

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

FILE 62-CR-08-2728

v.

ORDER

Schiller,

Defendant.

The above-entitled matter came on for hearing on August 12, 2008, pursuant to defendant's motion contesting the legitimacy of the stop of defendant's automobile.

Esq., Assistant City Attorney, 500 Courthouse, St. Paul MN 55102, appeared on behalf of the plaintiff.

Ryan P. Garry, Esq., 10 South Fifth Street, Suite 525, Minneapolis MN 55401, appeared representing the defendant who was personally present.

Based upon the testimony and exhibits, the Court makes the following:

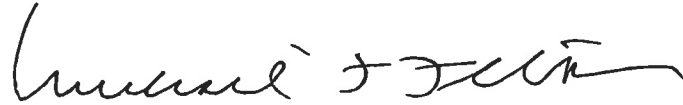
IT IS ORDERED that:

1. Defendant's motion to find the stop unconstitutional is **GRANTED.**
2. The charge of DWI-Operating a Motor Vehicle Under the Influence of Alcohol is therefore dismissed.
3. The attached Memorandum is made a part hereof.

4. The mailing of this Order to the counsel of record by United States

Mail is sufficient notice for all purposes

BY THE COURT:

A handwritten signature in black ink, appearing to read "Michael F. Fetsch", written over a horizontal line.

**MICHAEL F. FETSCH
JUDGE OF DISTRICT COURT**

DATED: August 15, 2008

MEMORANDUM

Facts

On May 16, 2008, about 1:20 a.m., the St. Paul Police dispatcher received a call from a person who identified himself as Matthew Gorelancyk, giving his telephone number 715-252-6620. He related that he had observed a driver "all over the road" and who "went into the ditch near 94 W/B/Marion, almost hit 911 caller, varying speeds under 25 mph, swerving back and forth."

Minnesota Highway Patrol Trooper Carrie Rindahl (Rindahl) elaborated on the information she received from dispatch. The almost accident occurred in the vicinity of I35 and Highway 36. The actual call came to the dispatcher after the caller who indicated that he was in the vicinity of I-94 and Marion. The car was described as a Dodge Durango with Florida plates.

Rindahl located a Dodge Durango with Florida plates exiting at Lexington Avenue from westbound I94. She followed the Durango south on Lexington Parkway over the I94/Lexington Avenue bridge past Concordia, Carroll, Iglehart to Marshall. At Marshall the Durango stopped for the red traffic signal. When the signal turned green the Durango continued south on Lexington past Dayton, stopping at another red light at Selby. When the stop light turned green, the Durango again resumed its course south on Lexington. Just past Selby, Rindahl activated her red lights. In response the Durango immediately turned on its right blinker, smoothly pulling over to and next to the curb.

Rindahl on cross-examination acknowledged that the Durango's driving conduct was at all times legal, that she noticed nothing to suggest the driver was in any

way impaired. There was no weaving, no slowing or speeding up, no jerkiness or hesitation displayed.

~~Rindahl agreed that the only justification for her stopping the Durango~~
was the 911 call.

Law

The information communicated to Rindahl is partially conclusionary, i.e., without specific facts, e.g. almost caused an accident because almost hit caller. Rindahl observed no swerving, weaving or inappropriate varying of speeds. The uncontradicted testimony is that there is no ditch along I94 near Marion.

Since Rindahl's personal observations negated all of Gorelancyk's allegations of bad driving, there remains only the "almost hit me" allegation as justifying the stop. This allegation is not fact-specific and contains no basis upon which to form a rational judgment of driving misconduct.

The requirement articulated in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968), does not change because the information comes from a citizen through the dispatcher or from a trooper's direct observation.

The information from the dispatcher does not provide sufficient factual basis to justify the stop. The trooper's own observation completely negated the information communicated through the dispatcher.

The trooper needs "specific and articulable facts which taken together with reasonable inferences from those facts reasonably warrant that intrusion." *Ibid.* 88 S.Ct. 1880. At a minimum there must be "enough indicia of reliability to justify the officer's

forcible stop.” *Adams v. Williams*, 407 U.S. 143, 147, 92 S.Ct. 1921, 1924, (1972). Here
there was not.

M.F.F.