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NO. A19-1554

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State of Minnesota
In Supreme Court

**OFFICE OF
APPELLATE COURTS**

State of Minnesota,
Respondent

vs.

Carlos Ramone Sargent,
Appellant

APPELLANT'S REPLY BRIEF

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I. Introduction

This case presents a traffic stop expanded both in scope and in duration. In arguing that the expansion of the subject traffic stop was lawful, the State's analysis focuses narrowly on the expansion of the stop's scope and generally ignores the issue of the expansion of the stop's duration.

The State also fails to identify authority to support the expansion of either a stop's duration or scope to investigate noncriminal and noncontraband activity, relying instead on a "de minimis" intrusion rule specifically rejected by the United States Supreme Court.

For the reasons set forth in Sargent's principal brief and in the additional analysis below, this Court should reverse the Court of Appeals and remand with instructions to dismiss.

II. Argument

1) The State's Reliance on State v. Lopez Is Misplaced.

In support of its argument that the underlying offense justifying the expansion of the traffic stop, the State relies on the Court of Appeals' opinion in *State v. Lopez*, 631 N.W. 2d 810 (Minn. Ct. App. 2001). *See* State's Brief at Page 8. Aside from lacking precedential value, the opinion itself fails to support the State's position.

The *Lopez* Court explicitly stated that the odor of alcohol served as a "lawful basis" to expand the traffic stop precisely because the odor of alcohol "provided [law enforcement] with reasonable suspicion of *criminal activity*, i.e., an open bottle in the car." *Lopez*, 631 N.W.2d at 814 (emphasis added). *Lopez* does not, as the State suggests, stand

for the proposition that law enforcement may expand the scope of a traffic stop to investigate *noncriminal* activity. In fact, the State entirely fails to identify any such case.

The State also appears to misread the implication of Sargent's argument. To be clear, whether the smell of alcohol emanating from a car can serve as reasonable suspicion sufficient to expand a traffic stop is not in dispute. Admittedly, the odor, in and of itself, could indicate an intoxicated driver or, as in *Lopez*, the presence of an open bottle. *See, State v. Burbach*, 706 N.W.2d 484 (Minn. 2005). Both are crimes in the State of Minnesota. *See*, Minn. Stat. § 169A.20 (driving while impaired) and § 169A.35 (open bottle law). Sargent did not and does not now object to law enforcement's use of the odor of alcohol to expand the scope and duration of the stop to determine whether the vehicle's driver was driving under the influence.

The odor of alcohol does not, however, grant law enforcement *carte blanche* to engage in an investigation to determine the precise source of the alcohol. In fact, this Court has specifically rejected adopting a "bright-line rule that the odor of alcohol always justifies a vehicle search." *Burbach*, 706 N.W.2d at 489. As the *Burbach* Court explained, "[t]o allow a vehicle search solely because an adult passenger smelled of alcohol would be to permit highly speculative searches against a large group of entirely law-abiding motorists, including designated drivers." *Id.* In other words, the odor of alcohol may be used as a basis to expand the scope or duration of a traffic stop if, and only if, law enforcement reasonably suspects that the odor indicates the presence of criminal activity. That logic is directly applicable here.

The moment law enforcement confirmed the sobriety of Elise Howard, the vehicle's driver, no reasonable suspicion of *criminal activity* remained. The driver was sober. The State does not contest the noncriminal nature of a violation of conditional pretrial release. Even the mystery of the source of the odor of alcohol had an easy answer: each of the vehicle's passengers admitted to drinking. (T. at 37-38; V. at 4:05). Simply put, the State failed to cite any authority contravening Sargent's assertion that, in order to expand the scope and duration of a traffic stop, the underlying activity to be investigated must either be criminal or contraband-related in nature.

2) *There Is No "De Minimis" Intrusion Exception to Justify Expansion of a Stop's Duration.*

The State's argument narrowly focuses on the expansion of the subject stop's scope, opining that the "core issue at hand" is the expansion of the scope of the stop to include questioning of Sargent related to a potential violation of conditional pretrial release. State's Brief at 5. While Sargent does indeed argue that the stop's scope was impermissibly expanded, his objection is not so limited. Rather, Sargent also objects to the expansion of the stop's duration.

Here, the impermissible expansion of the stop's duration actually occurred prior the impermissible expansion of the stop's scope. The stop exceeded its permissible durational limit immediately after officers confirmed that the vehicle's driver was sober as Officer Hanson ordered the driver to remain unattended at the squad car while he proceeded back to Howard's vehicle to question Sargent. (V. at 7:30). Obviously, with the driver removed from the vehicle, Sargent had no place to go and remained seized even though the stop's

initial purpose (i.e., the investigation of the traffic violation) and the purpose of the permissible expansion (i.e., the investigation of a potential DUI) had both been accomplished.

Moments after the expansion of the stop's duration, officers expand the stop's scope by engaging in questioning of Sargent regarding a potential violation of pretrial release conditions. Without addressing the durational expansion, the State asks this Court to uphold the expansion of the stop's scope by arguing that the intrusion into Sargent's privacy was "de minimis" and, therefore, outweighed by the State's interest in "public safety." State's Brief at Page 14.

Importantly, the State never identifies any nexus between its interest in "public safety" and Sargent's underlying conduct (i.e., sitting in the passenger seat of a car with blood alcohol content of .03). Rather, the State appears to argue that Sargent's continued release posed a threat to public safety due to his "criminal history with law enforcement." State's Brief at Page 14. This position should be rejected on its face as tantamount to arguing that the continued release of any individual with a prior record poses a threat to public safety. Holding otherwise could subject any Minnesotan with a criminal history (or, for that matter, any individual merely seen by law enforcement at an earlier criminal arraignment hearing) to additional intrusions by law enforcement, so long as such intrusions remained merely "de minimis."

In addition to being bad policy, the State's argument also runs contrary to settled constitutional law. In vacating the Eighth Circuit's opinion, the United States Supreme Court specifically held that even "de minimis" intrusions are unreasonable if such intrusion

“adds time to the stop.” *Rodriguez v. U.S.*, 575 U.S. 348, 357 (2015) (internal quotations omitted). The *Rodriguez* Court explicitly abrogated the Eighth Circuit rule set forth in *U.S. v. \$404,905.00 in U.S. Currency*, 182 F.3d 643 (8th Cir. 1999) that had upheld as reasonable stops enduring a mere thirty seconds longer than necessary without reasonable suspicion as such extension amounted to a “de minimis” intrusion. *Id.* at 356. In so doing, the Court distinguished the “legitimate and weighty” interest in officer safety from the government’s “general interest in criminal enforcement.” *Id.* The government’s interest in officer safety “stems from the mission of the stop itself...so an officer may need to take certain negligibly burdensome precaution in order to complete his mission safely.” *Id.* Meanwhile, “[o]n-scene investigation into other crimes...detours from [the mission of the stop].” *Id.*

Where, as here, the State’s interest sounds of something other than officer safety, the rule set forth in *Rodriguez* makes abundantly clear that no intrusion—not even a “de minimis” intrusion—can add time to the stop unless supported by reasonable, articulable suspicion of criminal activity. The expansion of the scope and duration of the subject stop clearly “detoured” from the original mission of the traffic stop (i.e., to investigate a traffic violation). Thus, the State’s proposed “de minimis” intrusion exception must fail.

III. Conclusion

For the reasons discussed above and in Sargent’s principal brief, Sargent respectfully requests that this Court reverse the Court of Appeals and remand with instructions to dismiss this case.

Respectfully Submitted,

Dated: March 8, 2021.

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APPELLANT’S CERTIFICATE OF COMPLIANCE

I hereby certify that appellant's reply brief in case no. A19-1554 complies with Minnesota Rules of Appellate Procedure 132.01 Subd.3(b)(1). I further certify that the brief contains 1,137 words and uses a 13-point font. It was prepared with Microsoft Word 2016. I hereby certify that the content of the accompanying paper brief and addendum or addenda, if applicable, is identical to the electronic version filed and served, except for any binding, colored cover, or colored back, and I understand that any corrections or alterations to a brief filed electronically must be separately served and filed in the form of an errata sheet.

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