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had a legal right to be in Borst's home and when it overruled Borst's motion to suppress both the physical evidence seized from Borst's home and the subsequent tainted statements he made in the holding cell. Consequently, the Court of Appeals erred when it affirmed the district court's ruling on the motion to suppress. We reverse the decision of the Court of Appeals, and we remand the cause to the Court of Appeals with directions to reverse Borst's convictions and to remand the cause to the district court for a new trial on both charges.

REVERSED AND REMANDED WITH DIRECTIONS.

WRIGHT, J., not participating.

BRYAN S. BEHRENS, AN INDIVIDUAL, ET AL., APPELLANTS AND CROSS-APPELLEES, V. CHRISTIAN R. BLUNK, AN INDIVIDUAL, ET AL., APPELLEES AND CROSS-APPELLANTS.

796 N.W.2d 579

Filed March 18, 2011. No. S-10-342.

SUPPLEMENTAL OPINION

Appeal from the District Court for Douglas County: J. PATRICK MULLEN, Judge. Supplemental opinion: Former opinion modified. Motion for rehearing overruled.

David A. Domina and Terry A. White, of Domina Law Group, P.C., L.L.O., for appellants.

Mark C. Laughlin and Patrick S. Cooper, of Fraser Stryker, P.C., L.L.O., for appellees Christian R. Blunk and Berkshire & Blunk.

William R. Johnson, of Lamson, Dugan & Murray, L.L.P., for appellees Christian R. Blunk and Abrahams, Kaslow & Cassman, L.L.P.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

Case No. S-10-342 is before this court on the motion for rehearing filed by the appellees regarding our opinion reported at *Behrens v. Blunk*, 280 Neb. 984, 792 N.W.2d 159 (2010). We overrule the motion but for purposes of clarification, modify the opinion as follows:

In the section of the opinion designated "PROCEDURAL HISTORY," we withdraw the third paragraph, *id*. at 988, 792 N.W.2d at 163, and substitute the following:

> In November 2009, the defendants again moved to compel discovery. The court's docket sheet shows that the court sustained the motion in part, and in part overruled it, but the court apparently did not issue a written order. This order, however, effectively overruled the motion to stay, and the defendants agree that the court did overrule that motion. In December, the defendants moved for summary judgment. They asked for a dismissal, arguing that the plaintiffs could not "simultaneously maintain this action while asserting Fifth Amendment rights." In support of this motion, the defendants stated only that "Behrens has asserted his Fifth Amendment rights, has refused to answer various discovery propounded by Defendants, and has refused to sit for a deposition in this matter."

Further, we withdraw the last paragraph in the section of the opinion designated "ANALYSIS," *id*. at 996, 792 N.W.2d at 168, and substitute the following:

> Because the court's findings were insufficient to support an order of dismissal, we reverse the order and remand the cause for further proceedings. The defendants' cross-appeal does not alter our conclusion. They moved for summary judgment solely because of Behrens' invocation of his Fifth Amendment rights. Because this was not a proper ground for summary judgment, the court did not err in overruling their motion.

The remainder of the opinion shall remain unmodified.

FORMER OPINION MODIFIED.

MOTION FOR REHEARING OVERRULED.

WRIGHT, J., not participating.