. Opperman*, 428 U.S. 364, 372-73 (1976)
[19] *See Reese v. Commonwealth*, 220 Va. 1035, 1039 (1980).
[20] *South Dakota v. Opperman*, 428 U.S. 364, 375-76 (1976); *Florida v. Wells*, 495 U.S. 1, 4 (1990).
[21] 413 U.S. 433 (1973).

In *King v. Commonwealth*, a more recent application, the defendant was pulled over and was discovered to be driving with a suspended license.[22] The Virginia Court of Appeals ruled against the prosecution on defendant's appeal of a conviction based on the fruits of the subsequent search of his vehicle. Although the officer had the car impounded because he felt it inappropriate to leave on the side of a congested road, the Court of Appeals ruled this was not enough, instead requiring an objective set of facts showing the vehicle's presence put the public's safety at risk, or otherwise needed to be safeguarded.

Unlike in *Cady*, but as in *King*, the vehicle in this case does not appear to have posed any threat to the public. It was not on the side of a busy highway but parked in a suburban cul-de-sac. The doors to the passenger compartment were locked, preventing any member of the public from accessing the only apparent dangerous instrumentality – the gas can in the front seat. The community caretaker exception does not apply.

Moving to whether the vehicle was parked in violation of the law, thus justifying impoundment, the Commonwealth rests on the Defendant's alleged violation of Fairfax Code § 82-5-26, which states "it shall be unlawful for any person to park on a highway any vehicle not displaying current state motor vehicle license tags." The Defense argues convincingly the Defendant had not violated this ordinance, as the vehicle was displaying current stickers on its (admittedly stolen) plates, and that impounding is only appropriate for a vehicle "parked in violation of the law," a statutorily distinct phrase referring to violation of specific provisions, rather than lacking a current license plate or inspection stickers. It does not appear that impoundment was merited under the statute.

C. Conduct of the Search

It is clear from the evidence presented at the hearing regarding circumstances surrounding performance of the search that the police were not conducting an inventory search at all. They did not catalogue the items they found as they went and failed to begin filling out a PD-48 form in compliance with FCPD orders on inventory searches. FCPD General Order 522, which governs impoundment and seizure of motor vehicles, states PD 48 inventory forms shall be completed at the scene and prior to removal of the impounded vehicle. According to Officer Jones' testimony, the officers were not preparing PD 48 forms, and were taking and removing items from the vehicle without documenting them. If an inventory search is not conducted according to established police procedure governing such searches, it cannot be a constitutionally reasonable search.[23]

Based on the evidence presented, the Commonwealth has not carried its burden of showing the search of the vehicle was constitutionally reasonable. It is not clear if impounding the vehicle was justified under the law or under the community caretaker exception, and the FCPD's procedures for inventory searches were not followed. Finding the searches were unconstitutional, the Court now turns to the question of whether the evidence later found on

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[22] 39 Va.App. 306 (2002)
[23] *See Florida v. Wells*, 495 U.S. 1, 4 (1990); *Cantrell v. Commonwealth*, 65 Va.App. 53, 60-61 (2015).

Defendant's phone and (after a search warrant was procured) computer are suppressible fruits of this illegal search.

IV. Attenuation

The exclusionary rule was introduced as an enforcement mechanism of the Fourth Amendment. As the constitutional guarantee against unreasonable search and seizure is not self-executing, the U.S. Supreme Court introduced the rule mandating evidence taken through or as a result of unreasonable searches and seizures be excluded from consideration at subsequent prosecutions. However, this rule is not absolute: there exist several exceptions to the exclusionary rule, including the independent source doctrine, inevitable discovery, good faith and, at issue here, attenuation. If the exclusionary rule were absolute, the evidence in this case would be suppressible fruit of the poisonous tree – uncovered as a result of the unconstitutional search of the Defendant's vehicle – because but-for the second search, breaking open the door to his van, it is apparent the Defendant would not have entered into his violent confrontation with Officers Mullen and Jones, and would not have been taken into custody. Unless attenuation applies, his cell phone and computers must be suppressed.

A. Standard of Review

This doctrine was recently elaborated in *Utah v. Strieff*:

> First, we look to the temporal proximity between the unconstitutional conduct and the discovery of evidence to determine how closely the discovery of evidence followed the unconstitutional search. Second, we consider the presence of intervening circumstances. Third, and particularly significant, we examine the purpose and flagrancy of the official misconduct.[24]

In Virginia, a finding with respect to attenuation can only be made after consideration of all the circumstances of the case, particularly whether the evidence in question was come by through "exploitation" of the police misconduct in question.[25] The Court will now evaluate the three factors in order of significance.

B. Application

First, the search which uncovered the cell phone was temporally proximate to the unconstitutional search, as it was recovered from the Defendant after he was shot immediately subsequent to his assault on Officer Mullen. The computers were recovered later pursuant to a warrant and are not as closely related to the initial searches challenged here. This factor weighs in opposite directions for each item recovered.

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[24] 579 U.S. 232, 233 (2016) (cleaned up).
[25] *Kyer v. Commonwealth*, 45 Va.App. 473, 483 (2005); *Carlson v. Commonwealth*, 69 Va.App. 749, 759 (2019).

Second, Officer Jones testified his search was not investigatory, but a wellness check on a possible occupant of the vehicle. Procedures were not followed properly; however, the Court heard no evidence at the hearing to show the officer's actions rose to the level of "misconduct." The purpose of the constitutionally-infirm vehicle search was not wrongful, it cannot be said the illegality in question was particularly flagrant, and there is nothing to show exploitation of police misconduct.

Finally, the intervening circumstances factor weighs in favor of attenuation: the intervening circumstance was assault on a police officer when Vaughn drew a rifle and brandished it at Officer Mullen. This is a much stronger intervening circumstance than merely discovering an active warrant,[26] or report of returning home from a gun charge;[27] instead committing a violent felony against law enforcement.

An unconstitutional search may be found in the slightest act, and force is not an acceptable response. Bringing a K-9 officer upon the stoop of a suspect to sniff for drugs may be an unconstitutional search.[28] Simply tilting a stereo, to get a better look at the serial number on its underside, may be an unconstitutional search.[29] If a defendant, in response to such a search, drew a weapon and began to fire on the officer conducting it, it is obvious any evidence gained from a subsequent search incident to arrest or inventory search of a now-abandoned vehicle could not be excluded on the basis that the defendant never would have opened fire, but for the officer's mistake. The Defendant's felonious intervention clearly attenuates and dilutes the taint from the illegal search, which does not absorb into the later recovered evidence at issue.

CONCLUSION

The search caused Vaughn to emerge from his vehicle and point his gun at the officers, and Vaughn was shot in the neck. From that moment, the causal connection between the challenged search and the evidence discovered on his phone and on his computer after the intervening actions of the Defendant became far too attenuated. As a result, the Court hereby denies the Defendant's motion to suppress.

Sincerely,

[redacted]

Penney S. Azcarate

[26] *Utah v. Strieff*, 579 U.S. 232 (2016).
[27] *Commonwealth v. Hendrick*, 2022 WL 17980316 (Va.App. 2022).
[28] *See Florida v. Jardines*, 569 U.S. 1 (2013)
[29] *See Arizona v. Hicks*, 480 U.S. 321 (1987).