FILED
March 17, 2020
OFFICE OF
APPELLATE COURTS

NO. A19-1554

State of Minnesota
In Court of Appeals

State of Minnesota,
Respondent

vs.

Carlos Ramone Sargent,
Appellant

APPELLANT'S PRO SE SUPPLEMENTAL BRIEF

CASS COUNTY
ATTORNEY'S OFFICE

BY: BENJAMIN T. LINDSTROM

0388054

Cass County Attorney
Cass County Courthouse
4th Floor, P.O. Box 3000
Walker, MN 56484-3000
Direct: 218-547-7255

ATTORNEY FOR RESPONDENT

CARLOS RAMONE SARGENT

APPEARING *PRO SE*

OID 162222
MCF-Moose Lake
1000 Lake Shore Drive
Moose Lake, MN 55767

APPELLANT

PRO SE SUPPLEMENTAL BRIEF

1. Leech Lake Tribal Police used the traffic stop as a pretext to expand the scope and duration to investigate the passengers for a reason other than investigating criminal wrongdoing.

a. The State originally argued in its Memorandum Opposing Supression of Evidence (filed 9-11-2018)(hereinafter "Memorandum 8.11.18") on pg. 5 explaining that the search was permissible, as "expansion of the scope of a traffic stop to include investigation of other suspected illegal activity is permissible under the Fourth Amendment only if the officer has reasonable articulable suspicion of that activity. State v. Weigand, 645 N.W.2d 125, 135 (Minn. 2002)." The State goes on to say "[t]he Minnesota Supreme Court reaffirmed that a police officer must have a reasonable, articulable suspicion of criminal activity in order to expand the scope of a routine traffic stop beyond the underlying justification for the stop. State v. Fort, 660 N.W.2d 415, 419 (Minn 2003). If the detainee's responses or other circumstances give rise to a reasonable, articulable suspicion of additional criminal activity within the time necessary to resolve the original purpose of the stop, an officer may broaden his inquiries and satisfy those suspicions.-Weigand, 645 N.W.2d at 136."

The State is making the assumption that the Defendant/Appellant was actually suspected of illegal or criminal activity.

This argument makes sense, but only when there is "other illegal activity" or "reasonable, articulable suspicion of criminal activity," however, that is not the case in this matter.

b. The question for this Court is then is that why is an officer expanding the scope of a stop when there is no illegal or criminal activity occuring.

The Defendant/Appellant may have been drinking, which in itself is not illegal, as long as the person is over the age of 21 and is not driving a vehicle; the fact that he was on a "no-drink" pretrial release condition did not nor cannot give rise to a violation of any criminal statute. The conditions are supervised by the county probation department and administrative searches are limited only to those authorized to conduct such searches.

Suspicion of a violation of pretrial release conditions does not warrant an unlawful intrusion in a person's privacy, by police,

as protected by the Fourth Amendment, nor does it authorize the type of seizure the Leech Lake Tribal Police conducted, nor justify this type of seizure authorized by Terry.

The police officer's sole purpose in breath testing and searching Defendant/Appellant was purely investigatory, supported by a mistake that Defendant/ Appellant was actually comitting a crime. These facts, put together points to several indicia of pretext which raises a question about whether the search was conducted in good faith. There was no crime committed by Defendant /Appellant that the Police could articulate to, nor was there any contraband or other evidence that there was any other crime being comitted by the driver of the vehicle stopped or any of the passengers in the vehicle at the time of the illegal and unconstitutional investigation.
Collectively, these facts are harmful to the State's position, as the search, including all these facts, are constitutionally defective.

2. In the alternate, the State is conferring authority of one administrative body to the other, violating "Separation-of-Powers", the county court is supervising Defendant/Appellant's Pretrial release and the Tribal Police is an executive branch administration, separate from the judicial branch, there exists no authority from one to the other.

a. The Officers are pretextually and subjectively believing to use a court's rule to acquire jurisdiction to test Defendant/ Appellant for alcohol use in violation of his pretrial release conditions.
An officer's reason cannot always be credited to support a stop, see State v. George, 557 N.W.2d 575, where an officer had reasonable subjective belief that a headlight configuration was illegal on Thomas George's motorcycle, the court determined that the stop was not a reasonable or permissible one.

The State recites all sorts of excuses, reasons, and inconsequential facts to try excuse or justify the illegal search and points to nothing in the record that points to illegal or criminal activity of the Defendant/ Appellant to justify a search of his breath or person.

b. Even if the justifications warranted a search, a police officer, acting alone, pretextually without prior authorization from and supervision of the Cass County Probation Department, the officers cannot search the Defendant / Appellant unless he was in fact, committing a crime. The breath test was also not warranted as the Defendant was not driving the vehicle at the time of the stop. No Statute or Court rule authorizes these sorts of searches by law enforcement unless initiated by the Cass County Probation Department.

The Supreme Court in stating an agency's authority not expressly stated is that "we resolve any doubt about the existence of an agency's authority against the exercise of such authority." In re Application of Minn. Power, 838 N.W.2d 747, 753 (Minn. 2013). "Administrative agencies are creatures of statute and they have only those powers given them by the legislature." In re Hubbard, 778 N.W.2d 313, 318 (Minn. 2010)."An agency's statutory authority may be either expressly stated in the legislation or implied from the expressed powers." id. To determine the extent of an administrative agency's powers, "we first look to the plain language of the authorizing statute." In re Valley Branch Watershed Dist., 781 N.W.2d 417, 421-22 (Minn. App. 2016)
The burden is on the State to produce the authority in which it operated, in this case, it did not cite any controlling statute that authorized this search, absent a criminal offense.

CONCLUSION

The pretextual search of Defendant /Appellant was not conducted by an authorized person, nor was the Defendant /Appellant suspected of any criminal wrongdoing, which did not warrant the type of intrusion by law enforcement officers. A condition of pretrial release is not a crime, it is only a violation of an administrative rule, and does not rise to the level of criminality authorizing a pretextual search of Defendant/ Appellant by law enforcement without permission or criminality.

Dated: March 11th, 2020

Carlos Sargent
1000 Lakeshore Dr.
Moose Lake, MN 55767