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Anna Maria Hodges

Clerk of Circuit Court

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STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 24-CF-4485

AISHA CARR,

Defendant.

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**DEFENSE'S FIRST MOTION TO SUPPRESS RECORDS**

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NOW COMES the above-named defendant, AISHA CARR, by her attorney Daniel M. Adams, who respectfully enters this Motion to Suppress Records. This motion addresses the Milwaukee District Attorney's Office's inducement of a search of Ms. Carr's public assistance records without a required subpoena. That search, of the databases of the Wisconsin Department of Health Services (herein "DHS"), was done in violation of the rights guaranteed to Ms. Carr under Wisconsin law, specifically Wisconsin State Statutes sections 49.81 and 968.135, *State v. Popenbagen*, 2008 WI 55, 749 N.W.2d 611, the Fourth Amendment of the U.S. Constitution, and Article I, Section II of the Wisconsin state constitution. The searched records form the evidentiary basis for the charges in the instant case.

It appears in their zeal to prosecute Ms. Carr the Milwaukee District Attorney's Office undertook a flagrant fishing expedition for confidential information without cause and without a legally required subpoena for records. Every Wisconsinite who is a recipient of public assistance, including Ms. Carr, has the statutory right to confidentiality of her records – the State appears to have completely ignored this right.

As relief, Ms. Carr seeks suppression of all DHS records obtained as fruits of the State's illegal fishing expedition, as well as all derivative evidence. *Taylor v. Alabama*, 457 U.S. 687 (1982); *Dunaway*

*v. New York*, 442 U.S. 200 (1979); *Brown v. Illinois*, 422 U.S. 590 (1975); *Davis v. Mississippi*, 394 U.S. 721 (1969); *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v. Knapp*, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899; *State v. Harris*, 199 Wis. 2d 227, 544 N.W.2d 545 (1996).

## FACTS

1. On March 8, 2024 Ms. Carr was asked to come to the Milwaukee County District Attorney's Office for questioning relating to her residency status. This investigation stemmed from a tip from the local teachers' union – political opponents of then-school board director and education reformer Ms. Carr. She was told she would not need an attorney.
2. During the March 8 questioning, Ms. Carr and the District Attorney's Office investigators discuss several documents brought by Ms. Carr, including: a tuition bill (Ms. Carr was attending UW-Madison), a tax document from Marquette University (Ms. Carr states she taught there during the summer), a letter from an injury attorney, documents from the IRS, a letter from Department of Public Instruction regarding her licensure, records from a political campaign Ms. Carr had worked on, mailed bank statements, a record from Take 5 oil change, and a record from Wisconsin's unemployment insurance agency (the Department of Workforce Development).
3. During the March 8 questioning, a District Attorney's Office investigator reviews and makes copies of several of the documents and appears to retain a copy of other documents.
4. **At no time during the March 8 questioning do the parties discuss FoodShare benefits or documents.**
5. The Defense has sought from the State any documents taken from Ms. Carr at this meeting. In discovery, an *electronic* version of a FoodShare application was produced, but no copies of any physical FoodShare documents have been provided. **In short, no FoodShare documents were provided by Ms. Carr to the State.**

6. The State's primary investigative document in the case, titled "Investigation Summary of Evidence and Violations," was created by then-DHS trafficking investigator Nicole Housley. The document indicates the following statement regarding the impetus of her investigation into Ms. Carr's FoodShare benefits:

I, Nicole Housley, Lead Trafficking Agent for the WI OIG, received a phone call from Nicolas Heitman Assistant District Attorney (ADA) from the Milwaukee County District Attorney's office. ADA Heitman was requesting information for an investigation he had opened into Ms. Carr. Based on our conversation, we had reason to believe Ms. Carr did not accurately report her income when applying for FS benefits.

7. Investigator Housley was questioned under oath at the November 6, 2024 Preliminary Hearing in the instant case regarding the impetus of her investigation and gave a different answer:

Q How did you become involved in that investigation regarding Ms. Carr?

A **I had some correspondence with the – your – the district attorney's office investigator**, and he had conducted an interview with Ms. Carr, and she had provided some documentation for – to him for the interview. And one of those pieces of – or one of those documents was a FoodShare application.

Q And what did you do when you received that information from the investigator from the DA's office?

A I actually want to strike that last -- I don't know for sure it was a FoodShare application, but it was FoodShare documents.  
(PH Trans. at 6) (Emphasis added).

8. In an attempt to clear up the obvious discrepancy between Investigator Housley's report and her sworn testimony, on December 11, 2024 the Defense made a specific discovery request for any correspondence and documentation between the District Attorney's Office and Investigator Housley relating to her preliminary hearing testimony. In response, the State provided brief emails between the District Attorney's Office and Investigator Housley. These emails indicate the assigned Assistant District Attorney and Investigator Housley had a short telephone call on March 8, 2023.

9. On December 18, 2024, seven days after the Defense's specific discovery request, a District Attorney investigator wrote a new report regarding the March 8, 2024 telephone call between the assigned Assistant District Attorney and Investigator Housley. This new report was written 286 days after the phone call. In this newly created report, a District Attorney's Office investigator states:

“(d)uring this (March 8) interview, Carr provided documentation of receiving ‘Food Share’ documents from DHS showing the proof of her address...(a)fter the interview was over, Inv. Meverden and I met with ADA Nick Heitman to advise him of the interview. During this meeting, **ADA Heitman called Nicole Housley at the Wisconsin Department of Human (sic) Services to verify the address from the ‘Food Share’ document that Carr provided us.** During that conversation it was discussed that Housley didn’t have documentation reporting the MPS income or that Carr was working for MPS. Housley was going to be investigating this information.” (Emphasis added).

10. Startlingly, this newly created record is directly contradicted by the former DHS investigator Housley. In a comment made by her on March 8, 2023 (presumably contemporaneously made with her call with the Assistant District Attorney and his investigator) in the BRITS database she states the following:

“Received a phone call/referral from Detective Thomas Meverden and ADA Nic Heitman from MKE county. **They believed Ms. Carr whom they were investigating was not truthfully reporting her income to receive FS as she has been employed by the Milwaukee County School Board since 2021.** I walked through the Federal requirements to release information and the following was sent by ADA Heitman: ‘This is a written request and we are willing to help investigate Aisha D. Carr 10/2/87 as we will believe there is reason to believe fraud is occurring regarding foodshare.’ Preliminary review of the case shows Ms. Carr has not been reporting her income at MKE county since 2021. Opening prelim investigation as DA Heitman and Detective Meverden are going to send me bank records once obtained. Also request surveillance on red flag transactions on Ms. Carrs account”<sup>1</sup> (Emphasis added).

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<sup>1</sup> The Defense discovered this illuminating contradiction after obtaining DHS records on April 6, 2025, in response to a Defense subpoena duces tecum. The DHS Office of Inspector General previously denied production of the records via an open records request and cited their “consultation with the Milwaukee County District Attorney’s Office...” in their denial. (February 25, 2025 email from DHS Inspector General Anthony Baize to the undersigned).

11. Clearly, Ms. Housely's contemporaneously created note indicates the District Attorneys' Office – without cause – instigated a search of Ms. Carr's personal and confidential public benefits records.

12. No search warrant or judicially authorized subpoena was obtained by the State for Ms. Carr's FoodShare documents before they were searched.

**I. Public assistance records are confidential by statute and constitutional right.**

No one – even a motivated State prosecutor and his attending investigators – has the right to arbitrarily rummage through an individual's personal documents. Nor do State prosecutors have the right to initiate the same rummaging by another State actor. Our Legislature has designated certain categories of documents as having express confidentiality protections including juvenile court records (Wis. Stat. 938.396), mental health and healthcare records (Wis. Stat. 146.82), educational records (Wis. Stat. 118.125), and as will be discussed herein, public assistance records.

Recipients of State of Wisconsin public assistance have an express statutory right to confidentiality. In a section aptly titled "Public assistance recipients' bill of rights" Wis. Stat. 49.81 states:

**The department of health services, the department of children and families, and all public assistance and relief-granting agencies shall respect the rights of recipients of public assistance. The rights shall include all rights guaranteed by the U.S. constitution and the constitution of this state<sup>2</sup>, and in addition shall include:**

(1) The right to be treated with respect by state agents.

(2) **The right to confidentiality of agency records and files of the recipient.** Nothing in this subsection shall prohibit the use of such records for auditing or accounting purposes or, to the extent permitted under federal law, for the purposes of locating persons, or the assets of persons, who have failed to file tax returns, who have underreported their taxable income or who are delinquent taxpayers, identifying fraudulent tax returns or providing information for tax-related prosecutions.

(Emphasis added).

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<sup>2</sup> Article I, Section 11 of the Wisconsin Constitution states in full "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

Based on even the narrowest reading of this express provision of statutory rights, Ms. Carr had a right to not have her FoodShare files plumbed for potentially incriminating data based solely on the whim of the District Attorney's Office.

Moreover, the statute incorporates by reference "...all rights guaranteed by the U.S. constitution and the constitution of this state." *Id.* The Supreme Court has "made clear... that when (a statute) speaks of 'any right or privilege secured ... by the Constitution or laws of the United States,' it means precisely that." *United States v. Guest*, 383 U.S. 745, 753, 86 S.Ct. 1170, 16 L.Ed.2d 239 (1966). The Fourth Amendment to the U.S. Constitution and Article I, Section 11 of the Wisconsin Constitution require probable cause to support every search or seizure in order to "safeguard the privacy and security of individuals against arbitrary invasions by government officials." *State v. DeSmidt*, 155 Wis.2d 119, 130, 454 N.W.2d 780 (1990). There was no probable cause, with or without Ms. Carr bringing FoodShare documents to her questioning, for the Milwaukee County District Attorney's Office to instigate an arbitrary and invasive review of her public benefits.

**II. *State v. Popenhagen* shows the requirement of judicial authorization before the State may obtain personal records.**

Wisconsin's case law on personal records is laid out in *State v. Popenhagen*, 2008 WI 55, 749 N.W.2d 611. In *Popenhagen*, the defendant challenged the State's use of form civil subpoenas issued under Wis. Stat. § 805.07 to obtain her bank records. *Id.* at ¶ 8. Because there was no pending civil proceeding, these subpoenas were issued in error. *Id.* at ¶ 9.

The Court analyzed the lawfulness of the subpoena under Wis. Stat. § 968.135, which permits a court to issue a subpoena *after* a showing of probable cause. *Id.* at ¶ 14. This requirement ensures judicial authorization of the compulsion process. *Id.* at ¶¶ 13-14, 20. The Court also held that

suppression is warranted when the statute is not followed. *Id.* at ¶¶ 4, 68. Here, the subpoena statute was not followed at all and suppression is warranted.

The District Attorney's Office induced a search of Ms. Carr's personal records without any subpoena process and judicial authorization, let alone a flawed process such as that in *Popenhagen*. The State showed extreme indifference to the subpoena requirement in their rummaging through Ms. Carr's FoodShare file in search of any incriminating evidence. In *Popenhagen*, the State even issued a subpoena that was signed by a circuit court judge to obtain that defendant's records. *Id.* at ¶ 98, 105. In sharp contrast, the Milwaukee District Attorney's Office had no signed subpoena, no signed warrant, and not a sliver of probable cause to begin their illegal fishing expedition. In short, the District Attorney's Office's actions were far worse than the police in *Popenhagen* who at least *tried* to obtain their documents with judicial authorization. This extreme indifference in searching Ms. Carr's records warrants suppression.

**III. Inducing another State investigator's rummage of confidential records is the functional equivalent of searching or obtaining them.**

The State may argue that the District Attorney's Office inducing the search of the records by another State actor is not the same as obtaining the records. But "peaking" at records is the functional equivalent of obtaining the records outright as both actions result in the government intruding into an individual's private information without the necessary legal safeguards. When a state actor, such as a prosecutor, unlawfully obtains personal records—whether through an invalid subpoena, an informal request, or another extrajudicial method—they gain access to information that would otherwise be shielded by legal protections. This is why directing a state investigator to comb through confidential records without proper legal authorization is no different from unlawfully obtaining those records in the first place. Both actions bypass judicial oversight, eliminate the individual's right to contest the search, and expose sensitive data to potential misuse. The harm is not only in the initial acquisition but also in the subsequent exploitation of the information, which violates privacy

protections. Therefore, the distinction between acquiring records and searching them is illusory in this context—both constitute an unlawful intrusion into protected personal data.

Moreover, the Fourth Amendment is implicated through an inspection of third-party records. *See, e.g., Doe v. Broderick*, 225 F.3d 440, 450-52 (4th Cir.2000) (holding that detective's examination of a patient file held by a methadone clinic was a search and, without probable cause, violated the patient's Fourth Amendment rights); *DeMassa v. Nunez*, 770 F.2d 1505, 1508 (9th Cir.1985) (holding that "an attorney's clients have a legitimate expectation of privacy in their client files"); *cf. Ferguson v. City of Charleston*, 532 U.S. 67, 78, 121 S.Ct. 1281, 149 L.Ed.2d 205 (2001) (holding that patients enjoy a reasonable expectation of privacy that the results of diagnostic tests will not be disclosed to law enforcement without the patient's consent).

Suppression, through the exclusionary rule, should be used in this case. "The primary purpose of the exclusionary rule 'is to deter future unlawful police conduct....'" *State v. Knapp*, 700 N.W. 899 (2005). *quoting United States v. Calandra*, 414 U.S. 338, 347 (1974). Here, the State's unlawful conduct is far worse than an inexperienced line patrol officer. The Milwaukee District Attorney's Office holds a special role at the apex of the local criminal justice – setting the standard, and in fact, advising the other local police agencies as to the law. Therefore, that Office should be specifically deterred from obtaining highly personal records without judicial authorization. Moreover, this deterrence will filter throughout its Office and generally into the other police agencies it works with throughout Milwaukee County.

Respectfully entered this 7<sup>TH</sup> day of April 2025.

By:

A handwritten signature in black ink that reads "Dan Adams". The signature is written in a cursive, slightly stylized font.

Daniel M. Adams  
State Bar No. 1067564