STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Court File No.: 62-CV-09-7662

The City of Saint Paul, Minnesota, by and through its City Attorney, John J. Choi,

Plaintiff,

v.

Selby Siders, a criminal gang, sued as an unincorporated association

Defendant.

ORDER GRANTING TEMPORARY INJUNCTION

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANT:

The above-entitled matter came on before hearing on July 15, 2009, before the undersigned Judge of the above-named Court on Plaintiff's Notice of Motion and Motion for A Temporary Injunction. Assistant City Attorneys John T. Kelly, Yamy Vang and David Palm appeared for Plaintiff. All other appearances, if any are as noted on the record.

Plaintiff filed a Complaint seeking to abate a public nuisance against Defendant and its named members identified on Exhibit A attached hereto, pursuant to Minnesota Statute §§617.91 - 617.97, often commonly referred to as the "Minnesota civil gang injunction law." The Plaintiff's Complaint requests among other things, that this Court enjoin the Defendant and its members identified on Exhibit A hereto, from engaging in the activities set forth in this Order, from 9:00 A.M. (C.D.T.) on July 18, 2009 to 6:00 A.M. (C.D.T.) on July 19, 2009, within that certain geographic area depicted on the map attached hereto as Exhibit B (hereinafter referred to as the "Safety Zone")

After due consideration of all papers and pleadings filed in this action, including affidavits and other evidence submitted, and arguments of counsel, if any, the Court hereby makes the following:

I. FINDINGS OF FACT

1. That Defendant is an unincorporated association of two or more persons using a common name pursuant to Minn. Stat. §540.151.

2. That Defendant and all of the persons identified on Exhibit A, attached hereto, have been properly and timely served with notice of all of Plaintiff's pleadings and related papers hereto, as required by the Minnesota Rules of Civil Procedure.

3. That Defendant is a "criminal gang" as that term is defined in Minn. Stat. §617.91, Subdivision 3.

4. That all of the persons identified on Exhibit A, attached hereto, are active, present members of Defendant.

5. That Defendant has "continuously and regularly" engaged in "gang activities" as those respective terms are defined in Minn. Stat. §617.91, Subdivisions 2 and 3, both within and outside of the Safety Zone.

6. That Defendant increases its criminal gang activities within the Safety Zone during the annual Rondo Day community festival ("Rondo"). That all of the persons identified on Exhibit A, attached hereto, are the most active and influential in Defendant's criminal gang activities within Saint Paul. Because of their influence and status within the Defendant's organization, these individuals pose the greatest threat of organizing and/or leading the Defendant's collective criminal gang activities during Rondo.

7. That Rondo will be held between 9:00 A.M. (C.D.T.) on July 18, 2009 to 8:00 P.M.

(C.D.T.) on July 19, 2009.

8. Even though the event itself concludes at 8:00 P.M. (C.D.T.) on July 19, 2009, the Defendant will linger in the Safety Zone either on public streets and sidewalks, private houses or taverns for many hours after the event seeking opportunities to confront its criminal gang rivals. The Defendant will also often use these hours following the conclusion of Rondo to conduct its criminal activities, including seeking physical confrontation with its criminal gang rivals. Accordingly, from a public safety perspective, the effective conclusion of Rondo must include a reasonable period following the conclusion of the event itself, so as to allow all of the attendees, including members of the Selby Siders to reasonably and safely disperse from the Safety Zone.

II. CONCLUSIONS OF LAW

The specific activities the City seeks to enjoin Defendant and its members from engaging in within the Safety Zone during Rondo serve as a reasonable "injunctive limitation on gang behavior and social interaction that reduces the opportunity for gang activity." See, Minn. Stat. §617.94 (2)(b). As additionally required by Minn. Stat. §617.94 (2)(b),), the relief requested by the City successfully balances the City's interest in public safety with relevant, well-reasoned constitutional standards used by many courts in upholding the issuance of civil gang injunctions in other cities.

The leading case on civil gang injunctions is People ex rel. Gallo v. Acuna. 929 P.2d 596 (Cal. 1997), *cert. denied sub nom.* Gonzalez v. Gallo, 521 U.S. 1121 (1997). In Acuna, the California Supreme Court upheld a public nuisance injunction permanently enjoining thirty-eight (38) named members of a San Jose criminal gang from a four-square block, "safety area". Id. at 601-603. The two provisions of the injunction challenged in Acuna, included prohibitions on gang members associating publicly with each other and intimidating people in the safety area. Id.

at 608-614. Relying on well-established U.S. Supreme Court jurisprudence, the California Supreme Court upheld both provisions of the injunction against constitutional challenges asserting violations of First Amendment protections of freedom of association and expression. Id. at 615 (rejecting overbreadth challenge to gang injunction and upholding an injunctive restriction that prohibited appellant from "standing, sitting, walking, driving, gathering or appearing anywhere in public view" "with any other known [gang] member").

More recently, the Texas Court of Appeals in three separate decisions, has upheld the constitutionality of civil gang injunctions issued in Texas. Goyzueta v. Texas, 266 S.W.2d 126 (Tex. App. 2008); Lawson v. Texas, __ S.W.2d __ , 2009 Tex. App. LEXIS 767 (Tex. App. Feb. 5, 2009); and Martinez v. Texas, 2009 Tex. App. LEXIS 1067 (unpublished decision Tex. App. Feb. 12, 2009). At issue in the three appellate court decisions is a Texas civil gang injunction statute that is very similar to the Minnesota civil gang injunction law.[1] In Goyzueta and Lawson, the Texas Court of Appeals rejected claims that the Texas civil gang injunction statute was unconstitutionally overbroad and vague. Goyzueta, 266 S.W.2d at 131-135; Lawson, 2009 Tex. App. LEXIS 767, at *4.

In Martinez, the Texas Court of Appeals upheld the constitutionality of an injunction that permanently enjoined twenty-one gang members from a 1.54 square mile "safety zone" in Wichita Falls, Texas. Martinez, 2009 Tex. App. LEXIS 1067, at **1-3. The two provisions of the injunction challenged in Martinez included prohibitions on gang members associating publicly in the safety zone, and from using gang signs and wearing gang clothing. Id. at *6. Like the court in Acuna, the Texas Court of Appeals soundly rejected claims that the prohibition on gang members associating publicly in the safety zone violated the members' rights of association

[1] The Texas criminal gang injunction statute is set forth in Tex. Civ. Prac. & Rem. Code. Ann. §§125.061-125.069 and Tex. Penal Code. Ann. §71.021.

as protected by the First Amendment. Id. at **10-11 (holding that injunctive prohibition against gang members associating in public within the safety zone "do not fit" the two types of associations entitled to protection under the First Amendment: those with intrinsic or "intimate" value; and those that are "instrumental" to forms of political or religious expression or activity); see also, Acuna, 929 P.2d at 615.

The court in Martinez also held that the injunctive prohibition against gang members using gang signs or wearing gang clothing did not violate their free expression rights under the First Amendment. Martinez, 2009 Tex. App. LEXIS 1067, at **17-23. Applying the relevant free expression test required by the U.S. Supreme Court in Madsen v. Women's Health Ctr., Inc., 512 U.S. 753 (1994), the Martinez court held the prohibition was content-neutral and did not burden any more speech than necessary to serve a significant government interest. Martinez, 2009 Tex. App. LEXIS 1067, at **18-21; see also, People v. Englebrecht, 106 Cal. Rptr. 2d 738, 756-58 (Cal. Ct. App. 2001).

On April 24, 2009, Ramsey County District Judge Gregg Johnson granted the first injunction sought in Minnesota pursuant to the Minnesota civil gang injunction law. City of Saint Paul ex rel. Choi v. Sureño 13, Court File No. 62-CV-09-3113, slip op. (Dist. Ct. Second Jud. Dist. Apr. 24, 2009). In reaching his decision, Judge Johnson properly found the manner by which courts in California and Texas have adjudicated substantive legal issues attendant with civil gang injunctions to be illuminative. Id. at p.p. 5-6. I agree that it is appropriate for this Court to look to relevant judicial decisions in those states that have had a more extensive and developed experience with civil gang injunctions. Kahn v. Griffin, 701 N.W. 2d 815, 829 (Minn. 2005) (among the factors to be considered "when addressing an issue that may implicate a separate independent analysis under the Minnesota Constitution" is the consideration of

"relevant case law from other states that have addressed identical or substantially similar constitutional language").

The above-cited California and Texas cases are also particularly pertinent to interpreting the Minnesota civil gang injunction law because of their reliance on U.S. Supreme Court jurisprudence. In State v Wicklund, the Minnesota Supreme Court held that it is also proper for this Court, when interpreting the free speech and association provisions of Article I, Section 3 of the Minnesota Constitution, to look to federal case law interpretations of those analogous provisions of the First Amendment of the United States Constitution. 589 N.W.2d 793, 801 (Minn. 1999) (declining to extend the free speech protections of the Minnesota Constitution beyond those protections offered by the First Amendment of the U.S. Constitution

Defendant fails to qualify for protection under either category of associational rights. First, Defendant clearly does not fit the category of intimate associations, as it is a large group that does not outwardly appear to have family-related motivations. Martinez, 2009 Tex. App. LEXIS 1067, at *10; Acuna, 929 P.2d at 610 ("[a]t bottom, protected rights of association in the intimate sense are those existing along a narrow band of affiliations that permit deep and enduring personal bonds to flourish, inculcating and nourishing civilization's fundamental values, against which even the state is powerless to intrude"); see also, Roberts, 468 U.S. at 620, 104 S. Ct. at 3250; Hvamstad v. Suhler, 727 F.Supp. 511, 517 (D. Minn. 1989), *aff'd.* 915 F.2d 1218 (8th Cir. 1990) (denying overbreadth challenges based upon the freedom of intimate association). Finally, the gatherings of Defendant also clearly do not fall into the instrumental association category, as it does not meet in public for political, economic, educational, religious, or cultural purposes. Martinez, 2009 Tex. App. LEXIS 1067, at *10.

The First Amendment also does not recognize a generalized right of "social association." City of Dallas v. Stanglin, 490 U.S. 19, 25, 109 S. Ct. 1591, 1595, 104 L. Ed. 2d 18 (1989). In support of this holding, the U.S. Supreme Court noted that it is possible to find some "kernel of expression" in many activities, including "walking down the street or meeting one's friends at a shopping mall, but such a kernel is not sufficient to bring the activity within the protection of the First Amendment." Id., 109 S. Ct. at 1595. At best, Defendant and its members are merely a social organization that is not entitled to protection under the First Amendment. Martinez, 2009 Tex. App. LEXIS 1067, at *10; see also, Stanglin, 490 U.S. at 25, 109 S. Ct. at 1595.

Additionally, it is also widely accepted that "First Amendment [protection] does not extend to joining with others for the purpose of depriving third parties of their lawful rights." Madsen v. Women's Health Ctr., Inc., 512 U.S. 753, 776, 114 S. Ct. 2516, 2530, 129 L. Ed. 2d 593 (1994); see also, State v. Mireles, 619 N.W.2d 558, 562 (Minn. Ct. App. 2000) (citing Madsen's above-quoted proscription, in rejecting claim that Minn. Stat. 609.229 violated a gang member's right of association). In Madsen, the Court pointed out a significant difference between injunctions and statutes in the context of protected associational and speech claims. Madsen, 512 U.S. at 762. According to the Court, an injunction can regulate a particular group (or individuals) and its speech because of the groups past actions in the context of a specific dispute between real parties. Id. The parties seeking the injunction assert a violation of their rights, and the court hearing the action is charged with fashioning a remedy for a specific deprivation, not with the drafting of a statute addressed to the general public. Id.

Unlike statutes that are applicable to all persons, a gang injunction applies only to those parties responsible for creating an expressly defined "public nuisance" based upon their past criminal actions. Specifically, the only persons subject to the Minnesota civil gang injunction

law are not general members of the public but are active members of a criminal gang. As clearly documented in the instant case, the Defendant and its named members subject to this Order are well deserving of their status as a "criminal gang". Moreover, any perceived associational rights are further protected since Minn. Stat. §617.95 provides that gang injunctions are criminally enforceable only against individuals who "knowingly" violate an injunction provision. Mireles, 619 N.W.2d at 562 (presence of specific-intent requirement in Minn. Stat. 609.229 defeats claim that statute violates a gang member's right of association).

Based on the foregoing, Defendant and its members do not fall within any of the First Amendment's protected classes of association.

This Order's restrictions on the use of gang signs and symbols also do not violate the free speech rights of Defendant and its members.

It is well-settled that the First Amendment provides no protection to speech that qualifies as a "true threat," or imminently incites illegal activity. Virginia v. Black, 538 U.S. 343, 358-59 (2003) (holding that "'[t]rue threats'" encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals...The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats 'protects individuals from the fear of violence' and 'from the disruption that fear engenders,' in addition to protecting people 'from the possibility that the threatened violence will occur'. Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.")(internal citations omitted). In the context of criminal gangs, the "throwing" or

"flashing" of gang signs and symbols by criminal gang members towards their gang rivals or the general public certainly qualifies as the quintessential "true threat".

However, even assuming that this Order can be construed as actually restricting a form of protected "speech," such restrictions easily satisfy the applicable constitutional test set forth in Madsen. As previously explained in this Order, the Court in Madsen pointed out the significant difference between injunctions and statutes in the context of protected speech claims. Madsen, 512 U.S. at 762. Consequently, the Court held that the appropriate test to determine the constitutionality of a content neutral injunction similar to the one sought by the City is "whether [its] challenged provisions ...burden no more speech than necessary to serve a significant government interest." Id. at 765.

A law is content-neutral when it is justified without reference to the content of the regulated speech. Bartnicki v. Vopper, 532 U.S. 514, 526, 121 S. Ct. 1753, 1760, 149 L. Ed. 2d 787 (2001). Moreover, "a regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." Ward v. Rock Against Racism, 491 U.S 781, 791, 109 S.Ct. 2746, 2753, 105 L.Ed. 2d 661 (1989); see also, Goward v. City of Minneapolis, 456 N.W.2d 460, 464 (Minn. Ct. App. 1990); Menotti v. City of Seattle, 409 F. 3d 1113, 1129 (9th Cir. 2005) (holding that a restriction denying access to an area of the city "[t]hat predominantly affected protestors with anti-WTO views did not render it content based").

The injunctive relief requested by the City is content-neutral because it does not seek to prohibit any particular gang sign message. Instead, it seeks to prohibit the use of all gang signs and gestures used by those named members of Defendant within the Safety Zone without reference to the speech or message of any person. Madsen, 512 U.S. at 763; see also

Englebrecht, 106 Cal. App. 4th at 1266 (holding that "[a]n important aspect of the gang's ability to act collectively, to define its territory, to challenge nonmembers and other gangs and to maintain control by fear and intimidation is its use of gang signs and symbols. It is not the content of these expressions to which the injunction looks but the fact of them and their effect on others"); Martinez, 2009 Tex. App. LEXIS 1067, at *18-19 ("This injunction is content-neutral because it did not prohibit any particular gang sign message; rather, it prohibited the use of all gang signs and gestures [used by the Defendant] within the delineated zone."); Fischer v. City of Saint Paul, 894 F. Supp. 1318, 1327 (D. Minn. 1995) (holding that a restriction that excluded all persons from the sidewalk in front of a Planned Parenthood clinic, except for invitees of the clinic and those persons with "legitimate business" to conduct at the clinic, was content neutral).

In Fischer, the court rejected a claim of content-neutrality as baseless, by reasoning that "[the excluded party] was not prevented from expressing his message in one of several different ways; he was simply prohibited from expressing it within the buffer zone." Fischer, 894 F. Supp. at 1325. Similarly, enjoining Defendant's members from the using gang hand signs and wearing gang clothing in the Safety Zone during Rondo "does not prevent [them] from expressing [their] message in one of several different ways" outside of the Safety Zone.

The injunction sought by the City is solely intended to serve the City's significant interest of ensuring the safety and well-being of all persons in the Safety Zone during Rondo. Martinez, 2009 Tex. App. LEXIS 1067, at *19 (significant government interest in preventing the incitement of gang violence); Acuna, 929 P.2d at 618 ("[p]reserving the peace is the first duty of government, and it is for the protection of the community from the predations of the idle, the contentious, and the brutal that government was invented"); Fischer, 894 F. Supp. at 1327

("[t]he First Amendment does not require the St. Paul police to ignore valid public Safety (sic) concerns and allow mayhem to ensue before acting to ...ensure public safety").

The narrowly-drawn restrictions contained in this Order are also amply supported by other well-reasoned appellate court jurisprudence applied in the civil gang injunction context. In Englebrecht, the California Court of Appeals held that the words, gestures, hand signs or other forms of communication including the wearing of gang clothing, "amounts to or contributes to the nuisance enjoined." Englebrecht, 106 Cal. App. 4th at 1266. It further held that "[g]angs use such means of expression to demonstrate affiliation which in turn facilitates collective criminal action, defines exclusive territoriality, intimidates nongang members and serves as a warning and challenge to members of other gangs." Id. Thus, the Englebrecht court held that a narrowly drawn prohibition on such expression, such as the one sought here by the City is proper. Id.

Unlike much broader and more permanent injunctive restrictions upheld against gangs by other courts, the injunction sought by the City is very limited and narrow in scope and clear in describing the conduct it seeks to enjoin.

First, the restrictions seek to prevent public nuisance activities caused only by those members of Defendant who hold positions of leadership and influence and who were served with these pleadings. Cf. People ex rel. Totten v. Colonia Chiques, 156 Cal. App. 4th 31, 42-43, 67 Cal. Rptr. 3d 70 (Cal. Ct. App. 2007) (holding that gang members who were not served with the injunction are bound by its terms). Secondly, the injunction only applies to nuisance activities conducted within a narrowly-defined Safety Zone by individuals who do not reside in that area. Acuna, 929 P.2d at 617. Thirdly, the duration of the injunction requested by the City is only for 38 hours, as opposed to the permanent and interminable injunctions issued in all of the above-cited gang injunction cases. Finally, the injunction defines the enjoined conduct sufficiently for

an ordinary person of common intelligence to determine with reasonable certainty what he or she cannot do in the Safety Zone. Id. at 613-614 (rejecting void for vagueness challenge); Martinez, 2009 Tex. App. LEXIS 1067, at *21 (rejecting void for vagueness challenge to injunctive prohibition against using gang signs and wearing gang clothing); see also, Dunham v. Roer, 708 N.W.2d 552, 568 (Minn. Ct. App. 2006), *rev.denied*, 2006 Minn. LEXIS 197 (2006) (holding that void for vagueness doctrine does not require that prohibition be "drafted with absolute certainty or mathematical precision. It need only furnish criteria those persons 'of common intelligence who come into contact with the [prohibition] may use with reasonable safety in determining its command.'").

Based on the foregoing findings of facts and legal authorities, the Court further concludes:

1. That Plaintiff has established by a preponderance of the evidence that Defendant including all of the persons identified on Exhibit A , attached hereto, constitutes a "public nuisance" pursuant to Minn. Stat. §617.92, Subdivision 1.

2. That the Minnesota civil gang injunction law explicitly authorizes injunctive relief to abate the public nuisance created by Defendant and all of the persons identified on Exhibit A and A-1, attached hereto.

3. That an injunction limiting the gang behavior and social interaction by the Defendant, including all of the persons identified on Exhibit A , attached hereto, is necessary so as to reduce the opportunity for gang activity within the Safety Zone both during Rondo and for the ten hours thereafter.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the persons identified on Exhibit A , attached hereto (hereinafter said persons shall be collectively referred to as the "Enjoined Persons," or singularly as an "Enjoined Person") are enjoined, prohibited and restrained from engaging in or performing directly or indirectly, any of the following activities in the Safety Zone, between 9:00 A.M. (C.D.T.) on July 18, 2009 and 6:00 A.M. (C.D.T.) on July 19, 2009:

a. **No Association With Known Criminal Gang Members:** Associating, standing, sitting, walking, driving, bicycling, gathering or appearing, anywhere in public view or any place accessible to the public, with any and all of the Enjoined Persons, or with any other person known to an Enjoined Person to be a member of the Defendant criminal gang known as the Selby Siders, but not including: (1) when all such described individuals are inside a state licensed school attending class, or participating in an official state licensed school activity supervised by a school official; and (2) when all such described individuals are inside a church; and (3) when three or fewer such described individuals are in publicly-accessible place to participate in a bona fide anti-drug, anti-gang or anti-crime program, supervised by a charitable community organization that is licensed and/or registered to provide such services pursuant to federal, state or local law; provided, however, that such described individuals are in full compliance with all other terms of the injunction, and no association occurs during travel to or from any of the above-described places and locations;

b. **No Intimidation:** Confronting, intimidating, annoying, harassing, threatening, challenging, provoking, assaulting or battering any person known to be a witness to, known to be a victim of, or known to have complained about any

of the criminal gang activities of the Defendant criminal gang known as the Selby Siders;

c. **No Use of Gang Signs**: Using words, phrases, physical gestures, or symbols commonly known as "gang signs", or "gang hand signs", or engaging in other forms of communication visible and audible to the general public, which an Enjoined Person knows describes, refers to, or identifies the Defendant criminal gang known as the Selby Siders, and abbreviations and variations thereon, including, but not limited to the phrase, "Selby Siders," "Selby," and the letters "S", and "C", or what appears to be a "V.

d. **No Gang Clothing:** Wearing clothing or accessories, including but not limited to, caps, shirts, belt buckles, which an Enjoined Person knows describes, refers to, or identifies his/her membership in the Defendant criminal gang known as the Selby Siders, and and abbreviations and variations thereon, including, but not limited to the phrase, "Selby Siders," "Selby," and the letters "S", and "C", or what appears to be a "V", respectively;

e. **Don't Force Any Person To Join The Defendant:** Do not make any threats or do anything threatening, including without limitation to strike, batter, destroy the personal property, or disturb the peace, to cause a person to join the Defendant criminal gang known as the Selby Siders;

f. **Don't Prevent Any Person From Leaving the Defendant:** Do not make any threats or do anything threatening, including without limitation to shoot, strike, batter, destroy the personal property, or disturb the peace (1) to prevent a person from leaving the Defendant criminal gang known as the Selby Siders or

(2) to any person known to have left the Defendant criminal gang known as the Selby Siders; and

2. Pursuant to Minn. Stat. §574.18, Plaintiff, being a political subdivision, shall not be required to give any form of security.

BY THE COURT

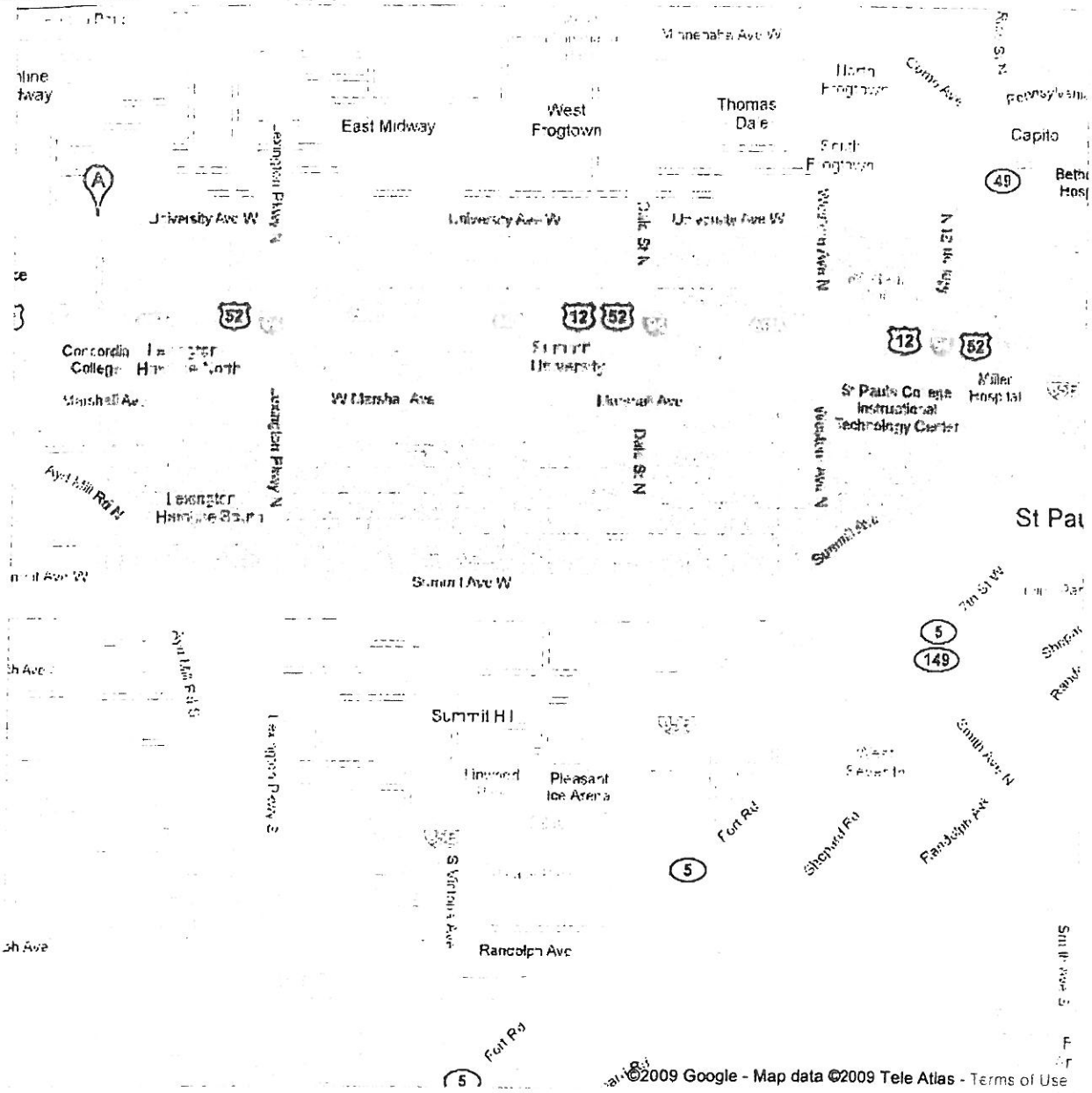
Dated: July 15, 2009

M. Dt. Moorehead

Judge of the District Court

EXHIBIT A

1. Raishawn Devonte Nixon (D.O.B. 11/27/1989); A/K/A "Mad Ron"
2. Jumoke Ace Cryer (D.O.B. 01/03/1986); A/K/A "Oobie"
3. Regis Avery Jones (D.O.B. 06/03/1990); A/K/A "Smoke"
4. Ronald Dean Smaller (D.O.B. 05/09/1991); A/K/A "Bear"
5. Willie Lee Givens (D.O.B. 09/09/1988); A/K/A "Little Havoc"
6. Kenneth Scott Christian (D.O.B. 06/21/1989); A/K/A "Lil Heavy"
7. Fredrick Barnes (D.O.B. 03/02/1989); A/K/A "Freaky" or "Little Pilla"
8. Raivon Treyshon Balenger (D.O.B. 04/06/1991); A/K/A "Six"
9. Brandon Jermel Smith (D.O.B. 05/21/1991); A/K/A "B.G."



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West Frogtown
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North Frogtown
South Frogtown
Capito
University Ave W
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Dale St N
Western Ave N
Concordia College
Summit University
Marshall Ave
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St Paul's College Instructional Technology Center
Miller Hospital
Ayd Mill Rd N
Lexington Hamline Sound
Summit Ave W
Summit Hill
Pleasant Ice Arena
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Shepard Rd
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