

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT – FELONY DIVISION
FOURTH JUDICIAL DISTRICT

State of Minnesota,)
Plaintiff,)
vs.)
SHAUNTEZ PALMER,)
Defendant.)

**NOTICE OF MOTION AND
MOTION**

MNCIS File No. 27-CR-18-7791

* * *

TO: THE HONORABLE LUIS BARTOLOMEI, FOURTH JUDICIAL DISTRICT COURT;
AND KEVIN BIEGING, ASSISTANT HENNEPIN COUNTY ATTORNEY

PLEASE TAKE NOTICE, that on June 4th, 2018, the Defendant, Shauntez Palmer, will seek the relief specified below:

MOTION

Mr. Palmer hereby requests a hearing regarding selective enforcement by the Minneapolis Police Department in violation of the equal protection clause of the United States and Minnesota Constitutions. U.S. Const. Amend. XIV; Minn. Const. Art. 1 § 2. The defense further moves this Court to compel the state to disclose the following evidence:

1. Police reports, videos, and audio recordings, including but not limited to safe zone footage, department issued iphone data, trespass notices, BWC, MVR, squad to squad, dispatch, and MDT including administrative channels for all downtown Minneapolis drug sting related police interactions, regardless of charges that stemmed out of those interactions, on January 24, 2018, February 13, 2018, February 28th, 2018, March 15, 2018, March 26, 2018, April 11, 2018, and May 24, 2018
2. MPD policies, procedures, directives, and manuals related to undercover drug stings including any information regarding drug stings shared in daily briefings or roll calls

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**MEMORANDUM IN SUPPORT OF
MOTION**

MNCIS File No. 27-CR-18-7791

* * *

Shauntez Palmer is charged with Aiding and Abetting a Fifth Degree Sale of 1.6 grams of marijuana. On March 26, 2018, Officer Belcourt was working undercover on Hennepin Avenue between North 5th St. and North 6th St. Officer Belcourt stated in her report that she purchased marijuana from Ameir Davis, while Shauntez Palmer essentially acted as a lookout. The marijuana weighed 1.6 grams with packaging. Both men were arrested, and brought to jail. Although the sale itself did not take place on metro transit property, both men were trespassed from “metro transit’s property.”

The Minneapolis Police Department are engaging in a series of undercover marijuana stings using a large amount of department resources. The first precinct, in conjunction with other precincts and metro transit, are sending undercover officers out to Hennepin Avenue between 5th Street and 6th Street. Undercover stings have taken place on January 24, 2018, February 13, 2018, February 28th, 2018, March 15, 2018, March 26, 2018, April 11, 2018, and May 24, 2018. The Public Defender’s Office has reviewed 47 cases received as a result of stings on those dates. Almost all of those cases involve a sale of 1-2 grams of marijuana for a total of \$10-\$20. The total amount of marijuana recovered in these 47 cases amounts to not much over the felony

threshold for possession for a single individual, roughly 70 grams, though some of the marijuana was weighed in its packaging so 70 gram is a generous estimate.

On the dates of the stings officers are approaching people of color, individuals and groups, and asking to buy drugs. Officers have directly asked black men to facilitate drug deals with other black men, and have then requested that the facilitator be charged with sale. Officers are using Safe Zone cameras to surveil people of color. Officers are seeking out extremely low-level marijuana transactions with people of color and are then arresting and booking the sellers and submitting the cases for felony charging.

Of the 47 cases reviewed by the Public Defender's Office from undercover marijuana stings in 2018, all but one (2%) involve defendants who are people of color. The remaining 46 cases (98%) involve people of color. In the one exception, it was the white defendant who allegedly initiated the interaction with police and not the other way around. The Public Defender's Office submitted a data request to the Sentencing Guidelines Commission for 5th Degree Sale data from Hennepin County by race. [EXHIBIT A]. In 2016, 42 defendants were sentenced for Fifth Degree Sale. Of those sentenced, 8 (19%) were white. The undercover buys conducted on Hennepin Avenue on these seven days in 2018 account for more 5th Degree sale cases than all 5th degree sale cases that were sentenced in 2016. In these sting cases, where officers choose how to conduct stings, where to patrol, who to surveil, and who to approach to initiate unlawful activity, 98% of defendants, all but one, were people of color. [EXHIBIT B].

The Minnesota Supreme Court has long recognized the defense of selective enforcement based on race, which is a violation of the equal protection clauses of the United States and Minnesota Constitutions. Selective enforcement occurs where there is discriminatory enforcement of a law that, on its face, is non-discriminatory. *City of Minneapolis v. Buschette*,

240 N.W.2d 500 (Minn. 1976). As the Minnesota Supreme Court held, “[t]here can be no doubt that the equal protection clause of the Fourteenth Amendment forbids the discriminatory enforcement of nondiscriminatory laws” *City of Minneapolis v. Buschette*, 240 N.W.2d 500 (Minn. 1976). Although the Minnesota Constitution does not have an amendment with language that mirrors the United States Constitution’s Equal Protection Clause, Article One Section 2 of the Minnesota Constitution has been recognized as the legal equivalent. *State v. Russell*, 477 N.W.2d 886 (Minn. 1991). Further, the Minnesota Supreme Court has held that the Minnesota Constitution’s Equal Protection Clause merits a standard of review that is independent of, and more stringent than, the federal equal protection standards. *Id.*

The Minnesota Supreme Court has ruled that the defense of selective enforcement is available to challenge enforcement of criminal laws. *State v. Buschette*, 240 N.W.2d 500 (Minn. 1976) (“...the defense of discriminatory enforcement by law-enforcement officials on all levels of state criminal laws and municipal penal ordinances may be raised by a defendant.”). Where a defendant raises such issue, he is entitled to “[a]n adversary hearing at the trial court level...” *State v. Sharich*, 209 N.W.2d 907 (Minn. 1973).

Under Minnesota law, a party who alleges selective enforcement, and supports the allegations with facts, is entitled to a contested hearing on the matter. *State v. Sharich*, 209 N.W.2d 907 (Minn. 1973). “To take a claim of discriminatory enforcement beyond the frivolous state, the defendant must allege facts which show that he was singled out for enforcement and that his selection was invidious or in bad faith.” *State v. Hyland*, 431 N.W.2d 868 (Minn. App. 1988) (citation omitted). The defendant has to “show that he is a member of a suspect class, that he was exercising a fundamental right, or that any intentional deliberate, or systematic singling out occurred.” *Id.* (citation omitted). Under federal law, the defense must present “some evidence

tending to show” discriminatory effect and discriminatory intent. *United States v. Armstrong*, 517 U.S. 456 (1996).

Allegations that police are targeting members of a suspect class for enforcement of particular criminal laws has been found to be sufficient under Minnesota law to merit a hearing on selective enforcement. In *Russell I*, the defense alleged that officers conducted theft stings targeting black defendants. *State v. Russell*, 343 N.W.2d 36 (1984) (commonly referred to as *Russell I* to distinguish it from equal protection case *Russell II* decided in 1991). The police set up a buy house where people would bring stolen goods and sell them to an undercover officer. *Id.* All but one person charged with related activity were black. *Id.* Though the court ultimately found that the state adequately justified their actions at the contested hearing, the court found there was a sufficient showing to merit the hearing in the first place. *Id.* Similarly, in *State v. Woodard*, the defense presented statistics demonstrating that police were targeting black people for theft stings, and argued that police clearly intended to discriminate since they knew of the discriminatory effect but continued their operations. 378 N.W.2d 32 (Minn. App. 1985). While the court found at the hearing that the state adequately justified their actions, the defendant’s allegations merited the hearing in the first place. *Id.*

Minneapolis Police conducted targeted stings on January 24, 2018, February 13, 2018, February 28th 2018, March 15, 2018, March 26, 2018, April 11, 2018, and May 24th 2018. These 8 days in 2018 account for more 5th Degree Sale cases than all such cases that were sentenced collectively in 2016. Every single one of these stings took place around 5th street and Hennepin Avenue. Each sting, which resulted in an average yield of 1-2 grams of marijuana per defendant, a petty misdemeanor amount in terms of possession, utilized the resources of numerous police precincts, metro transit officers, and safe zone cameras. Each one of these cases was submitted

for felony charging. Absent active and targeted police action in engaging in sales, much of the behavior observed by police would merit no charge at all, or nothing more than a petty misdemeanor possession charge or a misdemeanor loitering with intent charge.

These largely 1-2 gram and \$10-\$20 sales have resulted in felony convictions for numerous black defendants who had been targeted, and all the devastating collateral consequences that go along with such convictions, jail time, prison time, and even deportation proceedings. Officers have used tactics such as approaching individuals and groups and asking to buy drugs, and asking people to facilitate sales with other people and then submitting the facilitator for felony charging. 46 out of 47 people charged with these low-yield marijuana sales are black and many are homeless. The defense is aware of no other populations of people that are being targeted similarly through such a massive, deliberate, and focused departmental effort that is so wholly disproportionate to the crime being charged, and is aware of no other large-scale targeted marijuana stings in other locations in Minneapolis in 2018.

Mr. Palmer was a target of selective enforcement of the Minneapolis marijuana sales law by Minneapolis Police Officers. Mr. Palmer is entitled to a hearing. Mr. Palmer will be asking for strict scrutiny review, though the defense submits that the state could not withstand rational basis review under the federal or Minnesota standard. The defense has submitted a request for discovery to Police Chief Arradondo and is awaiting a reply. [EXHIBIT C]. The defense is further requesting discovery that “relates to the case” and is in the state’s possession in order to prepare for the hearing, including but not limited to the enumerated discovery requested.

Respectfully Submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER
MARY MORIARTY - CHIEF PUBLIC DEFENDER

By: _____ /s/
Jess Braverman
Assistant Public Defender
Attorney License No. 0397332
701 4th Avenue South, Suite 1400
Minneapolis, Minnesota 55415
Telephone: (612) 596-9407

DATED: this 31st day of May, 2018

EXHIBIT A

Sale of Controlled Substance Crime by Race: Sentenced Hennepin County 2016

Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender-based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense.

Information Requested: 2016 data, specifically for drug sale cases, as opposed to possession, by degree and race for Hennepin County.

Analysis:

- Sentenced 2016
- Sale of Controlled Substance Crime under Minn. Stat. § 152.021, subd. 1 – 152.025, subd. 1
- Hennepin County
- By Race

In 2016, 164 offenders were sentenced in Hennepin County for Sale of a Controlled Substance Crime in the First- through Fifth-Degree. The following table displays the number of offenders sentenced by degree and race.

Number of Offenders Sentenced for Sale of Controlled Substance Crime Sentenced Hennepin County 2016

Degree of Sale of Controlled Substance Crime	Offender Race					Total
	White	Black	Am Indian	Hispanic	Asian	
1 st Degree	16	22	0	4	5	47
	34.0%	46.8%	0.0%	8.5%	10.6%	100.0%
2 nd Degree	7	16	0	1	0	24
	29.2%	66.7%	0.0%	4.2%	0.0%	100.0%
3 rd Degree	9	39	1	1	0	50
	18.0%	78.0%	2.0%	2.0%	0.0%	100.0%
4 th Degree	1	0	0	0	0	1
	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%
5 th Degree	8	31	1	1	1	42
	19.0%	73.8%	2.4%	2.4%	2.4%	100.0%
Total	41	108	2	7	6	164
	25.0%	65.9%	1.2%	4.3%	3.7%	100.0%

EXHIBIT B

Affidavit of Anna Novak

Upon information and belief I swear the following information to be true and correct:

- 1) I am a paralegal with the Hennepin County Office of the Public Defender. I have been a paralegal with this office for 4 years. My job is to assist attorneys with their cases by pulling records, compiling information and creating demonstratives as needed.
- 2) I have reviewed almost 100 marijuana sale cases from 2018 that have been submitted to the Office of the Public Defender.
- 3) I pulled out any 2018 cases where an undercover officer was involved in a street level marijuana buy, which was a total of 47 cases. To the best of my ability, I believe I reviewed all undercover marijuana stings from 2018 that were submitted to the Public Defender's Office.
- 4) The cases I pulled out from 2018 all had offense dates of either January 24, 2018, February 13, 2018, February 28, 2018, March 15, 2018, March 26, 2018, April 11, 2018, or May 24, 2018.
- 5) Almost every case I reviewed involved a sale to an undercover officer around 5th Street and Hennepin Avenue.
- 6) Out of the 47 people charged with felony marijuana sale, 46 were black.
- 7) The cases I reviewed varied in terms of whether police or the defendant were alleged to have initiated the contact in relation to the drug sale. In the case of the sole white client to be charged, police allege that it was the client who initiated the interaction and not the other way around.
- 8) The vast majority of these felony cases involve Marijuana sales of 1-2 grams in exchange for \$10-\$20. Many cases involve less than 1 gram.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116

Dated: May 31, 2018



Anna Novak, Paralegal

EXHIBIT C

OFFICE OF THE PUBLIC DEFENDER
HENNEPIN COUNTY - FOURTH JUDICIAL DISTRICT
701 FOURTH AVENUE SOUTH, SUITE 1400
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May 29, 2018

Chief Medaria Arradondo
350 S. 5th St. Room 130
Minneapolis, MN 55415

Chief Arradondo,

The Hennepin County Office of the Public Defender demands all MPD policies, procedures, manuals, and directives regarding undercover marijuana stings in downtown Minneapolis. It has come to our attention that the Minneapolis Police Department has begun to prioritize crimes involving 1-2 grams of marijuana. The First Precinct CRT, working with Metro Transit and teams from other precincts, are conducting undercover marijuana stings in downtown Minneapolis. A review of the cases received by our office strongly suggests a trend of racial profiling under the guise of "livability" detail.

Officers are approaching people of color and asking to purchase drugs. Officers have directly asked black men to facilitate drugs deals with other black men, and have then requested that the facilitator be charged with sale. Officers are using safe zone cameras to surveil people of color. Almost all of the marijuana sale cases involve a sale of as little as one to two grams - 40 grams under the felony threshold for possession.

The targeted behavior, at times initiated by MPD officers themselves, is barely distinguishable from petty misdemeanor possession, but leads to vastly different outcomes. As a result of this practice, folks are sitting in jail and even prison, and are having felonies added to their records. Of the cases reviewed by our office, all but one involve people of color. In the one case that served as an exception, it was the white male, and not the MPD officer, who initiated the interaction.

To the extent that crimes involving one to two grams of marijuana appear to be a high priority for the MPD, we believe that your Department, and the city as a whole, can find ways to address the issue that do not lead to such starkly disparate and harsh treatment of already vulnerable members of our community. In the meantime, we are litigating some of the cases that your office has brought to the County Attorney for charging, and respectfully request the documents referenced above, along with any additional information that may shed light on and help make sense of this ongoing practice. Please feel free to contact me with any questions or concerns.

Sincerely,


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CC: Mary Moriarty, Chief Public Defender
Jeanette Boerner, Assistant Chief Public Defender
Jacob Frey, Mayor
Imani Jaafar, Director, Office of Police Conduct Review
Mike Freeman, Hennepin County Attorney
Susan Segal, Minneapolis City Attorney