[CAPTION]

MOTION TO SUPPRESS EVIDENCE (INVENTORY SEARCH)

The Defendant, by counsel, respectfully requests that this Court to suppress all property seized, all observations made, and all statements taken as a direct result of an unlawful search. In support of this Motion, the Defendant states the following:

1. The Defendant is charged with [insert offenses].
2. On [insert date], police officers performed an unlawful inventory search of the Defendant's vehicle.
3. Any property, observations, and statements resulting from the search were unlawfully obtained because:
    a. The State cannot prove that the police officers performed a lawful inventory search, and, thus, the search violated the Fourth Amendment to the United States Constitution.
    b. Considering the totality of the circumstances, the police officer's warrantless search of the Defendant's vehicle was unreasonable and, thus, violated Article I, Section 11 of the Indiana Constitution.
    c. Because statements made by the Defendant were a direct result of the unlawful warrantless search of the Defendant's vehicle, the statements were obtained in violation the Fourth Amendment to the United States Constitution.
    d. Because statements made by the Defendant were a direct result of the unlawful warrantless search of the Defendant's vehicle, the statements were obtained in violation of Article I, Section 11 of the Indiana Constitution.

WHEREFORE, the Defendant requests the Court to:

1. Suppress and bar from use as evidence in the trial of this cause any property seized, observations made, or statements taken as a result of the unlawful warrantless search.

2. Suppress and bar from use in the trial of this cause all testimony relating to any property seized, observations made, or statements taken as a result of the unlawful warrantless search.

(Signature)

Fair v. State, 627 N.E.2d 427 (Ind. 1993) (the State bears the burden of showing both a need for the inventory search exception and that the police conduct fell within its bounds; in determining the reasonableness of an inventory search, courts must examine all the facts and circumstances of a case, typically focusing on: 1) the propriety of the impoundment, and 2) the scope of the inventory).

Brown v. State, 653 N.E.2d 77 (Ind. 1995) (under Article 1, § 11 of Ind. Constitution, police decisions to conduct warrantless seizure and inventory search of a vehicle are judged by reasonableness test, considering the totality of circumstances; police actions in this case were unreasonable because: 1) there was no shortage of time or emergency; 2) there was little likelihood that car would be moved; and 3) police were not engaged in valid community care taking function).

State v. Lucas, 859 N.E.2d 1244 (Ind.Ct.App. 2007) (Defendants had a reasonable expectation of privacy in a locked metal box inside the stolen van in which they were traveling; since standard police department policy was unclear, and thus did not mandate, whether an officer was to open a locked container as part of an inventory search, warrantless search of the locked metal box violated both the Indiana and U.S. Constitutions).

U.S. v. Duguay, 93 F.3d 346 (7th Cir. 1996) (where there is someone who can remove a car, impoundment is not necessary).

Rabadi v. State, 541 N.E.2d 271 (Ind. 1989) (unless an inventory search is conducted as a matter of routine department policy, there is a risk that it is being used as a mere pretext to avoid the warrant requirement; interests justifying the inventory search exception clearly were not protected by this search and officer's testimony that it was conducted according to routine police policy was insufficient).

Berry v. State, 967 N.E.2d 87 (Ind.Ct.App. 2012) (even though it was consistent with the community caretaking function to tow the car Defendant was driving because it was blocking customer traffic at the business where it was parked, the State presented no evidence regarding the police department's standard operating procedure for impounding vehicles or that the officer's decision to impound the vehicle was consistent with those procedures; thus, State failed to prove that an exception to the warrant requirement existed at the time of the inventory search); See also Gonser v. State, 843 N.E.2d 947 (Ind.Ct.App. 2006).

Faust v. State, 804 N.E.2d 1242 (Ind.Ct.App. 2004) (although a search at an impound lot by trained officers is preferred, a search at the site of an arrest or traffic stop may be proper if it follows normal inventory procedure).

Bartruff v. State, 706 N.E.2d 225 (Ind.Ct.App. 1999) (warrantless inventory of vehicle's contents was neither necessary nor consistent with established police procedures; search of vehicle at scene was mere pretext concealing investigatory police motive; both location of search and primary responsibilities of officer conducting search may be considered indicia of pretext which draw into question whether the search was conducted in good faith). See also State v. Tucker, 588 N.E.2d 579 (Ind.Ct.App. 1992).

Stevens v. State, 701 N.E.2d 277 (Ind.Ct.App. 1998) (vehicle search was not authorized under inventory exception because there was no established police policy allowing it).

Edwards v. State, 762 N.E.2d 128 (Ind.Ct.App. 2002), *affirmed on reh'g,* 768 N.E.2d 506 (Ind.Ct.App. 2002) (while impoundment of the Defendant's truck was proper, the State failed to show that search at scene conducted pursuant to impoundment was reasonable).

Terry v. State, 602 N.E.2d 535 (Ind.Ct.App. 1992) (where routine inventory search of the Defendant's car had already been done in Ohio, interests protected by inventory exception were already satisfied by time Indiana police officers subsequently searched the car two days later; second search was improper investigatory search rather than true inventory search).

Stephens v. State, 735 N.E.2d 278 (Ind.Ct.App. 2000) (the State must present more than mere conclusory testimony of a police officer that the search was conducted as a routine inventory).

Florida v. Wells, 495 U.S. 1, 110 S.Ct. 1632, 109 L.Ed.2d 1 (1990) (where no standardized policy exists governing the opening of closed containers encountered during an inventory search, such search cannot be justified under the inventory exception to the warrant requirement).

Colorado v. Bertine, 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987) (an inventory search of closed container in impounded car did not violate the Fourth Amendment even though less intrusive measures might be available to achieve purposes of inventory so long as it was conducted under standing police regulations requiring such opening and was not in bad faith effort to obtain incriminating evidence; fact auto was taken to secured lighted facility or that owner could have made other arrangements does not make search unreasonable).

Taylor v. State, 842 N.E.2d 327 (Ind. 2006) (where car was parked in apartment complex parking lot, the State failed in its burden of demonstrating that officer's belief that Defendant's vehicle posed some threat or harm to community or was itself imperiled was consistent with objective standards of sound policing; thus, the Court did not need to address whether impoundment of the Defendant's car was consistent with established departmental routine or regulation; impoundment was also a violation of Article 1, Section 11 of Indiana Constitution).

Hall v. State, 975 N.E.2d 401 (Ind.Ct.App. 2012) (warrantless inventory search of vehicle abandoned by Defendant after high-speed chase did not violate Fourth Amendment because Fourth Amendment does not apply to abandoned property).

Whitley v. State, 47 N.E.3d 640 (Ind.Ct.App. 2015) (inventory search by police of properly impounded vehicle was reasonable even though police officers failed to list all items found during inventory search, as required by police department’s established policy).

Wilford v. State, 50 N.E.3d 371 (Ind. 2016) (officer testimony provides adequate evidence of department impound policy if it outlines the department’s standard impound procedure and specifically describes how the decision to impound adhered to procedure, as opposed to officer’s generalized assertion; officer’s generalized reference to “our procedures” was insufficient to prove those procedures).