STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellant,

Court of Appeals No. 335651
Circuit Court No. 16-04364-FH

v

DEMETRIUS TERRELL MAGGIT,

Defendant-Appellee.

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN AND LINC UP

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INTEREST OF THE AMICI CURIAE

The **American Civil Liberties Union of Michigan ("ACLU")** is the Michigan affiliate of a nationwide nonpartisan organization with 800,000 members dedicated to protecting rights guaranteed by the United States and Michigan Constitutions. The ACLU has long been committed to protecting the right of the people to be secure against unwarranted government intrusion, as guaranteed by both the Fourth Amendment of the U.S. Constitution and by the Michigan Constitution. The ACLU regularly files amicus curiae briefs on constitutional questions pending before this and other courts. This case is of particular interest to the ACLU because it involves an arrest for trespass based on the existence of a so-called "No Trespass Letter." Since 2013, the ACLU has been litigating a federal case, *Hightower v City of Grand Rapids*, 1:13-cv-469 (WD Mich) (Maloney, J.), seeking to enjoin the Grand Rapids Police Department's practice of using these letters to make arrests without the individualized probable cause required by the Fourth Amendment.

LINC UP is a community development organization that is involved in a host of projects and services in Kent County, particularly in the southeast side of Grand Rapids. LINC UP serves low-income neighborhoods and communities of color and promotes community revitalization through partnerships and collaborations with other community-based organizations and neighborhood stakeholders. Because many of LINC UP's clients live in heavily-policed neighborhoods in Grand Rapids, LINC UP has taken a leading role in advocating for police accountability and improved police-community relations. LINC UP is particularly concerned about police practices that disparately impact low-income communities and communities of color.

STATEMENT OF FACTS

Amici rely primarily on the Statement of Facts found in Appellee's Response Brief. Amici, however, believe it is important that this Court understand that the illegal arrest of Mr. Maggit under the supposed authority granted by a "No Trespass Letter" was not an isolated incident.

On the contrary, the Grand Rapids Police Department ("GRPD") has long engaged in a pattern of illegal arrests for trespass based on generalized "No Trespass Letters," which the GRPD claims allow officers to make trespassing arrests without probable cause that the arrested individual is him/herself unwelcome on the premises. Moreover, the GRPD has continued this policy and practice of using "No Trespass Letters" to establish probable cause for trespassing arrests on commercial property—indeed, touting it as a tool to be used when officers lack probable cause to arrest for other offenses—in the face of at least three court opinions, dating back 20 years, finding such conduct unconstitutional under the Fourth Amendment. Finally, the GRPD has continued this practice despite the fact that it has had a disparate impact on communities of color in the city.

Because the Grand Rapids Police Department has continued to disregard repeated judicial admonitions that the trespassing arrest practice followed in this case is illegal and unconstitutional, the ACLU filed a federal civil rights lawsuit against the City of Grand Rapids, *Hightower v City of Grand Rapids*, No 1:13-cv-00469 (WD Mich), on behalf of five named plaintiffs, all of whom had been illegally arrested pursuant to the GRPD's "No Trespass Letter" policy, only to have the charges against them ultimately dismissed.

While the *Hightower* litigation remains pending, much of the evidence that has been presented in that case, including with regard to the history, scope, and nature of the GRPD's "No

Trespass Letter" policy, is instructive here.[1] First, it is clear that the GRPD's policy of arresting individuals for trespassing on commercial business property, based—at least in part—on the existence of a "No Trespass Letter" on file for the business in question, is well-established and longstanding. Indeed, in 1997, this Court flatly rejected the City's argument that GRPD officers could arrest an individual for trespassing on the basis of an existing "No Trespass Letter." See *People v Clay*, unpublished per curiam opinion of the Court of Appeals, issued April 11, 1997 (Docket No. 183101), 1997 WL 33352783 (Exhibit A). The arrest in Mr. Clay's case dated back to 1994, some 23 years ago. (Relevant Pages from Tr. of Mot. Hr'g, November 29, 1994, ECF 155-9, Pg.ID#2428.) This unconstitutional practice has only expanded in its scope over the last two decades. (Lieutenant Michael Maycroft Dep. Excerpts (Maycroft Dep.) 44-46, ECF 152-10, Pg.ID#2033.)

Second, the GRPD has continued its "No Trespass Letter" policy despite being admonished on multiple occasions by Michigan courts, including this one, that such letters cannot form the basis for trespassing arrests on commercial business property, particularly when those businesses are open to the public. Indeed, every court to have squarely addressed this question in this state has uniformly rejected the GRPD's claimed authority pursuant to "No Trespass Letters" because it is contrary to state trespassing law, contrary to the Grand Rapids trespassing ordinance, and contrary to the plain language of the "No Trespass Letters" themselves. See *Clay*, unpub op at *2 (holding arrest by Grand Rapids police for trespassing in gas station parking lot illegal despite "No Trespass Letter" because "Defendant was not told to

[1] The federal court record establishing the GRPD's policy and practices on the use of "No Trespass Letters" is extensive. In lieu of appending those documents, amici refer this Court to the filings in *Hightower v City of Grand Rapids*, No 1:13-cv-00469 (WD Mich), which are available electronically through the federal court's PACER system and are referenced here by Electronic Court Filing number (ECF) and page identification number (Pg.ID#), along with the document page or paragraph number.

depart from the premises, and inasmuch as the lot was open to the general public, the 'No Trespassing' signs were inadequate to inform defendant that he was forbidden to enter the parking lot")[2]; *People v Harvey*, unpublished opinion of the Kent County Circuit Court, issued May 11, 2010 (Docket No. 09-07137-FH) (Exhibit B) (holding trespassing arrest by Grand Rapids Police in restaurant parking lot illegal despite "No Trespass Letter" where defendant was not asked to leave parking lot, defendant had no notice of letter, and defendant was in parking lot open to restaurant's customers); *People v Weber*, unpublished opinion of the 61st District Court, issued October 24, 2012 (Docket No. 12-OM-1530) (Exhibit C) (holding trespassing arrest by Grand Rapids police in gas station parking lot illegal despite "No Trespass Letter" where there was no evidence defendant was aware of letter, defendant did not disturb any occupants of premises, and defendant was not asked to leave).[3]

Third, the social costs of the GRPD's unconstitutional "No Trespass Letter" policy have been significant. Between 2011 and 2013, more than 800 people were cited or arrested for trespassing on commercial business property, where there was a "No Trespass Letter" on file with the GRPD. (Dr. Frank Baumgartner Addendum to Suppl. Report 1, ECF 154-3,

[2] Mr. Clay was arrested for trespassing yet again in 2010, at the very same gas station. The charges were dismissed when the owner of the gas station submitted an affidavit on Mr. Clay's behalf indicating that Mr. Clay was a lawful visitor to and frequent customer at his business and that none of his employees had contacted the police regarding Mr. Clay's presence on the property or asked Mr. Clay to leave the premises. (Aff. of Karamjit Singh, ECF 5-3, Pg.ID#125.)

[3] Pursuant to MCR 7.215(C), amici have attached these unpublished opinions as the Appendix to this Brief. Amici cite *Clay*, *Harvey*, and *Weber* not for the well-settled propositions of law set forth in those decisions but instead to show that the Grand Rapids Police have been on notice for decades that it is illegal to use the mere existence of a "No Trespass Letter" as a basis to arrest a person in a business parking lot open to the public, unless the person first refuses a demand to leave the area.

Pg.ID#2304.)[4] Perhaps even more disturbing is the fact that because the GRPD's "No Trespass Letter" policy is unconstitutionally vague, police offers have unfettered and unguided discretion when enforcing trespassing laws in Grand Rapids. Such discretion can and has led to serious consequences, including the arbitrary and/or discriminatory enforcement of the law on people and communities of color.

According to a study conducted by Dr. Frank Baumgartner, who serves as an expert witness for the plaintiffs in *Hightower*, over 70% of individuals stopped for trespassing in Grand Rapids at an officer's initiative are Black, although Blacks constitute only approximately 21% of the city's population. (Dr. Frank Baumgartner Expert Report (Baumgartner Rep.) 1, Ex. 5, ECF 148-6, Pg.ID#1623.) Indeed, four of the five named plaintiffs in the *Hightower* litigation are Black, and many of the businesses with "No Trespass Letters" on file—and where the GRPD policy is most often enforced—are located in predominantly Black sections of Grand Rapids. In fact, the officer who arrested *Hightower* plaintiff Percy Brown suggested that, had Mr. Brown been White, he probably would not have stopped and arrested him for trespassing. (Anthony Leonard Dep. Excerpts (Leonard Dep.) 174-78, ECF 182-5, Pg.ID#3790-91.)

It is in this context that Mr. Maggit's case comes before this Court, the trial court having correctly determined that his trespassing arrest was unlawful.

ARGUMENT

I. The Trial Court Correctly Held That There Is No Probable Cause To Arrest A Person Who Enters The Parking Lot Of A Business Open To The Public When That Person Has Not Previously Been Ordered To Stay Away Or Asked To Leave On This Occasion.

As explained in detail in Mr. Maggit's Response Brief, the trial court was unquestionably

[4] See also Dr. Frank Baumgartner Expert Report (Baumgartner Rep.) 2-3, ECF 148-6, Pg.ID#1625-26 analyzing demographic dataset composed of individuals stopped for trespassing by the GRPD.

correct when it held that there was no probable cause to arrest Mr. Maggit for trespassing (or, for that matter, for any other offense). Amici shall not repeat the trial court's conclusion or Mr. Maggit's argument, but will amplify a few points.

The trespassing statute, MCLA 750.552(1), provides:

> Except as otherwise provided in subsection (2), a person shall not do any of the following:
>
> (a) Enter the lands or premises of another without lawful authority *after having been forbidden to do so* by the owner or occupant or the agent of the owner or occupant.
>
> (b) Remain without lawful authority on the land or premises of another *after being notified to depart* by the owner or occupant or the agent of the owner or occupant.
>
> (c) Enter or remain without lawful authority on fenced or posted *farm property* of another person without the consent of the owner or his or her lessee or agent. *A request to leave the premises is not a necessary element for a violation of this subdivision.* This subdivision does not apply to a person who is in the process of attempting, by the most direct route, to contact the owner or his or her lessee or agent to request consent.

(Emphasis added). The explicit text of the statute makes it indisputably clear that, with the exception of fenced or posted "farm property," a person cannot commit the crime of trespass in Michigan unless he or she was previously told not to enter or refuses a request to depart. The case law so holds. See, e.g., *People v Johnson*, 16 Mich App 745, 749; 168 NW2d 913, 915(1969) ("[T]he statute requires that the defendant must be on lands of another 'without lawful authority' and neglect or refuse to depart after notice, to be guilty of a criminal trespass.").[5]

Because the law of trespassing is clear, this Court in *Clay* and the local courts in

[5] Grand Rapids Ordinance § 9.133(1) also requires a "trespass," which, as *Johnson*, 16 Mich App at 749, explains, means an entry after entry has been forbidden or remaining after a request to depart, and it additionally requires that the person's presence result in "the annoyance or disturbance of the lawful occupants."

Harvey, *Weber*, and the instant case, have all correctly held that Grand Rapids police lack probable cause to arrest a person who merely enters a parking lot of an open business unless the person has first been denied entry to the premises or asked to leave. All of these courts have recognized that a "No Trespass Letter" on file with the police department does not matter unless the particular defendant has notice of the letter, and this Court in *Clay* specifically recognized that a "No Trespassing" sign in the parking lot of an open business is "inadequate to inform defendant that he was forbidden to enter the parking lot." *Clay*, unpub op at *2.

And those courts have also recognized that even the terms of the "No Trespass Letter" itself do not authorize an arrest as they merely "*authorize the GRPD to ask unauthorized persons to leave the property.* If they refuse to do so, or return thereafter, I authorize the GRPD to enforce any violations of the law on the property." *State v. Maggit*, Opinion & Order Granting Defendant's Motion to Suppress Evidence, Circuit Court for the County of Kent, issued October 3, 2016 at 4 (emphasis added) (quoting "No Trespass Letter").

Neither the trespassing statute nor the "No Trespass Letter" gives Grand Rapids police the authority to arrest any person who merely enters the parking lot of an open business. Because Mr. Maggit's conduct of simply being present in the parking lot of an open business did not even arguably meet the requirements of a trespass, the trial court correctly held that there was no probable cause to arrest him.

As a final observation, amici note that if a statute or ordinance really did grant the police the power to arrest for a person's mere presence in a business parking lot open to the public, that hypothetical statute or ordinance would have to be struck down as

flagrantly unconstitutional. Such a statute would be unconstitutional because it would effectively grant the police the unchecked discretion to arrest anyone who wandered into an open-to-the-public business parking lot without providing any standards as to who should be arrested. See, e.g., *City of Chicago v Morales*, 527 US 41; 199 S Ct 1849; 144 L Ed 2d 67 (1999) (striking down as unconstitutionally vague Chicago ordinance that allowed police to disperse persons who appeared on streets in presence of street gang members "with no apparent purpose" because ordinance permitted police to engage in arbitrary and discriminatory enforcement); see also *Papachristou v City of Jacksonville*, 405 US 156; 92 S Ct 839; 31 L Ed 2d 110 (1972) (striking down loitering ordinance for giving police unchecked discretion to arrest persons engaged in innocent conduct).

Indeed, the *Hightower* litigation, as well as the cases attached in the Appendix to this brief, have shown that for decades the Grand Rapids Police have used the "No Trespass Letters" to engage in precisely the kind of arbitrary and discriminatory policing that *Papachristou* and *Morales* forbid. In the *Hightower* litigation, GRPD officials have been quite clear that they consider "No Trespass Letters" as a tool not only to enforce trespassing laws, but also to enable officers to detain individuals who they *think* may be involved in other, more serious criminal activity, even in the absence of reasonable suspicion that the person is engaged in such activity. (Leonard Dep. 127, ECF 182-5, Pg.ID#3778; Lieutenant Daniel Lind Dep. Excerpts 73, ECF 152-8, Pg.ID#2018.) The result has been that Blacks are 2.2 times more likely to be arrested for trespass than Whites, controlling for other legally-relevant factors. (Baumgartner Rep. 10, ECF 148-6, Pg.ID#1623.)

Michigan law does not give the police the discretion to arrest anyone who enters

a business parking lot, as this Court recognized 20 years ago in *Clay*. The trial court was therefore correct to hold that there was no probable cause to arrest.

II. The Trial Court Correctly Held That *Heien v North Carolina* Is Inapplicable Because The Law Governing Criminal Trespass In Michigan (And In Grand Rapids) Has Long Been Settled.

After the trial court issued its October 3, 2016 decision suppressing the evidence obtained after Mr. Maggit's unlawful arrest, the prosecution filed a motion for reconsideration in which it argued that *Heien v North Carolina*, ___ US ____; 135 S Ct 530; 190 L Ed 2d 475 (2014), required a different result. The trial court correctly rejected this argument in an opinion issued on October 27, 2016.

The trial court on reconsideration correctly held *Heien* inapplicable to this case because *Heien* involved an officer who made a *reasonable* mistake of law given that the law he was attempting to enforce *was unclear and had not yet been interpreted* at the time he pulled over Mr. Heien. By contrast, there is nothing unclear about the plain text of the Michigan trespassing law (or the Grand Rapids ordinance), and, as demonstrated above, Michigan courts, including several judges in Grand Rapids, have clearly interpreted the trespassing law to require a previous order to stay away or a request to leave as a prerequisite for criminal trespassing (except for posted or fenced farm property).

In *Heien*, the officer pulled over the defendant's car after observing that one of his brake lights was not working. The statute requiring working brake lamps could reasonably be read to require that both lights be in working order. See *Heien*, 135 S Ct at 540 (noting language in statute "arguably indicating that if a vehicle has multiple 'stop lamp[s],' all must be functional"). *After the stop*, the North Carolina appellate courts concluded that the statute required only one working brake light but, critically, the provision "had never been previously construed by North

Carolina's appellate courts." *Id.* "It was thus objectively reasonable for an officer in Sergeant Darisse's position to think that Heien's faulty right brake light was a violation of North Carolina law." *Id.*

As the trial court held, *Heien* has nothing in common at all with this case. The trespassing statute in Michigan is not ambiguous—it could not be more clear from the plain text that, except for posted or fenced farm property, a person does not commit criminal trespass unless he or she has been previously told to stay away from premises or refuses a request to leave. There was no reasonable mistake as to the meaning of the statutory text here.

Further, the trespassing statute has been interpreted by courts, including appellate courts, for decades, and those courts have confirmed that the plain text means what it says: there is no criminal trespass unless the defendant has notice that he has been forbidden to enter an area or refuses a request to leave. See *Johnson*, 16 Mich App at 749-50. A "No Trespass Letter" on file with the police department cannot serve this function, nor can a "No Trespassing" sign in a parking lot of a business that is manifestly open to the public. See *Clay*, unpublished op.

Moreover, the Grand Rapids Police Department has been told repeatedly by this Court and the local courts that its reliance on "No Trespass Letters" in situations exactly like this one is illegal. See *id.*; *Harvey*, unpublished op; and *Weber*, unpublished op. It is not possible for the police to maintain that they have made a reasonable mistake of law when the courts keep telling the police that the statute (and local ordinance) does not authorize its conduct.

In short, to compare *Heien* to this case is to compare apples and oranges. The trial court was correct to so conclude.

III. The Trial Court Correctly Held that *Utah v Strieff* Does Not Apply When A Person Is Searched Pursuant To An Unlawful Arrest *Before* An Arrest Warrant Is Discovered, And *Strieff* Also Does Not Apply When, As Here, The Arrest Was Part Of A Pattern Of Illegal Trespassing Arrests.

The trial court was also right to reject the prosecution's argument that, because the police eventually learned after the arrest that Mr. Maggit had an outstanding warrant, the evidence should be admitted pursuant to *Utah v Strieff*, ___ US ___; 136 S Ct 2056; 195 L Ed 2d 400 (2016). The trial court's rejection of this argument was correct for two reasons: (1) unlike *Strieff*, the evidence obtained from Mr. Maggit was not attenuated from the illegal arrest because it was found *before* the police learned of the arrest warrant; and (2) unlike *Strieff*, the illegal arrest here was unquestionably not "an isolated instance of negligence" but was instead part of a pattern of "systemic or recurrent police misconduct." *Strieff*, 136 S Ct at 2063.

In *Strieff*, an officer in South Salt Lake City watching a suspected drug house observed a man, later identified as Mr. Strieff, exit the house and walk away. *Id.* at 2059-60. The officer initiated an investigative stop of Mr. Strieff, during which he learned that there was an outstanding arrest warrant. *Id.* at 2060. The officer therefore arrested Mr. Strieff and, during the resulting search incident to arrest, discovered narcotics and drug paraphernalia. *Id.* The prosecution later conceded that the officer lacked reasonable suspicion to stop Mr. Strieff. *Id.*

The Supreme Court concluded that the evidence seized from Mr. Strieff need not be suppressed after first framing the question as whether the police "discovery of a valid arrest warrant was a sufficient *intervening* event to break the causal chain *between* the unlawful stop and the discovery of drug-related evidence on Strieff's person." *Id.* at 2061 (emphasis added).

In answering that question in the affirmative, the Court stressed that the evidence was found as the result of the search required by the arrest on the valid warrant, not as a result of the

illegal investigative stop: "[O]nce Officer Fackrell discovered the warrant, he had an obligation to arrest Strieff . . . Fackrell's arrest of Strieff thus was a ministerial act that was independently compelled by the pre-existing warrant. And once Officer Fackrell was authorized to arrest Strieff, it was indisputably lawful to search Strieff . . . ." *Id.* at 206263. See also *id.* at 2063 ("Officer Fackrell's actual search of Strieff was a lawful search incident to arrest.").

Therefore, the Court concluded, "[t]he discovery of that warrant broke the causal chain *between* the unconstitutional stop and the discovery of evidence by compelling Officer Fackrell to arrest Strieff." *Id.* (emphasis added). Thus, the "discovery of the arrest warrant attenuated the connection *between* the unlawful stop and the evidence seized from Strieff incident to arrest." *Id.* at 2064 (emphasis added).

As the trial court correctly recognized, *Strieff* is plainly inapplicable here because it is undisputed that the discovery of the arrest warrant did not come *between* the officer's illegal trespassing arrest of Mr. Maggit and the discovery of the evidence. On the contrary, the police had already arrested Mr. Maggit and seized the evidence *before* ever learning of the arrest warrant. It is impossible for an arrest warrant to attenuate the connection *between* an illegal arrest and the discovery of evidence flowing from that arrest when that arrest warrant is not discovered until *after* both the arrest and the seizure of the evidence. For this reason alone, *Strieff* is inapposite to this case.

There is, however, a second reason *Strieff* still would not apply to this case even if the sequence of events had been different. The Court in *Strieff* clearly and repeatedly indicated that the result would be different if the initial stop of Mr. Strieff had been flagrantly unconstitutional or part of a pattern of illegal police conduct. Therefore, the Court stressed that "there is no indication that this unlawful stop was part of any systemic or recurrent police misconduct." *Id.* at

2063. "To the contrary, all the evidence suggests that the stop was an isolated instance of negligence that occurred in connection with a bona fide investigation of a suspected drug house." *Id.* In concluding that the evidence seized from Mr. Strieff should not be suppressed, the Court drove home this point, "it is *especially significant* that there is no evidence that Officer Fackrell's illegal stop reflected flagrantly unlawful police misconduct." *Id.* (emphasis added).

The Court then specifically recognized that the analysis would be different not only if the individual officer's conduct was flagrant but if the particular police department often engaged in the unconstitutional conduct: "Were evidence of a dragnet search presented here, the application of the *Brown* factors could be different. *But there is no evidence that the concerns that* [Defendant] *Strieff raises with the criminal justice system are present in South Salt Lake City, Utah*." *Id.* at 2064 (emphasis added) (citing *Brown v Illinois*, 422 US 590; 95 S Ct 2254; 45 L Ed 2d 416 (1975)).

Mr. Maggit's case thus presents the exact opposite of the situation in *Strieff*. As discussed in detail above, the trespassing arrest of Mr. Maggit was flagrantly unconstitutional because probable cause for trespassing was not even arguably present when Mr. Maggit was spotted in a business parking lot from which he had not been barred and had not been asked to leave.

Unlike the police in South Salt Lake City, the police in Grand Rapids have engaged for decades in a pattern of "systemic and recurrent police misconduct," *Strieff*, 136 S Ct at 2063, by arresting persons for trespassing who are indisputably not committing trespass, even after being repeatedly told by courts that there is no probable cause to make such arrests. The evidence in *Hightower* establishes that the Grand Rapids Police Department's unlawful policy of relying on "No Trespass Letters" to make trespass arrests is deeply embedded in its practices and procedures. Between January 1, 2009 and May 15, 2012, the GRPD distributed "No Trespass

Letters" to more than 2,000 entities throughout the city, over 800 of which were commercial businesses. (Answer to Second Am. Compl. with Affirmative Defenses and Reliance on Jury Demand (Answer), ¶176, ECF 46, Pg.ID#738.) The GRPD even maintains a database of those businesses that have a "No Trespass Letter" on file with the Department, which allows officers to determine whether a letter exists for a particular location. (Answer ¶¶180-81, ECF 28, Pg.ID#740; List of No Trespass Letters, ECF 150-10, Pg.ID#1868-1904; Screenshots of Trespass Database, ECF 150-9, Pg.ID#1857-1866; Officer Training Tasks Notebook/Field Training Manual (Field Training Manual) 72, ECF 150-8, Pg.ID#1854; GRPD Training Bulletin, with Cover Email from Lt. Lind – December 2012 (GRPD Training Bulletin), ECF 152-9, Pg.ID#2025-26; Maycroft Email – 5.22.13, ECF 156-7, Pg.ID#2463.)

In addition, GRPD officers are routinely trained to use the existence of a "No Trespass Letter" as a basis for trespassing arrests on business property, despite the owner or operator of the business never having asked the arrestee to leave the premises. (Field Training Manual 72, ECF 150-8, Pg.ID#1854 ("Complainant and/or valid 'No Trespass' letter necessary to arrest").) Department-wide bulletins have been distributed to GRPD officers informing them how to make arrests based on "No Trespass Letters." (GRPD Training Bulletin, ECF 152-9, Pg.ID#2026.) And for the GRPD's "community police officers," who are tasked with developing ongoing relationships with residents, businesses, and neighborhood associations, distribution of "No Trespass Letters" to local businesses is part of the job description. (Leonard Dep. 66-67, ECF 182-5, Pg.ID#3763.) In short, the use of "No Trespass Letters" by the GRPD is par for the course, and has been for decades.

As such, Mr. Maggit's unconstitutional trespassing arrest was far from the "isolated incidence of negligence" that occurred in *Strieff*, 136 S Ct at 2063. Therefore, and because the

evidence here was *not* found as a result of the arrest warrant, which was not even discovered until after the evidence was seized, the trial court was correct to reject the prosecution's attempt to invoke *Strieff* in this case.

CONCLUSION

The decision of the circuit court should be affirmed.

Respectfully Submitted,

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