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A Survey of Recent Developments in the Law: Criminal Law

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A. No Duty to Retreat in Defense of Dwelling

Until recently, defense of dwelling and self-defense were not clearly distinguished in Minnesota case law. However, the Minnesota Supreme Court recently decided two cases in an attempt to clarify the differences. In *State v. Pendleton*, the court held that the two defenses diverged regarding when it is justifiable to use deadly force. To justify killing in self-defense, a person must fear great bodily harm or death; yet deadly force is justified in preventing the commission of a felony in the actor's home. Hence, the basic distinction between the two actions is that a valid defense of dwelling claim does not require that the defendant fear great bodily harm or death to justify use of deadly force in preventing the commission of a felony in his or her home. Eight months later, the court further clarified the defense of dwelling defense in *State v. Hare*. In *Hare*, the court held that the defense of one's dwelling cannot be invoked when a person uses deadly force against a co-resident of the same dwelling.

More recently, the court took the opportunity to even further

1. See *State v. Carothers*, 594 N.W.2d 897, 900 (Minn. 1999).
2. 567 N.W.2d 265 (Minn. 1997).
3. See *State v. Pendleton*, 567 N.W.2d 265, 268 (Minn. 1997) (analyzing self-defense and the defense of dwelling as defined in Minnesota Statute section 609.065). See *MINN. STAT. § 609.065 (1998)* (“The intentional taking of the life of another is not authorized by section 609.06, except when necessary in resisting or preventing an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death, or preventing the commission of a felony in the actor’s place of abode.”).
4. See *Pendleton*, 567 N.W.2d at 269; see also *MINN. STAT. § 609.065 (1998)*.
5. See *Pendleton*, 567 N.W.2d at 271.
6. 575 N.W.2d 828 (Minn. 1998).
7. See id. at 832. The court noted that a defense of dwelling claim is rooted in the concept that "a man's home is his castle." *Id.* The court further stated that when read in conjunction with Minnesota Statute section 609.065, it is “clear that the defense of dwelling defense requires an unauthorized intrusion into the defendant’s dwelling. Necessarily, when the defendant and the victim reside in the same dwelling, the defendant cannot raise the defense of dwelling defense.” *Id.*
clarify the defense of dwelling defense. In *State v. Carothers*, the court held that the duty to retreat does not apply to defense of dwelling claims. In *Carothers*, the defendant had recently moved into a trailer home owned by his girlfriend's mother. He lived there with his girlfriend, her mother, and his girlfriend's 13-year-old brother. Shortly after defendant moved in, he and his girlfriend hosted a card game. A man whom the defendant had met through a neighbor brought the man's cousin to the game. The man the defendant had met was a member of a local gang, and was physically large. He bragged of being the "gang enforcer," and had a reputation in the neighborhood as a violent and ruthless person who, when drunk, became very intimidating. During the game, some persons smoked marijuana and everyone drank alcohol. After a few hours the game ended, and the defendant and his girlfriend argued with the visitors over money the visitors alleged was owed to them. The visitors left, but eventually returned. At trial there was conflicting testimony as to whether the two men knocked before reentering the trailer home. By all accounts, one of the men angrily approached the defendant and the defendant shot the man six times, killing him.

The defendant was indicted for first-degree premeditated intentional murder, second-degree intentional murder, and second-degree felony murder. The defendant admitted to intentionally shooting the victim, but claimed that he acted in self-defense and in defense of his dwelling. The court instructed the jury on both defenses. Over defense counsel's objection, the court instructed the jury that for both defenses the defendant had

8. 594 N.W.2d 897 (Minn. 1999).
9. See id. at 897-98.
10. See id. at 898.
11. See id.
12. See id.
13. See id.
14. See id.
15. See id.
16. See id.
17. See id.
18. See id. at 898-99.
19. See id.
20. See id. at 899.
21. See id.
22. See id.
23. See id.
a duty to retreat if reasonably possible. During deliberations, the jury asked the court whether the self-defense duty to retreat applied when acting in self-defense in one's abode. Again over defense counsel's objection, the court answered that the duty to retreat did apply if reasonably possible. One hour later the jury returned a guilty verdict to second-degree felony murder. The trial court then sentenced the defendant to 165 months in jail.

The defendant appealed, arguing that the trial court erred when it instructed the jury that there is a duty to retreat before using deadly force to defend one's place of abode. The court of appeals affirmed the conviction. The Minnesota Supreme Court reversed the conviction and remanded the case for a new trial. The court noted that while self-defense retreat requirements were debated at common law, one does not have a duty to retreat while in or defending one's dwelling. While Minnesota statutes have never addressed whether a duty to retreat applies to defense of dwelling or self-defense claims, Minnesota courts have been fiercely protective of the home. The Carothers court noted that a duty to retreat would be logically inconsistent with the holdings in Pendleton and Hare. These cases give a person the right to use

24. See id.
25. See id.
26. See id.
27. See id.
28. See id.
29. See id.
30. See id. at 899. The court of appeals held that the "duty to retreat applies to defense of dwelling claims when the facts indicate only a defense of self within the dwelling and the victim has already been admitted to the home." See id. (citing State v. Carothers, 585 N.W.2d 64, 67 (Minn. Ct. App. 1998)).
31. See id. at 904.
32. See id. at 900. ("The special status of the home has persisted over time, obviating the retreat requirements for people engaging in self-defense within their homes. 'It is not now and never has been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home.'") (quoting Gainer v. State, 391 A.2d 856, 862 (1978)). The Hare court noted that at common law "defense of the home was considered equivalent to defense of life itself." Hare, 575 N.W.2d at 832.
33. See Carothers, 594 N.W.2d at 900 (citations omitted).
34. See id. at 901.

These holdings are logically incompatible with a duty to retreat, which would effectively preclude a person from preventing a felony in the home. Mandating a duty to retreat for defense of dwelling claims will force people to leave their homes by the back door while their family
deadly force to prevent the commission of a felony in the person's home. To impose a duty to retreat upon such a person would be to deny that person his right to prevent the occurrence of a felony within his home.

In holding that there is no duty to retreat in defense of dwelling claims, the court also indicated a willingness to hold that no duty to retreat attaches to cases of self-defense within the home. While the court did not rule on the issue as it was not properly before the court, it did note the anomaly of requiring a duty to retreat for self-defense within the home but not requiring a duty to retreat in defense of one's dwelling. By requiring a person claiming self-defense to retreat, but not requiring a person defending his dwelling to retreat, the law seems to be providing more protection to the person who is defending his property than to the person who is defending his life. The law, however, unequivocally values life over property. Therefore, the court appears ready and willing to rule that the duty to retreat does not attach to self-defense within one's home. The court emphasized that the existence of a duty to retreat should not depend on the label attached to the defense, since the line between defense of dwelling and self-defense within the home is often blurry.

Finally, as the Carothers court noted, defense of dwelling and self-defense within the dwelling do not confer a right to kill, and are to be used defensively, rather than offensively. A person who invokes defense of dwelling must still prove that his actions were

members are exposed to danger and their houses are burgled. Further, forcing a resident to retreat from the home is at odds with the historical notion of the home as a place critical for the protection of the family. A duty to retreat is incompatible with the right to prevent the commission of a felony within one's home.

Id.
35. See id.
36. See id.
37. See id. at 903.
38. See id.
39. See id. (stating that since the law clearly favors life over property, a person claiming self-defense within the home should not have a duty to retreat prior to using deadly force).
40. See id.
41. See id. ("When events occur in a defendant's home, the factual requisite for self-defense using deadly force—fear of great bodily harm—can often also be expressed as the factual requisite for defense of dwelling, prevention of a felony assault or burglary.").
42. See id. at 903.
reasonable under the circumstances. In some situations, it may be more reasonable for a person to advance toward or move away from a danger within that person’s home. The determination of the reasonableness of the person’s conduct is left to the jury.

B. Registration of Predatory Offenders

On April 22, 1999, the Minnesota Supreme Court handed down its decision in Boutin v. LaFleur. The defendant, Timothy Boutin, was charged with two counts of third-degree criminal sexual conduct, one count of third-degree assault, and one count of fifth-degree misdemeanor assault. These charges resulted from an incident with Boutin’s girlfriend in November of 1994. At approximately 2:30 a.m. on November 13, 1994, Boutin was waiting up for his girlfriend to arrive home after she spent an evening out. When his girlfriend arrived, Boutin accused her of engaging in sexual relations with another man. He subsequently pushed her into a wall, which severely lacerated the back of her head, necessitating several stitches. Shortly thereafter, Boutin forced her to have sexual intercourse with him. His girlfriend alleged that he forced her to have sexual intercourse again around 9:00 a.m. Boutin later admitted that the two engaged in sexual intercourse and that “she said she didn’t want to and I still did it I guess.”

Before trial, Boutin’s girlfriend recanted her allegations regarding the nonconsensual sexual intercourse. Boutin then

43. See id. at 904. In a defense of dwelling claim, the jury must determine: (1) whether the killing was done to prevent the commission of a felony within the dwelling; (2) whether the defendant's judgment regarding the gravity of the situation was reasonable under the circumstances; and (3) whether the defendant's decision to defend his dwelling was a decision that a reasonable person would have made in light of the danger to be apprehended. See id. (citing State v. Pendleton, 567 N.W.2d 265, 270 (Minn. 1999)).
44. See id.
45. See id.
46. 591 N.W.2d 711 (Minn. 1999).
47. See id. at 713.
48. See id.
49. See id.
50. See id.
51. See id.
52. See id.
53. See id.
54. Id.
55. See id.
agreed to plead guilty to the third-degree assault charge. He also agreed to an upward departure in his sentence from 25 months to 40 months. Prior to Boutin's release from prison, his case manager told him he was required to register as a predatory offender under Minnesota Statute section 243.166. Boutin registered, and then brought an action against the Commissioner of Corrections seeking to enjoin the Commissioner from requiring him to register in the future because the requirement violated his constitutional rights. The trial court granted the Commissioner's motion for summary judgment, and the court of appeals affirmed.

On appeal to the Minnesota Supreme Court, Boutin argued (1) that it was "absurd and unreasonable" to require him to register as a predatory offender because he was not convicted of a sex crime; (2) that the Commissioner violated his right to substantive due process by infringing on his presumption of innocence; and (3) that the Commissioner violated his right to procedural due process because he did not have an opportunity to defend against the charges. The majority affirmed the lower courts, and held that Boutin was required to register under the predatory offender statute.

The majority interpreted the statute by its plain meaning, and held that even though Boutin was never convicted of one of the enumerated predatory offenses listed in the statute, he was convicted of another offense which arose out of the same set of circumstances as the predatory offenses with which he was charged. Therefore, the statute required Boutin's registration.

56. See id.
57. See id. at 713-14.
58. See id. at 714. Minnesota Statute section 243.166, entitled "Registration of Predatory Offenders," provides in relevant part:

A person shall register under this section if:
(1) the person was charged with or petitioned for a felony violation of or attempt to violate any of the following, and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances; (iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345; or 609.3451, subdivision 3.

MINN. STAT. § 243.166, subd. 1(a) (1998).
59. See Boutin, 591 N.W.2d at 714.
60. See id.
61. See id.
62. See id. at 715.
63. See id. at 715-16. The court discussed the history of the predatory
Regarding Boutin's claim that registration violated his constitutional right to substantive due process, the court found that the statute is a civil, regulatory statute and that consequently the presumption of innocence does not apply.\(^\text{65}\) Finally, the court rejected Boutin's claim that the registration requirement violated his constitutional right to procedural due process because he did not suffer a loss of any recognizable interest.\(^\text{66}\) The court acknowledged that being labeled a predatory offender injures one's reputation.\(^\text{67}\) Yet the court refused to recognize a protected liberty interest in reputation alone.\(^\text{68}\)

Three justices dissented.\(^\text{69}\) The dissent was bothered that the majority opinion required Boutin to register as a predatory offender when the district court failed to make a specific finding that the third-degree assault conviction arose from the same set of circumstances as the dismissed felony criminal sexual conduct charges.\(^\text{70}\) The dissent did agree, however, that if the district court

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\(^\text{64}\). See id. at 716.

\(^\text{65}\) See id. at 717. The court found that the primary purpose of the statute is to "create an offender registry to assist law enforcement with investigations." Id. The court further noted:

While conceding that the state has a legitimate interest in registering predatory offenders, Boutin claims that the state does not have an interest in registering nonpredatory offenders because the registration of nonpredatory offenders will dilute the list of predatory offenders and minimize its law enforcement effectiveness. This argument is not persuasive. Keeping a list of such offenders is rationally related to the legitimate state interest of solving crimes. Therefore, we hold that section 243.166 does not violate Boutin's constitutional right to substantive due process.

\(^\text{66}\). See id. at 718-19.

\(^\text{67}\). See id. at 718.

\(^\text{68}\). See id. at 719.

\(^\text{69}\). See id. at 721 (Anderson, J., dissenting). Justice Paul H. Anderson wrote the dissenting opinion, in which Justices Page and Lancaster joined. See id.

\(^\text{70}\). See id. at 719. In his dissent, Justice Anderson stated:

My review of the record convinces me that the district court did not make a specific finding either that the criminal sexual conduct with which
had made such a finding Boutin would have been required to register as a predatory offender.

C. Search and Seizure

1. Unprovoked Flight Can Justify Police Search

In Illinois v. Wardlow, the United States Supreme Court held that unprovoked flight from police can justify investigatory stops by police. In a 5-4 decision, the court made it clear that police have broad leeway in patrolling the streets.

On September 9, 1995, the defendant, Wardlow, was standing in front of a house in a Chicago neighborhood when a four-car police caravan passed by the building. The neighborhood was known for heavy narcotics trafficking, and the police were there to investigate drug activity. As the police caravan passed by the building, Wardlow saw the caravan and fled. Two of the officers tracked him down and immediately conducted a protective pat-down search for weapons. During the search, one officer

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Boutin was charged occurred or that the events leading to this charged offense arose out of the same set of circumstances as the crime of conviction, third-degree assault. It seems fundamental to me that if the serious consequences of section 243.166 are to be imposed upon Boutin or anyone else, we must, at a minimum, require that the district court make such a specific finding.

Id. at 720.
71. See id. at 721. The dissent stated:

Had the district court made a finding that the criminal sexual conduct charges arose out of the same set of circumstances as the assault, I have no doubt that we would not have before us today the issue of whether Boutin is required to register as a sex offender. With this procedural safeguard in place, Boutin would undoubtedly have been more fully aware of the consequences of his guilty plea and we would not be tempted to make factual findings at this stage of the proceedings. But, as tempting as it may be to make our own finding based upon police reports and unverified statements, to do so is improper.

Id.
72. 120 S. Ct. 673 (2000).
73. See id. at 676.
74. See id. at 674-75.
75. See id. at 674.
76. See id. at 675.
77. See id.
squeezed Wardlow's bag and felt a gun inside.\textsuperscript{78} The officer opened the bag and found a .38 caliber handgun and five rounds of live ammunition.\textsuperscript{79} The officers then arrested Wardlow.\textsuperscript{80}

The case reached the Illinois Supreme Court, which determined that sudden flight in an area known for heavy drug trafficking did not create a reasonable suspicion to justify the pat-down search.\textsuperscript{81} The United States Supreme Court granted certiorari to determine whether the initial stop was supported by reasonable suspicion.\textsuperscript{82} Relying on \textit{Terry} \textit{v. Ohio}, the majority stated that unprovoked flight is the "consummate act of evasion."\textsuperscript{83} The court noted that while flight is "not necessarily indicative of wrongdoing, it is certainly suggestive of such."\textsuperscript{84} Stating that police must use common sense judgments and inferences about human behavior in determining whether they have reasonable suspicion for conducting a stop, the \textit{Wardlow} court held that the officers were justified in suspecting that Wardlow was involved in criminal activity, and that they were therefore justified in conducting an investigatory stop.\textsuperscript{85}

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\textsuperscript{78} See id.
\textsuperscript{79} See id.
\textsuperscript{80} See id.
\textsuperscript{81} See id. The United States Supreme Court noted that the state courts have differed on whether unprovoked flight is sufficient grounds to constitute reasonable suspicion. See id. (citing People v. Wilson, 784 P.2d 325 (Colo. 1989) (holding stop of individual who turned and fled when approached by individual who resided in immediate area was invalidated); Harris v. State, 423 S.E.2d 723 (Ga. 1992) (holding that merely running away from police may not alone justify search and seizure); Platt v. State, 589 N.E.2d 222 (Ind. 1992) (holding that defendant's driving away quickly after seeing police car justified temporary investigative stop); People v. Shabaz, 378 N.W.2d 451 (Mich. 1985) (holding that even the heightened suspicion of flight by suspect under police surveillance does not supply the necessary basis to justify even a temporary seizure); State v. Hicks, 488 N.W.2d 359 (Neb. 1992) (holding that defendant's efforts to avoid police did not provide basis for stop of defendant); State v. Tucker, 642 A.2d 401 (N.J. 1994) (holding that running from police did not justify defendant's seizure); State v. Anderson, 454 N.W.2d 763 (Wis. 1990) (holding that the heightened suspicion of flight by suspect under police surveillance does not supply the necessary basis to justify even a temporary seizure)).
\textsuperscript{82} See \textit{Wardlow}, 120 S. Ct. at 676 n.2.
\textsuperscript{83} 392 U.S. 1 (1968). In \textit{Terry}, the United States Supreme Court held that "an officer may, consistent with the Fourth Amendment, conduct a brief investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." \textit{Wardlow}, 120 S. Ct. at 676.
\textsuperscript{84} \textit{Wardlow}, 120 S. Ct. at 676.
\textsuperscript{85} \textit{Id.}
\textsuperscript{86} See id.
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2. Determination of When Seizure Occurs

On March 11, 1999, the Minnesota Supreme Court handed down its ruling in *State v. Harris*, which helped refine the precise point at which a seizure occurs. In *Harris*, two St. Paul narcotics officers arrested the defendant, Oluseyi Harris, during a drug interdiction operation at the St. Paul Greyhound Bus Depot. Harris was a passenger on an interstate bus that made a scheduled stopover in St. Paul. When the bus made the stopover, Harris got off the bus and entered the bus depot, acting in a manner that the undercover narcotics officers considered suspicious. After Harris reboarded the bus, the two narcotics officers also boarded. One of the officers walked to the back of the bus and, while standing in the middle of the aisle, showed his badge to everyone on board. The officer told all passengers that many narcotics were entering St. Paul from cities outside Minnesota via bus. The officer then informed the passengers that the officers would like to speak with them individually to determine whether they were transporting any weapons, narcotics, or large amounts of currency. The officer told the passengers “this is consensual.” Both officers were dressed in plainclothes and, although both were armed, neither officer displayed his weapon to any of the passengers.

The officers first approached Harris, who was seated in the back row of the bus. One of the officers advised Harris that “this was all consensual,” and asked Harris if he was transporting any weapons, narcotics, or large amounts of currency. Harris told the

87. 590 N.W.2d 90 (Minn. 1999).
88. See id. at 104.
89. See id. at 94.
90. See id. at 95.
91. See id. One of the arresting officers described Harris' and his companion's behavior saying, "They got off the bus. They kind of looked around to see who's inside the depot. They didn't use a phone. They didn't get a can of pop. They wanted to see who was around and they boarded the bus... [I]t appeared to me that they wanted to see who was inside." Id. The officer further testified that no other passengers appeared as concerned with the presence of the undercover officers and the narcotics dog as Harris did. See id.
92. See id.
93. See id.
94. See id.
95. See id.
96. Id. at 96.
97. See id.
98. See id.
99. See id.
officer he was not. The officer then asked Harris' permission to search his person. Harris consented, and the officer conducted a thorough pat-down search. The officer did not find any weapons, narcotics or large amounts of currency. The officer then asked whether Harris had any luggage on board. Harris stated that he had a carry-on-bag in an overhead compartment, and he consented to the officer's request to search the bag. While searching the bag, the officer found two baggies, each containing 40–75 plastic bindles, "which are commonly used to package marijuana for sale." Upon discovering the bindles, the officer confronted Harris, telling Harris that the officer knew bindles were used to package narcotics, and demanding that Harris tell him where the narcotics were. The officer testified that "[a]t this point, Harris was extremely nervous, breathing hard, and trying to hide his left arm."

Fearing that Harris might be concealing a gun under his seat, the officer told Harris that "for officer's safety reasons" he wanted to see Harris' left arm, which Harris had been trying to hide. When Harris put his left arm on his lap, the officer noticed a large bulge in the left sleeve of Harris' jacket. When the officer asked Harris what was in his sleeve, Harris told the officer that he did not know. The officer asked Harris if he could check what was in Harris' sleeve. Harris agreed to the search of his sleeve. The officer then discovered a large bag of marijuana. The officer immediately placed Harris under arrest. A brief altercation ensued in which Harris struck one of the officers in the chest, and the other officer struck Harris in the eye. Harris was then taken

100. See id.
101. See id.
102. See id.
103. See id.
104. See id.
105. See id.
106. Id.
107. See id.
108. Id.
109. See id.
110. See id.
111. See id.
112. See id.
113. See id.
114. See id.
115. See id.
116. See id.
into custody and charged with fifth-degree possession of a controlled substance with intent to distribute, in violation of Minnesota Statute section 152.025, subdivisions 1(1) and 3 (1996).117

The district court found Harris guilty as charged.118 The court concluded that Harris was not illegally seized because the officers had reasonable articulable suspicion that Harris might be transporting controlled substances and because Harris consented to all of the searches.119 The court further concluded that Harris was not seized until after the officers found the marijuana in his sleeve.120 The court of appeals affirmed both the district court's denial of Harris' motion to suppress and his conviction.121 Unlike the district court, the court of appeals held that Harris was seized when the officers confronted him at his seat at the back of the bus, rather than when the officers found the marijuana.122

On appeal to the Minnesota Supreme Court, Harris argued that, under the Minnesota Constitution, he was per se seized when the officers boarded the bus.123 Alternatively, he argued that he was seized when the officers confronted him at his bus seat.124 As the basis for both claims, Harris argued that at neither time did the officers have reasonable articulable suspicion that Harris was transporting weapons, narcotics, or large amounts of currency.125 He also argued that he did not voluntarily consent to any of the officers' requests to search his person or his belongings.126

The majority noted that if Harris was seized at any point before the officers had reasonable articulate suspicion to seize him, the evidence gathered thereafter would be suppressed because he would have been seized illegally.127 However, the court ruled that the officers did not seize Harris when they boarded the bus and announced their intent to search for drugs.128 Nor did the court find that Harris was seized when the officers approached and

117. See id.
118. See id.
119. See id. at 96-97.
120. See id. at 97.
121. See id.
122. See id.
123. See id.
124. See id. at 101.
125. See id.
126. See id. at 102-03.
127. See id. at 104.
128. See id. at 100.
questioned him at his seat. 129 Instead, the court held that it was not until the officers found the bindles in Harris' bag that Harris was seized. 130 Furthermore, the court held that the officers lacked reasonable articulable suspicion when they boarded the bus. 131 The court held that the officers did not have a reasonable articulable suspicion until after they found the bindles in Harris' bag and then noticed the large bulge in Harris left jacket sleeve, to which Harris stated that he did not know what the bulge was. 132 At any point prior to this, Harris could have refused to comply with the officers' requests to search his person and belongings. 133 However, because Harris consented to the first search of his person, his constitutional right to be free from all unreasonable searches and seizures was not violated. 134

Harris argued that the evidence of the marijuana should be suppressed because he did not voluntarily consent to the second search of his person, during which the officer found the marijuana. 135 While the court agreed that Harris did not voluntarily consent to the second search of his person, the court nevertheless held that the second search and the resulting seizure of the marijuana was justified because, as a result of the first consensual search of his person, the officers had a reasonable suspicion that Harris was armed and dangerous. 136

129. See id. at 102.
130. See id. at 103-04 (stating that when the officer found the bindles in Harris' carry-on-bag, "Harris' situation fundamentally changed").
131. See id. at 101.
132. See id. at 104.
133. See id. at 101 ("Had Harris refused to comply with [the officer's] requests, [the officer] would have been required to terminate the encounter because, at that point, ...[the officer] did not have reasonable articulable suspicion that Harris was transporting a controlled substance.").
134. See id. at 103.
135. See id. at 104.
136. See id. at 105. The court stated that even though the officers illegally searched Harris, the evidence of the marijuana would not be suppressed because, under the "inevitable discovery" exception, the officers would have obtained the evidence if no misconduct had occurred. See id. The court noted, "had [the officer] performed a protective outer-clothing pat-down search of Harris' jacket, he would have felt, then seized, what he had probable cause to believe was marijuana, which would have been admissible against Harris." Id. The court further stated that "[b]ecause legal discovery of the marijuana was inevitable, the intervening illegality of performing a search of Harris' jacket sleeve ... pursuant to Harris' apparent, but involuntary, consent cannot operate to invalidate the search." Id.
3. Minnesota Supreme Court Refuses to Extend Expectation of Privacy Beyond that Provided by the United States Constitution

At approximately 8 p.m. on May 15, 1994, an informant approached an Eagan police officer named Jim Thielen and told Thielen that he had observed people in an apartment bagging a white powder.\(^{137}\) The informant also told Thielen that he/she thought the occupants of the apartment had a blue Cadillac currently located in the apartment complex’s parking lot.\(^{138}\) In response, Thielen went to the apartment complex and approached the window of the apartment unit where he expected the occupants.\(^{139}\) Thielen stood approximately 12-18 inches from the window and peered through a gap in the window blinds, which were pulled shut.\(^{140}\) For fifteen minutes Thielen observed two males and one female sitting at the kitchen table packaging, in an organized manner, a white powdery substance in plastic bags.\(^{141}\)

Thielen then called Officer Kevin Kallestad of the South Metro Drug Task Force, and reported what he witnessed.\(^{142}\) Kallestad instructed Thielen to stop and secure the Cadillac if anyone tried to drive it away.\(^{143}\) Meanwhile, police began to prepare affidavits to request warrants to search both the apartment and the Cadillac.\(^{144}\) At approximately 10:30 p.m., the two men got in the car and began to drive away.\(^{145}\) As instructed, Eagan police stopped the vehicle and ordered both men out of the car.\(^{146}\) As the police opened the door to let the passenger out of the car, they noticed a black zippered pouch and a handgun, which was later determined to be loaded.\(^{147}\) The police arrested the two men.\(^{148}\) After receiving the signed search warrant, the police searched the car and discovered that the black zippered pouch contained a white mixture in plastic baggies.\(^{149}\) They also found the passenger’s identification, pagers,

\(^{137}\) See State v. Carter, 596 N.W.2d 654, 658 (Minn. 1999).
\(^{138}\) See id.
\(^{139}\) See id. at 658-59.
\(^{140}\) See id. at 659.
\(^{141}\) See id.
\(^{142}\) See id.
\(^{143}\) See id.
\(^{144}\) See id.
\(^{145}\) See id.
\(^{146}\) See id.
\(^{147}\) See id.
\(^{148}\) See id.
\(^{149}\) See id.
and a scale. Subsequently, the white mixture was identified to be 47.1 grams of cocaine. The police later returned to the apartment and arrested its occupant, the woman previously seen packaging the white mixture with the two men. The police also executed a search warrant for the apartment and found cocaine residue on the kitchen table along with plastic baggies like those found in the Cadillac.

The case reached the Minnesota Supreme Court, which reversed the district court and the court of appeals, and held that the police violated the constitutional rights of the defendants. Specifically, the court held that the search of the apartment was illegal and that the defendants had standing to challenge the search. The United States Supreme Court granted certiorari and reversed the Minnesota Supreme Court. The court held that the defendants did not have a legitimate expectation of privacy to challenge the search of the apartment because the defendants were short-term business guests, rather than overnight guests who could claim protection by the Fourth Amendment. On remand by the United States Supreme Court, the Minnesota Supreme Court refused to interpret the Minnesota Constitution as providing broader protection than that offered by the United States Constitution. Consequently, the court held that, under the Minnesota Constitution, the defendants did not have a legitimate expectation of privacy to challenge the apartment search.

150. See id.
151. See id.
152. See id.
153. See id.
155. See Carter, 596 N.W.2d at 655-56 (noting that three members of the court dissented, arguing that the defendants did not have a legitimate expectation of privacy under the Fourth Amendment to challenge the search of the apartment).
157. See Carter, 596 N.W.2d at 656 (citing Minnesota v. Carter, 525 U.S. 83 (1998)).
158. See id. (concluding that the defendants' rights to challenge a search under Article I, Section 10 of the Minnesota Constitution are coextensive with their rights under the Fourth Amendment to the United States Constitution).
159. See id. In his dissent, Justice Page stated, "[s]urely their presence in an apartment with the blinds drawn and the windows and doors closed gave them an expectation of privacy that was reasonable." Id. at 660 (Page, J., dissenting).
Therefore, the court affirmed the defendants’ convictions.\footnote{Statute}

Steve Fenlon

Justice Page further proclaimed:

If I am incorrect and it is not the illegal nature of the conduct that drives today's decision, then every Minnesotan has lost their reasonable expectation of privacy because the limits placed on the reasonableness of one's expectation of privacy that the court announces today represents the maximum level of protection that Minnesota citizens can expect. Minnesota citizens visiting another person’s home for whatever purpose will be surprised to learn that under our law they no longer have an expectation of privacy in that home. Our citizens deserve more.

\textit{Id.} at 661.

160. \textit{See id.} at 658.