STATE OF NEW YORK
COUNTY COURT : COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

Versus

[redacted]

MEMORANDUM OF LAW IN SUPPORT OF SUPPRESSION OF THE FIREARMS

Indictment No. [redacted]

Dated: [redacted]

By: [redacted]

To: HON. JAMES BARGNESI, JCC

JUSTIN CALDWELL, ESQ.

FACTS

On [redacted], shortly after 9:00 P.M., Officer [redacted] was driving a patrol vehicle with Officer [redacted] as passenger (8). The officers both testified that they saw a newer model white Jeep Grand Cherokee driving with no headlights (8, 65). At that time, they conducted a traffic stop of the vehicle, activating their overhead lights (8). The vehicle promptly pulled over into a lawful parking spot (22). In fact, the vehicle was parked in a full parking lane, which was separated from the main road by a bicycle lane (22; Defense Exhibits A, B, and D).

The officers ascertained the identity of the driver, [redacted] (25). While [redacted] testified that he did not know it was [redacted] prior to the traffic stop, he learned it was [redacted] upon his initial approach (25). He also knew that Detective [redacted] with the Intelligence Unit had put out a briefing that very day that [redacted] would be driving around and may be in possession of a firearm (25). Based upon that information, he wanted to search the vehicle (27). [redacted] candidly testified that he thought a search of that vehicle would uncover a firearm (28), and that he desired to search it for that reason (27).

Officers learned that [redacted], the driver, did not have a valid driver's license (11). Notwithstanding that the vehicle was parked lawfully, the officers decided to impound the vehicle and inventory its contents (11, 13). Notably, [redacted]t was asked several times about why he decided to impound the vehicle, and he never said that he was concerned it could be stolen or damaged, and never mentioned any recent problems in that area of a similar nature (14, 56).

[redacted] who was "assisting" that night while [redacted] was making the decisions (63), testified that they were concerned that someone could have stolen the vehicle because the area was "known for that" (69). No specific instances nor substantiation were given, and no indication was made as to any uniformity in how that provision is enforced. In fact, both officers testified that it is their practice to conduct inventory searches when they are permitted to impound a vehicle, and then decide whether to impound or not (31-32, 78).

While the officers were taking [redacted] and passenger [redacted] out of the vehicle to put them into their patrol vehicles, Officers [redacted] and [redacted] pulled up in another cruiser, coming from the opposite direction (People's 8, *Tran BWC*, 0:03). They pulled in front of the Cherokee, effectively blocking its path (*id.*, 98). At this point, pursuant to a professed routine traffic stop, they had: (1) placed both defendants into handcuffs and in the back of patrol vehicles, even though the passenger had no warrants or indicia of criminal activity, (2) decided to impound and inventory a lawfully-parked vehicle without any conversation, and (3) had a second vehicle come in from the other direction, blocking the vehicle from the front. On top of that, [redacted]t admitted that the reason he placed [redacted] into the back of the patrol vehicle was because of his suspicion that there were guns in the vehicle (49). [redacted] initially testified that [redacted] did not have a valid license, but ultimately admitted that he had no idea whether [redacted] had a valid license, as he did not check (58). He had already acknowledged that he was desirous of searching the vehicle based on that same suspicion (27-28).

At that point, Officer [redacted] began to search the driver's side, while Officer [redacted] began to search the passenger's side (People's 7, 1:35). Quite notably, Officer [redacted] bodyworn

camera begins as he exits his vehicle (People's 8, [redacted] *BWC*). Nobody tells him that the vehicle is being impounded or that he is to assist in an inventory search; rather, he just starts searching. Moreover, there were no radio transmissions, phone calls, or text messages to him directing him to search (103).

As the pair of officers rummaged through the vehicle, [redacted] and [redacted] did not have any means to document any items, nor were they attempting to do so (*id.; see also* People's Exhibit 5, *Inventory Policy*, 6.7[C}, which requires officers to complete an inventory form ***while*** conducting the inventory search). Instead, they rummaged through the vehicle. [redacted] began to search the center console, moving and discarding items, as [redacted] said "This might be a good spot right here" (People's 7, 1:40-1:51). [redacted] responded, "Yup" (81; People's 7, 1:51). As they did so, another officer noted "This is the car that he put out, too" (People's 7, 1:56). [redacted] again stated "This might be a good spot right here" as [redacted] and [redacted] maneuver in and behind actual panels of the vehicle (People's 7, 1:56).

Refusing to acknowledge the obvious reality that they were searching for guns, [redacted] testified that, when he agreed with [redacted] about the "good spot," he meant that it was a good spot for valuables (72). Nonetheless, he then looked past an undocumented cell phone (a valuable) sitting in the cupholder, asking [redacted] "What about the glove box?" (83-85; People's Exhibit 7, 2:51). As soon as [redacted] opened the glove box, the two saw what appeared to be a firearm, and [redacted] said "There it is!" (People's 7, 2:54). When asked about why they were messing with actual vehicle panels when there were obvious valuables in sight, [redacted] stated that they were "making sure nothing is broken" (84-85). The defense respectfully asks the Court to watch

People's Exhibit 7 from 2:00 to 2:51 and determine whether the pair appear to be "making sure nothing is broken" or looking for a gun.

Once [redacted] located the gun, an officer said "I'd check for a second one though" (People's 7, 3:14). Still to this point, there was no mention of any other item in the vehicle, and the words "impound" nor "inventory" had been uttered. While [redacted] clears the guns, another officer said "Yup, that's the one he was looking for" (People's Exhibit 7, 4:18). [redacted] responded "A little one?" (*Id.*). And the other officer responds in the affirmative (*Id.*). Notably, [redacted] did not ask ***who*** was looking for a little gun, instead responding "Perfect" (*Id.*). It strains credulity to believe that [redacted] did not know that [redacted] was looking for a gun in [redacted] possession.

As the officers reveled in their discovery, Lieutenant [redacted] approached and asked "What yall got?" (People's 4, [redacted] *BWC*, 9:00-9:45). [redacted] exclaimed "Come on!" while [redacted] smirked. Then, when [redacted] asked if he had been posting on social media, [redacted] responded "Random pull" (*id.,* 35-38). When asked under oath if he was being truthful when he said that, [redacted] indicated yes (36). However, when shown Officer [redacted] bodyworn camera depicting the same event, which showed an image of himself, [redacted] acknowledged that, as he said it was a random pull, he reached toward his chest-mounted body cam (38). He then acknowledged that he again reached toward the body cam while giving repeated looks to the other officers in his presence (38).

About 5 minutes after the gun was found during the initial search, officers finally called for a tow (90). Over 10 minutes after the gun was found, Officer [redacted] finally enters the vehicle ***with*** a pen and a paper documenting items (100). Before beginning this actual inventory search, Officer [redacted] noted that it was supposed to be done while the search was being conducted (People's 7, [redacted] *BWC, Clip 2*, 0:01). Another officer remarked that it was "bullshit," to which [redacted] replied "Yup" (97-98, *Id.*). [redacted] said "Yeah but just do it," and [redacted] began an actual inventory search (97-98, *Id.*).

During the inventory of the vehicle, [redacted] did not note the large dent on the front quarter panel (*see* People's 6, *P-31*; *see also* People's 5, Inventory Policy, 6.7(A), requiring officers to inspect the vehicle for damage as part of the inventory search; *see also,* People's 8, [redacted] *BWC*, 0:03; *see also,* 98). In fact, [redacted] did not even inspect the exterior of the vehicle for damage (98). One can surmise that this was because he was not particularly interested in documenting damage, but rather finding the gun that [redacted] said would be in the vehicle.

THE APPLICABLE LAW

Warrantless searches are presumptively unreasonable under the federal and state constitutional protections against unreasonable searches and seizures unless they fall within an exception to the warrant requirement. A purported inventory search will not be upheld in the absence of evidence demonstrating "that the particular officer conducted the search properly and in compliance with established procedures" (*People v. Johnson,* 1 N.Y.3d at 256 ; *see People v. Gomez,* 13 N.Y.3d 6, at 11 [2009]).

Further, '[A]n inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence' (*Florida v Wells*, 495 US 1 [1990*]*). To guard against this danger, an inventory search should be conducted pursuant to 'an established procedure clearly limiting the conduct of individual officers that assures that the searches are carried out consistently and reasonably' (*People v. Galak,* 80 N.Y.2d 715 [1993]). The procedure must be standardized so as to 'limit the discretion of the officer in the field' (*id.*). While incriminating evidence may be a consequence of an inventory search, it should not be its purpose" (*Johnson,* 1 N.Y.3d at 256, 771 N.Y.S.2d 64, 803 N.E.2d 385).

As the Court of Appeals has stated:

> In short, when determining the validity of an inventory search, two elements must be examined: first, the relationship between the search procedure adopted and the governmental objectives that justify the intrusion and, second, the adequacy of the controls on the officer's discretion (*Galak*, 80 NY2d, at 719).

Moreover, an inventory search will be deemed invalid at the outset if the decision to impound is not made pursuant to a standardized policy that limits officer discretion in the field *South Dakota v Opperman*, 428 US 364, 368 [1972] [Prerequisite to valid inventory search is a valid impound of the vehicle]; *People v Leonard*, 119 AD3d 1237 [3rd Dept 2014] [Decision to impound must be pursuant to a valid policy that effectively limits the officer's discretion in the field]).

As will be examined below, the purported inventory search at issue here fails in almost every way possible. The firearms must be suppressed as to [redacted], who, as the driver of the vehicle, has standing to challenge said search.

ARGUMENT

THE PURPORTED INVENTORY SEARCH WAS UNLAWFUL AND UNCONSTITUTIONAL UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUION AND ARTICLE I, §12 OF THE NEW YORK STATE CONSTITUTION FOR THE FOLLOWING REASONS:

DECISION TO IMPOUND

A. ***The Officers' decision to impound was not pursuant to a uniform policy, as the Officers testified that they routinely used their discretion in deciding which vehicles to impound.***

B. ***The Officers' decision to impound was unlawful under the relevant caselaw and under the Buffalo Police Policy, as it was lawfully parked and there was insufficient evidence that it would have been dangerous to leave it so parked.***

INVENTORY SEARCH

C. ***The evidence very forcefully indicates that the purported inventory search was a pretext to search for contraband, specifically, a gun.***

D. ***The purported inventory search was not conducted in accordance with the uniform policy of the Buffalo Police Department, as officers failed to document obvious damage to the vehicle.***

A. THE OFFICERS' DECISION TO IMPOUND WAS NOT PURSUANT TO A UNIFORM POLICY, AS THE OFFICERS TESTIFIED THAT THEY ROUTINELY USED THEIR DISCRETION IN DECIDING WHICH VEHICLES TO IMPOUND.

While it is unclear who actually decided to impound the vehicle, it is clear that it was some combination of Officer [redacted] and Officer [redacted] who was "assisting" [redacted]. Remarkably, the officers both testified that, under their interpretation of the Buffalo Police Department Policy, they have virtually unfettered discretion in deciding which vehicles to impound and when to decide not to impound.

Consider the following exchange with [redacted], after he opined that he has the authority to impound and inventory search a vehicle anytime someone is caught driving without a license:

Q: But just because you can impound a vehicle doesn't mean you have to, correct?

A: I don't have to, no.

Q: And sometimes if someone is driving without a license, you might conduct the inventory and let them go if you don't find anything, right?

A: Circumstantial

Q: Is that a yes?

A: Every circumstance is different, every case is different, every stop is different.

Q: Okay. And that's kind of left up to you as to which vehicles you might decide to impound and which ones you won't, correct?

A: Correct.

Q: And sometimes that decision won't be made until after the inventory search is already completed, correct?

A: Correct (31-32).

[redacted] interpretation of the Buffalo Police Policy on impound and inventory is the exact opposite of what is permissible. The Court of Appeals has consistently admonished that in order to be a valid inventory search, the decision to impound must be in accordance with a policy, as applied to any given officer or case, that effectively limits officer discretion (*People v Johnson*, 1 NY3d 252 [2003]; *People v Galak*, 80 NY2d 715 [1993]). In fact, the Court noted that this is

perhaps the most important safeguard against inventory searches becoming pretexts for otherwise impermissible searches: "In the absence of a warrant from a neutral and detached Magistrate, it is an established procedure clearly limiting the conduct of individual officers that assures that the searches are carried out consistently and reasonably and do not become little more than an excuse for general rummaging to discover incriminating evidence" (*Galak*, 80 NY2d, at 719).

When it comes to inventory searches, without uniformity, there is no constitutionality. Here, the policy, as interpreted and implemented by [redacted] does nothing to limit discretion and ensure that inventory searches do not become the next "odor of marijuana."

Perhaps most striking is [redacted] admission that he will sometimes inventory search a vehicle and decide not to impound it. Similarly, [redacted] reluctantly admitted that he, too, has decided not to impound vehicles after conducting inventory searches (78). This perceived unfettered discretion alone renders the search unconstitutional, as the Buffalo Police Policy, while valid, clearly does not effectively limit [redacted] and [redacted] discretion. Rather, their perception of unfettered discretion under the policy creates the exact situation against which the Court of Appeals warns: that inventory searches become a ruse for general rummaging of a vehicle.

B. THE OFFICERS' DECISION TO IMPOUND WAS NOT IN ACCORDANCE WITH BUFFALO POLICE POLICY OR CASELAW, AS THE VEHICLE WAS LAWFULLY PARKED, NOT OBSTRUCTING TRAFFIC, AND THERE WAS NO REAL EVIDENCE BEYOND CONJECTURE THAT IT WOULD BE DANGEROUS TO SIMPLY LEAVE IT.

As noted above, if officers do not actually follow a valid, uniform policy that limits their discretion, an impound and inventory search will be deemed unlawful (*see eg. Johnson*, 1 NY3d, at 256). Here, it is undisputed that the vehicle driven by [redacted] pulled into a valid

and lawful parking spot when [redacted] conducted his "random pull." This is fatal to the impound and inventory search as well. Vehicles may not be routinely impounded incident to a lawful arrest for aggravated unlicensed operation. In invalidating an impound and inventory and suppressing evidence, the Second Department has stated:

> Here, the Supreme Court should have granted that branch of the defendant's omnibus motion which was to suppress the physical evidence recovered from his vehicle. The People failed to establish the lawfulness of the impoundment of the defendant's vehicle and subsequent inventory search (*see People v Gomez*, 13 NY3d 6, 11 [2009]; *People v Small*, 156 AD3d 820, 822 [2017]; *People v Leonard*, 119 AD3d 1237, 1238 [2014]). At the suppression hearing, the arresting officer testified that the defendant's vehicle was legally parked at the time of the defendant's arrest, and there was no testimony regarding posted time limits pertaining to the parking space. Further, although the officer testified that he impounded the defendant's vehicle for "safekeeping," the People presented no evidence demonstrating any history of burglary or vandalism in the area where the defendant had parked his vehicle. Thus, the People failed to establish that the impoundment of the defendant's vehicle was in the interests of public safety or part of the police's community caretaking function (*People v King*, 188 AD3d 721 [2nd Dept 2020]).

King, as well as many other cases, stand for the proposition that where a vehicle is pulled over, pulls into a lawful parking spot, and the driver is arrested, there is no need to impound the vehicle unless the prosecution demonstrates evidence of burglary or vandalism in the area sufficient to require that the vehicle be impounded for safekeeping. Here, the prosecutor made mild attempts to establish that the area was high crime. [redacted] given two opportunities, indicated that the reason for the impound was not because of any history of break-ins, car thefts, or vandalism (14, 56). [redacted] merely stated in conclusory fashion that "the area is, you know, known for that" (meaning car thefts). No basis for [redacted] opinion was laid, nor even any personal knowledge of any history of such occurrences. Rather, [redacted] merely said that the prevailing opinion is that car thefts occur there.

Moreover, even if the prosecution had offered sufficient evidence of danger to the vehicle in that area, as an equal protection argument (both state and federal), it bears noting that individuals who reside in high crime areas--disproportionately minorities—would receive lesser constitutional protection than those who reside in safer areas. It is well-known, and sometimes the elephant in the room, that inventory searches looking for evidence are very common in Buffalo. They are not so common in the more affluent suburbs. To use the neighborhood as a reason to allow unfettered rummaging would be unconstitutional.

In the unlikely event that *King* leaves any doubt that any decision to impound here was unlawful, please consider *People v Rivera*, 192 AD3d 920 [2nd Dept 2021]. There, the Second Department invalidated an impound and inventory where the defendant's vehicle was stopped and he was ultimately arrested, but where there was no testimony or evidence that the vehicle was not parked lawfully or that there was a history of vandalism or theft to warrant same under the community caretaking function (*see also People v Weeks*, 182 AD3d 539 [2nd Dept 2020] [Evidence suppressed and inventory validated where motorist pulled into lawful parking spot at police precinct upon being stopped, as there was no testimony that the parking spot was unlawful; claim of community caretaking was rejected because there was no testimony of any history of theft or vandalism in the area]). It bears noting that the prosecution bears the burden to prove the lawfulness of an inventory search at a suppression hearing (*People v Mortel*, 197 AD3d 196 [4th Dept 2021]). Here, the officer's half-statement that "the area is, you know, known for that" is woefully insufficient, especially where he was merely "assisting" Officer [redacted] who voiced no such concerns (14, 56).

Moreover, it must be questioned whether that voiced concern was even genuine. A review of the bodycam footage in evidence shows no discussion whatsoever about safety of the vehicle,

but quite a bit of discussion about guns, even before one was found. Officers failed to document a huge dent on the vehicle, which undermines any claim that they were acting out of concern for damage. Moreover, they broke the glove compartment and dashboard, as can be seen on Officer [redacted] bodycam footage, which is in evidence as People's 8.

Absent actual evidence and sufficient testimony of so-called "community caretaking," nothing in the Buffalo Police Department policy allows the police to tow a lawfully parked vehicle that is not impeding traffic, even where the driver is arrested for aggravated unlicensed operation or for some other offense. Section 6.3 of the Manual of Procedures, which is in evidence, denotes when a vehicle may be towed. It states:

> A. Damaged, broken down, or illegally parked vehicles may be towed when: 1. the vehicle is obstructing traffic or creating a hazardous traffic condition 2. the vehicle is blocking a driveway; 3. the vehicle is illegally parked in a persons with disability zone; 4. the vehicle has been abandoned or the vehicle has no license plates affixed; 5. the vehicle is obstructing street repairs, snowplowing, or other necessary work in the roadway; it is parked on a snow emergency route during a snow emergency, or towing is necessary to facilitate a special event (e.g. parade, street festival, etc.).

Inasmuch as there was no evidence that this vehicle was damaged, broken down, or illegally parked, this section does not apply and cannot serve to validate the decision to impound the vehicle.

Rule 6.1 states that a vehicle should be towed "whenever it comes under the control of the Buffalo Police Department and it **is necessary to safeguard the vehicle and its contents from damage or theft**; or when the vehicle is evidence or an instrumentality of a crime, **or when a vehicle presents a hazard or inconvenience to the public.** This is in accordance with the above-

cited case law. Here, as noted above, there was no attempt on the part of the prosecution to establish either of these purported justifications (*see King, Rivera,* and *Weeks*).

Finally, for completeness sake, Rule 6.3(D) states that a vehicle will be towed to the Auto Pound when:

1. It is not driveable and the owner is unable to make arrangements for immediate private towing
2. The vehicle is unable to be secured and there is a threat that the vehicle may be stolen or further damaged
3. Vehicles shall be towed if they are an integral piece of evidence that needs to be preserved for a successful prosecution of the charges. **Vehicles shall not be routinely towed incident to arrest**
4. Vehicles seized pursuant to VTL 511-b shall be towed
5. Vehicles used in a criminal transaction rendering them eligible for forfeiture shall be towed
6. Vehicles which are parked illegally and are scofflaws shall be towed (Emphasis in original)

None of these conditions are present either. It should be noted that VTL 511-b only authorizes seizure of a vehicle were the operator is arrested for violating aggravated unlicensed operation of a motor vehicle in the first or second degrees, not in the third degree. There was no testimony that this was the case, and the facts testified to would not have permitted an arrest for anything but third degree unlicensed operation (*see People v Miles*, 3 Misc3d 566, fn. 1 [Rochester City Ct 2003] ["Under NY Vehicle and Traffic Law 511-b, the police are required to impound a car where the driver is arrested for aggravated unlicensed operation of a motor vehicle in the second degree pursuant to N.Y. Vehicle and Traffic Law § 511(2). It is undisputed that the driver in this case was arrested for aggravated unlicensed operation of a motor vehicle in the third degree, for which there is no concomitant statutory impoundment obligation. Accordingly, the Court has no occasion to determine whether a car's impoundment pursuant to NY Vehicle and Traffic Law

511-b is constitutional in the absence of probable cause or other indicia demonstrating a constitutionally reasonable basis to do so"]).

Finally, the prosecution may argue that the decision to impound was necessary because the **owner** of the vehicle was not present. There is absolutely nothing in the Buffalo Policy, in evidence as People's 5, that allows for impoundment merely because the registered owner is not present (*cf People v Walker*, 20 NY3d 122 [2012] [Decision to impound was lawful where Trooper testified that the ***uniform policy*** of the New York State Police was to impound whenever the driver's license was suspended and the registered owner was not present]). Again, here, Buffalo has no corollary to that apparent State Police policy, and the State Police policy cannot be relied upon to validate a search conducted by an officer who was bound to follow the Buffalo Police policy.

In any event, such a policy may be unlawful where there are other reasons brought to police attention indicating that impoundment may be unnecessary (*id.* [We hold this to be a reasonable procedure, at least as applied to this case, where no facts were brought to the trooper's attention to show that impounding would be unnecessary]). Here, the fact alone that the vehicle was lawfully parked obviated the need. But as stated, the New York State Police policy is irrelevant here in any event.

Because there was no evidence adduced at the hearing that the vehicle was unlawfully parked, or that there had been recent thefts or vandalisms in the area, any decision to impound was unlawful. Accordingly, the pistol must be suppressed.

C. THE EVIDENCE VERY FORCEFULLY INDICATES THAT THE "INVENTORY SEARCH" WAS BUT A PRETEXT TO SEARCH FOR A GUN

Even if this case survives the undoubtedly questionable decision to impound, the rest of the evidence must be viewed against the backdrop of that decision. In other words, the officers' decision to impound a lawfully-parked car, even if technically constitutional (we do not believe it is), is evidence that the search was designed to uncover contraband rather than document damage and valuables.

During the hearing, the Court expressed the opinion that perhaps the subjective intent of the officers was unimportant (26-27). In most areas of suppression law, that is exactly the case, even with regard to the traffic stop here (*see People v Robinson*, 97 NY2d 341 [2001]). However, the Court of Appeals has expressly stated that "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence" (*People v Johnson*, 1 NY3d 256 [2003]). Even more expressly, the Court, in reversing an Appellate Division decision, distinguished the pretextual stop situation from *Robinson*, stating:

> **Relying on *Robinson*, the Appellate Division found that the officer's motives for conducting the inventory search did not matter as long as the stop and the arrest were lawful. In other words, the Appellate Division improperly applied the law governing pretext stops to inventory searches (*id.*).**

All New York Courts have followed suit, as they must. The law is that, in order for an inventory search to be lawful, the officer's **actual motivation** must be to document the items in the vehicle, rather than to uncover incriminating evidence (*see People v Padilla*, 21 NY3d 268 [2013] [Inventory search must be motivated by an actual desire to document the items in the vehicle, cannot be a ruse to uncover incriminating evidence]).

Here, there are so many indications that the impound and search were motivated by a desire to search the vehicle that they must be done in list form:

- The decision to impound, even if constitutionally permissible, was questionable at best where the vehicle was lawfully parked.

- Officer [redacted] wanted to search [redacted] based upon other information he received from officers stemming from Detective [redacted]

- [redacted] thought that a search would turn up a firearm, and wanted to search for that reason

- Both officers admitted that they use inventory searches to rummage even where an impound never actually takes place (this supports the uniformity argument, above, but also supports a finding that the decision to impound and inventory was pretextual)

- Although [redacted] was being arrested, they also put [redacted] into cuffs and a police vehicle prior to the search in anticipation of finding a gun

- Officer [redacted] admission to gesturing to his bodycam and darting eyes when he professed to other officers that it was a "random pull" of [redacted]

- No pens, pads, paper, or any ability to record items while searching

- The search being done on the side of the road, while not dispositive, may be a sign of pretext (*Colorado v Bertine*, 479 US 367 [1987] [Whether the inventory occurs at the location of the stop is a factor in determining the motivation for the search, but is not dispositive]).

- [redacted] previous substantial suspension for conduct relative to traffic stops

- [redacted] having no idea if Porter actually had a license or not (if no desire to search, wouldn't he have asked?)

- [redacted] claim that they were looking for "valuables" when they were searching the vehicle, when the video (People's 7, 1:00-3:00) shows otherwise

- Officers [redacted] and [redacted] synchronized failure to activate body cam when they claim the stop began

- “This might be a good spot.” “Yup.”
- “There it is!”
- “That’s the one he was looking for.” “The little one? Yup.”
- Calling the P-31 tow sheet “Bullshit”
- Nothing documented in initial search, P-31 done over 10 minutes later
- Tow truck not even called until 5 minutes after the guns were found
- Failure to examine the exterior of the vehicle for obvious damage despite professing to be protecting the vehicle from damage and the department from blame for said damage
- Violating policy by not completing P-31 tow sheet **while** doing search; why do it without the sheet when you’ll just have to do it again with the sheet?
- Violating policy by not examining the exterior of the vehicle
- Addition of “owner wasn’t present” as a justification for the tow even though the policy does not allow that as a reason
- Zero conversation about risk of damage or theft to cars, plenty of conversations about [redacted] and guns
- Zero talk of an actual cataloguing of items until long after the gun is found

A simple viewing of the footage, which is in evidence, indicates that the officers sought to search the vehicle to find contraband, and used the inventory search policy in an attempt to do so. One cannot watch the video and make any credible argument to the contrary. As such, the evidence must be suppressed.

D. THE OFFICERS FAILED TO FOLLOW THE BUFFALO POLICE POLICY ON INVENTORY SEARCHES, REQUIRING SUPPRESSION OF THE FIREARMS.

As stated above in Point A, to be a valid inventory search, the search must be conducted in accordance with a policy, as applied to any given officer or case, that effectively limits officer discretion (*People v Johnson*, 1 NY3d 252 [2003]; *People v Galak*, 80 NY2d 715 [1993]).

Here, the search was out of compliance with the Buffalo Police policy in several respects. First, as argued above in Point A, the initial decision to impound was outside of the policy. Second, the officers did not document the items contemporaneous with the search, as is required by the policy. Third, the inventory failed to note very conspicuous damage to the exterior of the vehicle, which is outside of the policy. And fourth, the policy does not permit or contemplate removal of or damage to the actual vehicle in order to accomplish the search; rather, it allows for only a search to document *the contents* of the vehicle.

These searches are purportedly authorized by the section of the policy, which is in evidence, entitled "PERSONAL PROPERTY IN A TOWED VEHICLE." That section reads as follows:

Whenever a vehicle is towed, the officer requesting the tow shall:

A. **inspect the vehicle for obvious damage;**

B. if the vehicle is unlocked, conduct a thorough and complete inventory of all the contents of the vehicle, including an inspection of the glove compartment and trunk, if they are unlocked, and the opening or inspection of any unlocked or unsealed containers;

C. **complete the Vehicle Inventory form while conducting the inventory**, noting the disposition of each item of inventory (ie left in car, delivered to property office, returned to owner);

D. secure the property in the vehicle unless:

1. Any single item of property has a value in excess of $50.00, in which case it shall be seized for safekeeping, or the property in the vehicle has an approximate aggregate value in excess of $200, or

2. There exists a reasonable threat that if left in the vehicle, the property will be lost or stolen, or

3. The property constitutes contraband or evidence, or

4. if the property is not secured in the vehicle, and it is not contraband or evidence, hold it for safekeeping and process the property as outlined in MOP Section 18.

Here, it is clear that the officers did not complete Step A, as there was obvious undocumented damage. There was no testimony that any exterior inspection was not completed, and the officer who completed the P-31 could not recall if he had done one. It is also clear that the officers did not "complete the inventory form while conducting the inventory," as is required under Step B. Rather, they completed the inventory form a full 10 minutes after the search, and did not even call for a tow until after the search (which corresponds with both of their testimonies that they will routinely conduct "inventory searches" prior to even deciding to tow. Third, they did not seize phones and a macbook for safekeeping, even though those items were clearly worth more than $50.

The adherence to a valid inventory policy is necessary to ensure that the searches are conducted uniformly in a manner that limits the discretion of officers in the field. Here, the officers did not adhere to the policy, and under the above cited case law, the firearms must be suppressed AS TO [redacted], who has standing.

E. FINAL ARGUMENT

Finally, it must be noted that Officer [redacted], who searched the passenger's side and found the firearm, was never even informed that the vehicle was being impounded or that [redacted] lacked a valid license. [redacted] body cam footage is in evidence, and it shows him arrive at the scene and immediately begin searching as other officers removed [redacted] from the passenger's side. Nobody informed him of the purpose of the search or what he was doing in the vehicle. His search was not an inventory search. It could not have been for the purpose of documenting items when he was never Rather, he was searching for contraband, as evidenced by his comments while conducting the search. [redacted] (the recovering officer) was not conducting an inventory search designed to document the contents.

As such, the evidence must be suppressed.

CONCLUSION

For the foregoing reasons, the evidence must be suppressed and the indictment dismissed.

Dated: [redacted]

By: [redacted]