

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

**STATEMENT OF FACTS,
CONCLUSIONS
OF LAW and ORDER**

v.

P████ V████

Court File No. 62-CR-15-██████████

Defendant.

The above-entitled matter came for a hearing on October █████, 2015, before Judge Judith M. Tilsen, District Court Judge for the State of Minnesota, on Defendant's Motion to Suppress Evidence.

The State of Minnesota was represented by ~~██████████~~ Assistant Ramsey County Attorney. The Defendant was present and represented by Ryan Garry, Esq.

Based on all of the files, records, exhibits, and proceedings herein, the Court makes the following:

ORDER

1. Defense motion to suppress is GRANTED
2. The attached Memorandum is incorporated by reference.
3. This case is set for an appearance on January █████, 2016 at █████ at the St. Paul Courthouse, 15 W. Kellogg Blvd. Room 130.

Dated: December █████, 2015


 Judith M. Tilsen
 Judge of District Court

MEMORANDUM

In early 2014 members of the Ramsey County Sheriff's Office Violent Crime Enforcement Team (VCET) received information from an unnamed person indicating that Mr. V [REDACTED] would be traveling to Minnesota to conduct illegal drug trafficking activities. Sgt. N [REDACTED] of the Ramsey County Sheriff's Office, a member of the VCET, communicated with this informant whom he called a "confidential reliable informant" and learned that Mr. V [REDACTED] "was going to be picking up a large quantity of Marijuana near the area of Sims and Forest" in St. Paul. Investigators from the VCET were familiar with Mr. V [REDACTED] and had been investigating him for over a year. They were familiar with some of Mr. V [REDACTED]'s behaviors from prior visits to St. Paul including staying at a Holiday Inn at 2201 Burns Avenue and frequenting a bar on Dale Street called Malina's. The information about the hotel and bar did not come from the informant.

On April 16, 2015 after receiving the tip about Mr. V [REDACTED]'s expected activities in the area of Sims and Forest, members of the VCET visited the Holiday Inn on Burns Avenue. The front desk staff verified that Mr. V [REDACTED] and his wife were registered guests and provided the officers with a description of a tan Chevy SUV Mr. V [REDACTED] was driving. Officers then drove around to the bars Mr. V [REDACTED] frequented and located a tan Chevy SUV at Malina's bar. Officers set up surveillance of the vehicle. Shortly thereafter, staff from Holiday Inn called the officers to inform them that Mr. V [REDACTED] and his wife were requesting transportation to the area of Malina's Bar. Defendant and his wife were then dropped off at Malina's bar in a hotel shuttle. They got into the tan Chevy SUV and drove away. Initially Mr. V [REDACTED] was in the passenger seat but Mrs. V [REDACTED] stopped the car and they switched places so that Mr. V [REDACTED] was driving. Mr. V [REDACTED] drove to a residence at 1009 Sims Avenue in St. Paul. There was no testimony regarding how close this address was to the intersection of Sims and Forrest. Officers continued surveillance and began

the process of obtaining a warrant to search the residence. After spending fifteen minutes inside the residence, Mr. V█████ exited carrying a cream-colored bag. Mr. V█████ put the bag in the back seat of the vehicle and drove away. Sgt. N█████ testified that the officers on scene believed that the bag contained marijuana. Sgt. N█████ testified that the officers based this belief on what they observed but could not include any specific basis except that they expected the bag to contain marijuana.

After watching Mr. V█████ drive away, Ramsey County Sherriff's Officers contacted Officer S█████ of the St. Paul Police Department and asked if he could perform a traffic stop on Mr. V█████ based on the suspected marijuana in the SUV's backseat. Officer S█████ stopped Mr. V█████'s vehicle and then smelled a "strong smell" of marijuana coming from the passenger compartment of the vehicle. Officer S█████ opened the rear right door of the vehicle and saw marijuana. Over five pounds of marijuana was found in the vehicle and seized.

At the hearing on October ██████, 2015, Defendant challenged the characterization of the informant in this case as a confidential reliable informant. Sgt. N█████ was reluctant to provide specifics about how law enforcement determined this individual was a confidential reliable informant.

Transcript from hearing on October ██████, 2015 page 24 lines 17 through Page 26 line 15. Mr. Gary questioning Sgt. N█████:

Q: And the informant is an informant because he's dealing with other pending criminal cases. Is that true?

A. I can't answer that. I don't know.

Q. Well, how did he get, this informant, get to be an informant for you?

A. Due to other police contacts.

Q. Meaning he was arrested on investigated for crimes?

A. I don't know that.

Q. What do you know about this informant?

A. I know that the information he gave on that particular day was spot on. I know that.

Q. Right. But I'm talking about before this day. What do you know about – what did you know about this informant?

A. Just that he was an informant through other police agencies.

Q. Okay. But you don't know – I'm not going to ask you his name, but there were a lot of questions on direct examination about this informant, so I want to ask you some questions. You don't know if he had pending criminal cases? You don't know that.

A. I don't know that.

Q. And you don't know if he'd ever been an informant for other police officers, meaning a snitch, on other people?

A. That's where I received his name, was from other police agencies. I don't know if he's ever informed on anybody else or not.

Q. Did they provide you with information about this informant, about his past, his criminal history, things of that nature?

A. Yes.

Q. What did you learn?

A. He's an informant. I really don't care to answer too much. It might give away his identity and cause harm to him at this point in time.

Q. What I'm trying – since the issue here is whether there was probable cause, part of what you're saying is that the probable cause existed because of the informant's veracity. Now I'm not asking you to identify the informant at all. What I'm asking is, is – I want to know more about this informant, if he had a lengthy criminal history, things of that nature.

A. I don't know if he has a lengthy criminal history.

Q. So you really don't know anything about this informant besides that he said Mr. V██████ was involved in criminal activity?

A. Based on what that officer had told me, that's the only information I had regarding this informant.

Despite repeated questioning, Sgt. N██████ failed to provide a basis of knowledge for treating the informant as a confidential reliable informant. Instead, he told the Court that he had learned of the confidential reliable informant through information from other law enforcement agencies but knew no specifics himself.

The first issue in this case is whether the information known by Sgt. N██████ and presented to the Court during testimony was sufficient to provide reasonable articulable suspicion to support an investigative traffic stop of Mr. V██████'s vehicle without a warrant. Reasonable articulable suspicion in this case was based on a combination of information from an informant and corroboration of the informant's tip. If the information came from a confidential reliable informant then some corroboration is necessary. If the information came from a person who is not a confidential reliable informant then more corroboration is necessary.

Minnesota courts have held that when assessing a confidential reliable informant, "courts examine the credibility of the informant and the basis of the informant's knowledge in light of all the circumstances." *State v. Cook*, 610 N.W.2d 664, 667 (Minn. Ct. App. 2000). This Court has struggled with how much information Sgt. N██████ needed to know about the informant to consider him a confidential reliable informant as "elaboration concerning the specifics of the CRI's veracity is not typically required. *State v. Munson*, 594 N.W.2d 128 (Minn. 1999). *Munson* cites *State v. Wiley*, 366 N.W.2d 265, 269 (Minn.1985) for the proposition that although courts would prefer details about informants, a statement that the informant "has been used over several years successfully" is sufficient to believe that the "informant had provided accurate information to the police in the past"). This is a fairly low standard to meet but the Officers in this case failed to provide even this bare-bones amount of information about the informant. Unlike in *Munson*, officers in Mr. V██████'s case either did not have, or failed to identify for the Court, sufficient specific details or a proven track record for the informant. Sgt. N██████ testified that he knew the informant had been used by other law enforcement. This is not sufficient.

In addition, this Court must look at the amount of corroboration provided. In *Munson*, the Minnesota Supreme Court held that police corroboration of "several specific details" was

necessary for the informant's information to allow reasonable articulable suspicion to stop the suspect. *Munson*, 594 N.W.2d at 136. Sgt. N█████ was told Mr. V█████ would be conducting a drug transaction in the area of Forest and Sims. Mr. V█████ drove to a residence on Sims. This Court feels that this single fact is not sufficient to support reasonable articulable suspicion even if the informant was a confidential reliable informant. While the Officers involved in this case may have had sufficient information to support that the informant was a confidential reliable informant, Sgt. N█████ failed to provide a basis of knowledge strong enough for this Court to conclude that the informant was a confidential reliable informant. If the informant was not a confidential reliable informant then there certainly was not enough corroboration to support the traffic stop.

This Court finds no problem with the procedures Officer S█████ followed in conducting the traffic stop of Mr. V█████ as instructed by the VCET. But in order for Officer S█████'s stop of Mr. V█████ and seizure of the marijuana in the vehicle to be lawful, this Court must find that Sgt. ██████ had a sufficient basis to believe that there was sufficient cooperation of the "tip" to support the conclusion that Mr. V█████ possessed marijuana. The Court cannot make this finding based on the testimony provided at the hearing. The traffic stop of Mr. V█████'s vehicle was not lawful, therefore, and the evidence found as a result of the stop will be suppressed.

The second issue is whether the search of Mr. V█████'s stopped vehicle was lawful. The stop of the vehicle was based on instructions from Officers with the VCET. Following the stop, Officer S█████ approached the vehicle and smelled what he described as "a large amount of marijuana." While this might have been sufficient if the stop was valid, as we are suppressing the stop, this Court will not reach the issue of the search. Defendant's argument regarding a non-criminal amount of marijuana is not applicable.

The third issue is whether the classification of marijuana as a Schedule 1 controlled Substance violates Mr. V[REDACTED]'s equal protection rights. This Court is suppressing the stop of the vehicle and therefore does not reach the Constitutional issue.

JMT