STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

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STATE OF MINNESOTA,
Plaintiff,

v.

MAURICE WALLACE,
Defendant.

NOTICE OF MOTION AND MOTION TO DECLARE MINN. STAT. § 343.31, SUBD. 2 (2005) UNCONSTITUTIONAL

SIP No.: 06026564
C.A. File No.: 06-5149

TO: HONORABLE JUDGE QUAINTANCE, HENNEPIN COUNTY DISTRICT COURT; ANDY SMALL, ASSISTANT HENNEPIN COUNTY ATTORNEY

NOTICE OF MOTION

PLEASE TAKE NOTICE, that Mr. Maurice Wallace will move the Court as follows:

MOTION

Mr. Maurice Wallace, by and through his counsel, John Ryan, hereby moves this Court for an order declaring Minn. Stat. § 343.31, subd. 2 (2005) unconstitutional. This motion is based on the Court's file, the entire record, the attached Memorandum of Law, and any oral arguments the Court may permit.

Respectfully submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER
LEONARDO CASTRO -- CHIEF PUBLIC DEFENDER

By _____
John Ryan
Assistant District Attorney
Hennepin County Public Defender's Office
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317 2nd Ave. S., Suite 200
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(612) 348-8271

Law Clerk: Dillon Forsyth

Dated: This 8th day of August 2006.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,
Plaintiff,

v.

MAURICE WALLACE,
Defendant.

MEMORANDUM IN SUPPORT OF MOTION TO DECLARE MINN. STAT. § 343.31, SUBD. 2 (2005) UNCONSTITUTIONAL

SIP No.: 06036564
C.A. File No.: 06-5149

TO: HONORABLE JUDGE QUAINTANCE, HENNEPIN COUNTY DISTRICT COURT; ANDY SMALL, ASSISTANT HENNEPIN COUNTY ATTORNEY

STATEMENT OF FACTS

Maurice Wallace has been charged with Animal Fights and Possession of Fighting Animals in violation of Minn. Stat. § 343.31, subd. 1(1), subd. 2 (2005). The circumstances leading to his arrest are as follows:

On the afternoon of March 23, 2006, Minneapolis Animal Control Officers Nancy Engberg and Andrea Piper responded to a call from a woman residing at 3400 Oakland Avenue South in Minneapolis stating that she was concerned for the welfare of several dogs located at that address. C.W., wife of Mr. Wallace, placed that telephone call to police. Officers Engberg and Piper were directed to several kennels located on the property where they found three pit bull terriers allegedly exhibiting various injuries.

A later search of the property, conducted by the above officers as well as Officer Okerberg of the Minneapolis Police Department and Humane Agent Keith Streff, revealed items such as a treadmill, syringes, ropes, small bottles containing various supplements, and a trailer allegedly used to transport dogs.

Following the above discoveries, Mr. Wallace was charged with violating Minn. Stat. § 343.31, subd. 1(1), subd. 2 (2005).

ARGUMENT

I. MINN. STAT. 343.31, SUBD. 2 (2005) IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE DUE PROCESS PROVISIONS OF THE UNITED STATES AND MINNESOTA CONSTITUTIONS.

Presumptions, in the context of the criminal law, have been subjected to rigorous constitutional scrutiny given the threat posed to the due process clauses of the United States and Minnesota Constitutions. See Francis v. Franklin, 471 U.S. 307 (1985); Sandstrom v. Montana, 442 U.S. 510 (1979); Sandstrom v. Montana, 442 U.S. 510 (1979); County Court of Ulster County, New York v. Allen, 442 U.S. 140 (1979); Mullaney v. Wilbur, 421 U.S. 684 (1975); Barnes v. United States, 412 U.S. 837 (1973); Leary v. United States, 395 U.S. 6 (1969); McLean v. Moran, 963 F.2d 1306 (9th Cir. 1992).

Presumptions are defined as "a rule of law by which the finding of one fact, the 'basic' or 'evidentiary' fact, gives rise to the existence of an element of the crime, the 'presumed' or 'ultimate' fact. McLean, 693 F.2d at 1308 (citing County Court, 442 U.S. at 156). In its discussion of criminal presumptions, the Supreme Court has articulated three broad categories into which such presumptions fall: 1) permissive, 2) mandatory rebuttable, and 3) mandatory conclusive. Id. Because those presumptions deemed permissive allow a jury to accept or reject the presumed fact from proof of the basic fact, constitutional infirmity is avoided. The same cannot be said of mandatory presumptions.

Because the statute in question creates a mandatory rebuttable presumption, the following analysis will focus on this particular type of presumption. A mandatory

rebuttable presumption "tells the trier that he or they *must* find the elemental fact upon proof of the basic fact, at least unless the defendant has come forward with some evidence to rebut the presumed connection between the two facts." County Court, 442 U.S. at 157. As such, it is a "troublesome evidentiary device." Id.

Criminal presumptions, specifically those which are mandatory rebuttable or mandatory conclusive, threaten the due process guarantees afforded to defendants by both the United States and Minnesota Constitutions. A fundamental cornerstone of due process is the requirement that "guilt of a criminal charge be established by proof beyond a reasonable doubt." In re Winship, 397 U.S. 358, 361 (1970). This derives, at least in part, from the seriousness of a criminal conviction and ensures that the State carry both the burden of production and the burden of persuasion in seeking a conviction. For the reasons that follow, the statute presently under consideration relieves the State of both burdens and, as such, is constitutionally infirm.

A. THE PRESUMPTION CONTAINED IN MINN. STAT. § 343.31, SUBD. 2 (2005) IS OF THE MANDATORY REBUTTABLE TYPE.

The language of Minn. Stat. § 343.31, subd. 2 (2005) is as follows: "There is a rebuttable presumption that a dog has been trained or is being trained to fight if: (1) the dog exhibits fresh wounds, scarring, or other indications that the dog has been or will be used for fighting; and (2) the person possesses training apparatus, paraphernalia, or drugs known to be used to prepare dogs to be fought. This presumption may be rebutted by a preponderance of the evidence."

On the surface, it is readily apparent that the presumption contained in this statute is of the mandatory rebuttable variety. Consequently, it is immediately constitutionally

suspect. In seeking a conviction, all that the statute requires of the State is a mere factual showing corresponding to the language quoted above. At that point, the jury – as ultimate fact-finder – is not free to accept or reject guilt. Rather, should the defendant not offer evidence to the contrary – by choice or otherwise – the jury is required to make a finding of guilt. The Supreme Court decisions addressing criminal presumptions, though not entirely consistent, are clear about one thing: a mandatory rebuttable presumption, in order to be constitutional, cannot relieve the fact finder of its duty to find guilt beyond a reasonable doubt. See County Court, 442 U.S. at 156. Because Minn. Stat. § 343.31, subd. 2 (2005) makes such a finding impossible, it is unconstitutional.

B. BECAUSE THE STATE'S BURDEN IS LIFTED, IT IS NOT POSSIBLE FOR A JURY TO FIND GUILT BEYOND A REASONABLE DOUBT UNDER MINN. STAT. § 343.31, SUBD. 2 (2005).

In its case against Mr. Wallace, the State may be able to show the "evidentiary" or "basic" fact, yet it is impossible for it to prove beyond a reasonable doubt the "ultimate" or "elemental" fact. Mr. Wallace is charged with animal fighting; the statute he is being prosecuted under, however, does not require the State to make any showing to this effect. Contrary to the demands of In re Winship and the other cases cited above, the state is relieved of its burden to prove the charged crime beyond a reasonable doubt. To that end, the due process guarantees afforded to Mr. Wallace are eliminated altogether.

Even more troublesome is the fact that the jury is in a position whereby it cannot possibly find guilt beyond a reasonable doubt. Should Mr. Wallace choose not to testify or offer evidence on his beyond – something which is clearly his right – the statute requires that the jury find guilt only upon a showing by the State of "evidentiary" or "basic" facts. At that point, both the burden of production and burden of persuasion shifts

to the defendant. A statutory maneuver of that sort completely undermines due process protections and, as a result, is unconstitutional.

CONCLUSION

For the aforementioned reasons, Mr. Wallace requests that the Court declare Minn. Stat. § 343.31, subd. 2 (2005) unconstitutional.

Respectfully submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER
LEONARDO CASTRO -- CHIEF PUBLIC DEFENDER

By_____
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Hennepin County Public Defender's Office
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Dated: This 8th day of August 2006.