

November 29, 2012

VIA FACSIMILE & U.S. POSTAL MAIL

The Honorable [REDACTED]
Judge of District Court
Ramsey County Courthouse
15 Kellogg Boulevard West
1370 Courthouse
St. Paul, MN 55102

RE: *State of Minnesota v. N [REDACTED] M [REDACTED] S [REDACTED]*
Court File No. 62-CR-08-2728

Dear Judge [REDACTED]:

This letter provides legal support for the proposition advanced at the August 12th 2008 hearing that Trooper R [REDACTED]'s observation of Ms. S [REDACTED] driving "perfectly" eroded the reasonable suspicion to stop her for driving while intoxicated and administer a preliminary breath test.

On May 16, 2008 a concerned citizen reported to police dispatch that the driver in front of him was driving erratically. Trooper R [REDACTED] located Ms. S [REDACTED]'s car, which matched the citizen's description, and followed her for over four blocks. Trooper R [REDACTED] did not observe any erratic driving. She pulled Ms. S [REDACTED] over nevertheless and eventually charged her with *Fourth Degree DWI: Operating a Motor Vehicle While Under the Influence of Alcohol* in violation of Minn. Stat. §§ 169A.20, subd. 1(1) and 169.27. The matter came on for hearing on August 12, 2008 on Ms. S [REDACTED]'s motion to suppress evidence and dismiss criminal charges for lack of reasonable suspicion to stop her and invoke the preliminary breath test under Minn. Stat. § 169A.41.

The testimony at the August 12 hearing established that the concerned citizen, who provided his name to the dispatch, reported that Ms. S [REDACTED]'s vehicle swerved back and forth across the road, dangerously varied speeds, almost hit the citizen's car, and drove into a ditch. Strangely, the citizen followed Ms. S [REDACTED] for nine miles after she allegedly almost hit his car before calling dispatch. Trooper R [REDACTED] eventually located Ms. S [REDACTED]'s vehicle and followed her for 4 blocks and through 4 stoplights. Trooper R [REDACTED] testified that during the entire time she followed Ms. S [REDACTED], Ms. S [REDACTED] drove in a lawful manner: she did not speed, vary her speed, swerve, cross fog lines, cross center lines, or fail to stop appropriately at stop lights. In fact, Trooper R [REDACTED] testified that Ms. S [REDACTED] drove "perfectly."

Under these facts, Trooper R [REDACTED] did not have reasonable suspicion to stop Ms. S [REDACTED] or invoke a preliminary breath test under Minnesota law. This case falls squarely under *State v. Olson*. 371 N.W. 2d 552 (Minn. 1985). In *Olson*, a trooper received a dispatch report from an anonymous

caller of a possibly drunken driver. *Id.* at 553. The caller only gave the vehicle's make, color, and plate number. *Id.* The trooper located the car and followed it for about half a mile. *Id.* He did not observe any erratic driving but stopped the car nevertheless. *Id.* The driver, Olson, was later determined to have been driving while intoxicated. *Id.* The court held that the informant's tip was *not reliable*, and therefore *no basis existed for the stop*, because nothing was known about the caller's veracity and basis of knowledge for alleging the driver was intoxicated. *Id.*

Olson is often contrasted with *Marben v. State* where the Minnesota Supreme Court upheld the stop based on the veracity and basis of knowledge of the informant. 294 N.W. 2d 697 (Minn. 1980). In *Marben*, a trooper running radar on the side of the highway received a C.B. radio call from a trucker who claimed he saw the trooper and wanted the trooper to check out a driver that had been tailgating the trucker for sixty miles. *Id.* at 698. The trooper pursued the car, driven by Marben, for a few blocks, did not see any erratic driving, but stopped him and later determined he was driving while intoxicated. *Id.* The court held that the informant's tip was still reliable, and therefore provided an adequate basis for the stop, even though the officer did not observe any erratic driving, because the trucker's reference to the trooper's location and Marben's car verified that he was in the area and first-time citizen informants are presumed reliable unless the circumstances show otherwise. *Id.* at 699-700.

The distinction between these cases is further fleshed out in *Fletcher v. Comm'r of Pub. Safety*. 2003 WL 21911187 (Minn. App. 2003). In *Fletcher*, a trooper received a dispatch report from an anonymous caller, who later pulled over and identified himself to the trooper, reporting that a vehicle, driven by Fletcher, was swerving all over the road and almost hit him. *Id.* at 1. The trooper followed the car, *observed erratic driving*, pulled Fletcher over, and later determined that he was driving while intoxicated. *Id.* The court relied on the Trooper's observation that Fletcher was driving erratically to corroborate the informant's tip. *Id.* The court also held, however, that the tip was sufficient, independent of the officer's corroboration, because it provided enough specific and articulable facts to support reasonable suspicion that Fletcher was driving while intoxicated. *Id.* at 3. The informant's tip alone was sufficient because the trooper's corroboration *did not contradict it*, so further articulable suspicion was not necessary. *Id.*

Under this case law, the case at issue clearly falls under *Olson*. Although the informant identified himself and alleged specifically that Ms. S [REDACTED] was driving erratically, it is exactly that allegation that entirely erodes his veracity. The uncontrollable erratic driving of an intoxicated driver is not something that the driver can simply turn off when a police officer pulls in behind him; especially not the degree of erratic driving that the informant alleged in this case. Ms. S [REDACTED] could not have swerved all over the road, almost hit the informant's car, and ended up in a ditch and then, within a matter of minutes, inexplicably began to drive "*perfectly*" by Trooper R [REDACTED]'s own description. The record establishes that Trooper R [REDACTED] did conclude Ms. S [REDACTED]'s driving was "perfect" cavalierly. She followed Ms. S [REDACTED] 4 blocks and through 4 stop lights, and during this entire period Ms. S [REDACTED] did not give off even the slightest indication that she was intoxicated: she did not speed, vary her speed, swerve, cross fog lines, cross center

lines, or fail to stop appropriately at stop lights. Trooper R[REDACTED]'s observations directly contradict the informant's articulable suspicion and therefore, under *Fletcher* and *Olson*, more articulable suspicion from the informant is required to justify the stop.

Olson requires that the informant provide some minimal information on why the he believes the driver is intoxicated. 371 N.W. 2d at 556. The informant in the instant case only alleged erratic driving as the basis for his charge of intoxication. Erratic driving, however, is not an unverifiable past event like the tailgating in *Marben* or the failure to stop at a red light in *State v. Davis* that driver's avoid when they spot a trooper. 294 N.W. 2d at 698; 394 N.W. 2d 179, 180 (Minn. 1986). Erratic driving due to intoxication is easily verified by the trooper. Trooper R[REDACTED] elected to verify the informant's tip and her observations completely undermined the trustworthiness of the informant. The informant's veracity is further undermined by the fact that he followed Ms. S[REDACTED] over 9 miles after she allegedly almost hit him before he called the police. He also did not stop and confirm his suspicions with the officer like the *Fletcher* informant. The informant failed to alleged any other specific and articulable facts beyond erratic driving so, with the erratic driving basis for the stop gone, there is no remaining reasonable suspicion for the stop or for invoking the preliminary breath test. 371 N.W. 2d at 556.

The entire purpose of requiring specific and articulable facts showing intoxication from the informant is to determine their veracity and basis of knowledge. Upholding a stop when the facts in this case show that the informant's tip entirely lacked veracity violates the entire purpose of the veracity requirement. The absence of veracity makes this search unreasonable. *Id.* But, beyond that, upholding an unreasonable stop like this stop violates the Fourth Amendment of the U.S. Constitution and Article 1 Section 10 of the Minnesota Constitution. *Id.* Therefore, the evidence from the stop and the preliminary breath test should be suppressed and the case should be dismissed.

Very truly yours,

CAPLAN LAW FIRM, P.A.

Ryan Garry

RPG/dmc

cc: J[REDACTED] P[REDACTED], Assistant St. Paul City Attorney (via facsimile only)

