A19-1554

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent

vs.

Carlos Ramone Sargent,

Appellant.

RESPONDENT'S BRIEF

Mr. Keith Ellison
Minnesota Attorney General
1800 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101
(651) 296-7578

Benjamin T. Lindstrom
Cass County Attorney
Attorney Reg. No. 0388054
303 Minnesota Avenue West
P.O. Box 3000
Walker, MN 56484
(218) 547-7255

Attorneys for Respondent

William Ward
Office of the State Public Defender
540 Fairview Ave. N.. Ste.300
St. Paul, MN 55104
(612) 349-2565

David M. Robbins
Special Asst. Public Defender
Attorney Reg No. 0396681
Meyer Njus Tanick, PA
330 Second Avenue South, Suite 350
Minneapolis, MN 55401
(512) 630-3245

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

MINNESOTA CASES **PAGES**

FEDERAL CASES

OTHER AUTHORITIES

LEGAL ISSUE

I. Whether the Court of Appeals properly affirmed the District Court's Decision that an officer can reasonably expand a traffic stop to investigate a suspect's violation of a pre-trial release condition.

The district court determined that the odor of alcohol gave the officer reasonable suspicion to expand the scope of the stop and question Appellant.

The Court of Appeals, affirming the district court, determined an officer may expand the scope of a lawful traffic stop to investigate a suspected pre-trial release violation if the expansion is reasonable; if the government interest in public safety outweighs the resulting intrusion on the suspect's individual rights and the expansion is supported by reasonable suspicion.

Most Apposite Cases:

Rodriguez v. United States, 135 S. Ct. 1609 (2015)

***State v. Askerooth,* 681 N.W. 2d 353 (Minn. 2004)**

***U.S. v. Knights*, 534 S. Ct. 1297 (July 18, 2014)**

STATEMENT OF THE CASE AND FACTS

Respondent accepts Appellant's statement of the case and facts.

ARGUMENT

I. Standard of Review

This Court's review is limited to whether the district court properly denied the suppression motion. *See* Minn. R. Crim. P. 26.01, subd. 4(f). When reviewing pretrial orders on motions to suppress evidence, this Court reviews "the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). If the relevant facts are undisputed, this court applies a *de novo* standard of review to a district court's ruling that an investigatory stop is valid. *State v. Yang,* 774 N.W.2d 539, 551 (Minn.2009).

II. The expansion of the Terry stop was justified.

Both Article I, § 10 of the Minnesota Constitution and the Fourth Amendment to the United States Constitution guarantee "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." In the context of a traffic stop, "a police officer may expand the scope of a traffic stop to include investigation of other suspected illegal activity . . . only if the officer had reasonable, articulable suspicion of such other illegal activity." *State v. Smith*, 814 N.W.2d 346, 351 (Minn. 2012). Traffic stops are not always expanded by an abrupt discovery of a crime. Often, a stop transitions incrementally into a broader criminal

investigation as the officer continues to encounter clues that additional criminal activity is afoot. In such cases, "each incremental intrusion during [the] traffic stop must be tied to and justified by the original legitimate purpose of the stop, independent probable cause, or reasonable, articulable suspicion of other illegal activity." *State v. Thiel*, 846 N.W.2d 605, 610 (Minn. Ct. App. 2014).

The Minnesota Supreme Court has held that traffic stops resulting in searches, seizures and/or arrests in Minnesota are governed by the principles of *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) and Article I, Section 10 of the Minnesota Constitution. *State v. Askerooth*, 681 N.W.2d 353 at 363 (Minn. 2004.) The Court has held that, when reviewing the constitutionality of a traffic stop, "...the Minnesota Constitution requires that each incremental intrusion during a traffic stop be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in Terry. Furthermore, the basis for the intrusion must be individualized to the person toward whom the intrusion is directed." Askerooth, Id. at 365. "An intrusion not closely related to the initial justification for the search or seizure is invalid under [Minnesota Constitution] Article I, Section 10 unless there is independent... reasonableness to justify that particular intrusion." *Askerooth*, Id. at 364. The reasonable-suspicion standard is "less demanding than probable cause," but requires more than an unarticulated "hunch." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn.2008.)

A peace officer may expand the scope of a traffic stop to "include investigation of other suspected illegal activity ... only if the officer has reasonable, articulable suspicion

of such other illegal activity." *State v. Wiegand*, 645 N. W.2d 125, 135 (Minn. 2002); see also *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). To be reasonable, the basis of the officer's suspicion must satisfy an objective, totality-of-the-circumstances test. The Minnesota Supreme Court has described this test as asking whether "'the facts available to the officer at the moment of the seizure [would] warrant a man of reasonable caution in the belief that the action taken was appropriate.' " *Askerooth*, 681 N.W.2d at 364 (quoting *Terry,* 392 U.S. at 21- 22, 88 S.Ct. 1868). The test for appropriateness, in turn, is based on a "'balancing of the government's need to search or seize and the individual's right to personal security free from arbitrary interference by law officers.'" *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005) (quoting *Askerooth*, 681 N.W.2d at 364-65); see also *State v. Henning*, 666 N. W.2d 379, 384 (Minn.2003). While the reasonable suspicion standard is "less demanding than probable cause or a preponderance of the evidence," it still "'requires at least a minimal level of objective justification.'" *State v. Timb*erlake, 744 N.W.2d 390,393 (Minn.2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000)).

A. Reasonable suspicion

Police may continue a stop and expand the scope of a stop, however, if the officer has reasonable and articulable suspicion of criminal activity beyond the original purpose of the stop. *State v. Cox*, 807 N.W.2d 447, 452 (Minn. Ct. App. 2011) ("Because [the officer] immediately observed signs of Cox's intoxication when he approached him . . . , we conclude that [the officer] lawfully developed additional reasonable suspicion that supported the expanded scope of the initial stop."). The odor of alcohol smelled upon

approaching a vehicle can provide reasonable suspicion to expand the scope of a traffic stop to "continue the detention [to] conduct an investigation." *State v. Lopez*, 631 N.W.2d 810, 814 (Minn. Ct. App. 2001), rev. denied (Minn. Sept. 25, 2001). In *Lopez*, an officer stopped a vehicle without license plates but then noticed that it had a valid "drive-out" registration sticker in its rear window. Id. at 812. The officer approached the driver to explain why she stopped the vehicle, at which point she detected the odor of an alcoholic beverage within the vehicle. *Id.* The Appellate Court held that the officer's continued detention of the driver was justified by the odor of alcohol within the vehicle, which provided the officer with reasonable suspicion of unlawful activity. *Id.* at 814. The Appellate Court has consistently applied Lopez to affirm that an odor of alcohol provides an officer with a reasonable articulable suspicion to expand a traffic stop.

In the current case, there is no dispute that the stop of the vehicle was lawful based on a minor traffic violation and was justified at its inception. The particular intrusion to which Appellant objects occurred when the officers began questioning Sargent about whether he had been drinking. The questioning was not extensive or obnoxiously intrusive. It was a simple question if he had been drinking. Upon discovery that the source of the odor of alcohol wasn't the driver Howard, Officer Hanson returned to the vehicle and asked Sargent if he was on a "no drink", which Sargent confirmed. It is these simple two questions that is the real core issue at hand. This court must determine if this questioning is justified by reasonableness as defined in *Terry.* After a careful balance of the intrusive nature of the questioning to the public safety interest of imposing the

conditions of pretrial release, the Appellate court deemed the intrusion "de minimis". (Index # 76-pg. 15) Respondent agrees with this analysis.

Again, Reasonable suspicion is a minimal standard. *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980). Reasonable, articulable suspicion means "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the investigatory action. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). "All that is required is that the [officer's action] not be the product of mere whim, caprice, or idle curiosity." *Marben,* 294 N.W.2d at 699. Under *Terry*, a police officer may "stop and temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity." *Id.* (quoting *Cripps*, 533 N.W.2d at 391). "Reasonable suspicion must be 'based on specific, articulable facts' that allow the officer to 'be able to articulate at the omnibus hearing that he or she had a particularized and objective basis for suspecting the seized person of criminal activity.'" Id. at 842-43 (quoting Cripps, 533 N.W.2d at 391). "A hunch, without additional objectively articulable facts, cannot provide the basis for an investigatory stop." Id. at 843 (quoting Harris, 590 N.W.2d at 101); see also Terry, 392 U.S. at 27; *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008).

In determining whether an inference is reasonably drawn from the circumstances, courts generally defer to an officer's experience and trained judgment. *State v. Flowers*, 734 N.W.2d 239, 251-52 (Minn. 2007). Courts also examine the reasonableness of those inferences in light of the totality of circumstances. Id. at 251. The reasonable articulable suspicion standard does not consider individual facts in isolation from that totality. *State*

v. Lugo, 887 N.W.2d 476, 486-87 (Minn. 2016); *State v. Eichers*, 840 N.W.2d 210, 221 (Minn. Ct. App. 2013), aff'd 853 N.W.2d 114 (Minn. 2014).

During the contested omnibus hearing, officer Anthony Hanson testified upon stopping Elise Howard's motor vehicle, he observed three other occupants in the vehicle. He testified that he recognized all three occupants and identified them as Carlos Sargent, Joseph Oothoudt and John Omaha. (T-35)[1]. He stated that he was familiar with Carlos Sargent from "previous law enforcement contact." (T-35). He continued, "he's got a pretty good record with our department." (T-35). Officer Hanson testified that it was standard to run a full 45 to get information, including probation and warrant check because he was a suspect in an assault. (T-36). Through that check, he learned that he was on probation, pretrial release.(T-36). Officer Hanson stated that he could smell alcohol in the vehicle and specifically asked Sargent "if he had been drinking and he said yes." (T-38). He continued his testimony, "after PBT'ing Howard, I went back up to the vehicle, asked him if he was on a no drink, which he replied yes, and then conducted a PBT, which he provided for. "(T-38).

Under the Fourth Amendment, the permissible scope of a traffic stop is context-dependent, according to its purpose. *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015). "[E]ach incremental intrusion during [the] traffic stop must be tied to and justified by the original legitimate purpose of the stop, independent probable cause, or reasonable, articulable suspicion of other illegal activity." *State v. Thiel*, 846 N.W.2d

[1] "T" refers to testimony given at the Omnibus hearing held on August 9, 2018; Index # 70.

605, 610 (Minn. Ct. App. 2014). If an officer engages in conduct unrelated to the original purpose of the stop and, in doing so, prolongs the stop's duration, those actions must be supported by a reasonable, articulable suspicion of some other illegal activity. *Rodriguez*, 135 S. Ct. at 1615; *Smith*, 814 N.W.2d at 351. If, however, the officer's actions are reasonably related to the stop's original purpose, the stop is not expanded, and no additional justification is needed. *Smith,* 814 N.W.2d at 351.

Appellant argues that the smell of alcohol wafting from a vehicle is more indicative of innocuous or even commendable activity. However, after testing the driver, Elise Howard, and determining she had not been drinking the odor of alcohol still remained. Officer Hanson did not then conduct extensive questioning, he testified as shown above that he knew all three occupants. He immediately recognized Sargent and knew of his criminal involvement. The exchange between Officer Hanson and Sargent was brief. Appellant further claims this alcohol use is not considered criminal activity, and as such does not provide a reasonable suspicion of criminal activity to expand the stop. Yet, as shown above in *Lopez,* reasonable suspicion of unlawful activity satisfies that reasonable suspicion threshold. Appellant extensively argues violating pre-trial release condition only holds the threat of violating a court directive and are not criminal in nature. Further, Appellant argues that Officer Hanson provided no details on the record what Sargent's criminal record included. However, the simple questioning of Sargent asking if he was on a "no drink" if considered an intrusion, is minimal. Had "no alcohol use" not been part of his pre-trial conditions, certainly the expansion would have

ended there. However, each small step or small incremental intrusion, led to one more small step in the reasonable suspicion threshold followed by a trained officer.

Compare *State v. Fort*, 660 N.W.2d 415 (Minn. 2003.) In *Fort,* officers stopped a car for a cracked windshield. Fort was a passenger in the car. Officers had no other basis for the stop and no other reason to be suspicious of him. However, officers removed Fort from the car, placed him in the squad car, asked him questions about weapons and drugs and eventually found drugs in his possession. The Minnesota Supreme Court reinstated the trial court's suppression of evidence found in Fort's possession, noting that "The purpose of this traffic stop was simply to process violations for speeding and a cracked windshield and there was no reasonable articulable suspicion of any other crime." *Fort,* Id. at 418 (Minn. 2003.) Unlike *Fort*, officers in Appellant's case did have a "reasonable articulable suspicion" of another (court ordered) violation, alcohol consumption.

Appellant argues that since the initial justification for the stop was a traffic offense, once officers were able to determine the driver Howard wasn't drinking, the stop should have ended. Appellant compares the current case to *State v. Burbach,* 706 N.W. 2d 484 (Minn. 2005). Although Burbach's legal analysis is sound, it is not analogous to the case here. In *Burbach,* the officers were not familiar with the passenger like Officer Hansen was here. Further, in *Burbach,* an odor of alcohol was the sole reason for the stop expansion. This is not analogous to the present case as Officer Hanson knew that Sargent was a suspect in a recent assault case ten days prior. Utilizing Officer Hanson's experience and trained judgment he believed that Sargent was on pre-trial conditions. In *Burbach,* once the officers gave field sobriety tests to Burbach which she passed, they

continued the expansion only on the basis of the odor of alcohol. They did not recognize nor know the identity of the passenger or have any reason to believe the passenger should not be consuming alcohol. Again, here Officer Hanson was familiar with Sargent and his criminal involvements.

Appellant then looks to *U.S. v. Santillanes*, 848 F.2d 1103 (10th Cir. 1988), to support its theory that pretrial release conditions do not provide a valid reason to effect a *Terry* stop. Because in New Mexico, a violation of a Metropolitan Court condition of pretrial release is not a crime under New Mexico law. However, as the Appellate Court pointed out, Minnesota has a procedural rule that allows law enforcement authority to arrest for pretrial violations. According to Minn. R. Cr. Pr. 6.03, Subd. 2: A peace officer may arrest a released defendant if the officer has probable cause to believe a release condition has been violated and it reasonably appears continued release will endanger the safety of any person. Respondent admits that while officers may have been aware Sargent was on pretrial release, they did not appear aware of his specific conditions. Through testimony, Officer Hanson shared his previous knowledge of Sargent at the omnibus hearing in this matter. He testified that he is familiar with Sargent. (T- 35) He knew him through "previous law enforcement contacts" and "he's got a pretty good record with our department". (T-35). He also testified that he had a case with him recently wherein he was a suspect in an assault; and as such, ran a full "45"[2], including probation status. (T-36). At that time, he learned that Sargent was on pretrial release.

[2] "45" is referenced often by Cass County law enforcement as a driver's license query or record.

This 45 was run approximately 10 days prior to the current encounter[3]. This information gained by Officer Hansen was the thrust behind the expansion of the stop beyond the determination of whether the driver, Elise Howard, was drinking. It should be noted that prior to Officer Hanson removing Howard from the vehicle, he asked Sargent whether he had been drinking to which he replied "yes". (T-38). After Howard was PBT'd, Officer Hanson returned to the vehicle and asked Sargent if he was on a "no drink". Sargent replied, "yes" and conducted a PBT, which showed a .03 BAC. This led to yet another incremental step in the expansion while Officer Hanson contacted Sargent's probation agent to confirm the pretrial conditions. This should be considered good police work in confirming the status of a probationer before further expanding the stop or arrest. Officer Hanson was told that Sargent was indeed on a no-drink and asked that he be arrested for the violation.

Further in *Santillanes,* law enforcement was much more intrusive in stopping Santillanes at the airport. The detective initially stopped Santillanes for the purpose of inquiring whether or not he violated conditions of release. The reasonable suspicion the officers used for support of the physical stop and detainment was that the Detective was "afraid" by reason of a previous violent encounter. Santillanes was seized in public at an airport and later taken to a private area where the search continued. This over-stepping detainment, search and questioning is not analogous to the case at hand. Here, it was the

[3] The assault investigation was October 25, 2017; the current arrest date was November 4, 2017, which results in approximately 10 days.

odor of alcohol and a question if Sargent had been drinking in possible violation of pretrial conditions. The intrusion minimal and as *Santillanes* determined:

> this assessment of reasonableness is essentially a balancing test. As the Supreme Court has noted:'... We must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. *When the nature and extent of the detention are minimally intrusive of the individual's Fourth Amendment interests,* the opposing law enforcement interests can support a seizure based on less than probable cause.' " (Emphasis supplied, citations omitted.)

Id at 1107. Permitting law enforcement to expand a Terry stop to investigate certain pretrial violations is not allowing a blanket rule that law enforcement could stop and investigate all noncriminal and non-contraband related infractions as Appellant alleges. However, it should be considered in a case-by -case basis.

B. Balancing of Interests.

Appellant argues both that the intrusion into Sargent's individual rights was aimed at soliciting evidence of a crime; yet he also argues that a pretrial conditional violation is not a crime. Respondent maintains the incremental intrusion is minor as the mere question if he's been drinking does not rise to the level of "intrusive questioning". *Burbach,* 706 N.W.2d at 489 (Minn. 2005) stresses that every analysis "under Article I Section 10 of the Minnesota Constitution must be individualized and viewed under the totality of the circumstances of each case, the odor of alcohol in *Schinzing* must be

examined in light of its particular context". This analysis is akin with the Appellate Court decision in this matter, concluding , "depending on the balance of interests at stake and the totality of the circumstances, a suspected violation of a pre-trial release condition can provide a basis to expand a lawful traffic stop. "(Index 76-19).

"The Fourth Amendment's touchstone is reasonableness, and a search's reasonableness is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed to promote legitimate governmental interests." *U.S. v. Knights*, 534 U.S. 112, 113 (July 18, 2014) *citing Wyoming v. Houghton,* 526 U.S. 295, 300, 119 S.Ct. 1297, 143 L.Ed.2d 408. "The degree of individualized suspicion required is a determination that a sufficiently high probability of criminal conduct makes the intrusion on the individual's privacy interest reasonable." *Id.* Here, there is a traffic stop and an odor of alcohol. It's not a Terry stop based only upon a probation condition violation, but a series of incremental steps that eventually led to the questioning of Sargent. And to be reasonable, any intrusion in a routine traffic stop must be supported by an "objective" and fair "balancing of the government's need to search or seize 'and the individual's right to personal security free from arbitrary interference by law officers.' " *Askerooth,* 681 N.W.2d at 364-65 (quoting *United States v. Brignoni-Ponce,* 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975)).

Thus, the analysis here is not whether the intrusion of Appellant was tied to the original justification for the stop but whether the governmental interest outweighs the intrusion in the expansion. The intrusion here as stated by Appellate Court, was "de

minimis" (Index # 76). The Appellate court properly determined that an officer may expand the scope of a traffic stop to investigate a suspected pre-trial release violation if the expansion is reasonable as defined in *Terry*. The Appellate court warned that they were not creating a blanket rule that allows law enforcement to always be allowed to lawfully expand a stop to investigate an individual's pretrial release status but will be determined in a case-by-case basis. In this case, considering Sargent's criminal history with law enforcement, the public safety outweighed the minimal intrusion of a mere question if Sargent had ben drinking while on a "no drink" condition.

C. Totality of the Circumstances

As the present case presents, the circumstances provide a basis for a lawful traffic stop expansion. Looking at the totality of circumstances, the invasion of Sargent's interests were minimal. The "totality of the circumstances" requires courts to consider "the whole picture." [*United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).] Our precedents recognize that the whole is often greater than the sum of its parts - especially when the parts are viewed in isolation. See *United States v. Arvizu*, 534 U.S. 266, 277, 274 .... *Dist. of Columbia* v. *Wesby,* 138 S.Ct. 577, 588. A "divide-and-conquer approach is improper." *Id.*

When dealing with the scope and duration of a traffic stop investigation, *State v. Burbach*, 706 N.W.2d 484 (Minn. 2005), succinctly stated:

> And any intrusion not closely related to the initial justification for the search or seizure is invalid under article I, section 10 unless there is independent probable cause or reasonableness to justify that particular

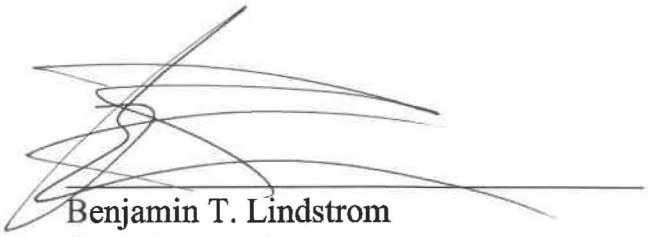
intrusion." *Askerooth,* 681 N.W.2d at 364. Both probable cause and reasonableness are evaluated by looking at the "totality of the circumstances." *State v. Henning,* 666 N.W.2d 379, 384-85 (Minn.2003).

In this case, under the totality of the circumstances, much of the information establishing reasonable suspicion derives from Officer Hanson and his knowledge of Sargent. He knew he was under investigation for an assault charge ten days prior. At that time when he ran the "45" he knew he was under court-imposed conditions and Sargent was familiar to him from past dealings. Thus, the odor of alcohol provided Officer Hanson with a reasonable suspicion Sargent may have been drinking in possible violation of the court-imposed conditions. Each of these facts held in isolation may not satisfy the low level of proof necessary for reasonable suspicion, but taken together as a whole, that threshold has been satisfied. Regardless, if the violation is deemed to be noncriminal, or a non-contraband act, the act of consuming alcohol is a court sanctioned violation and according to the Minnesota Rules of Criminal Procedure an arrest may be warranted. As such, under the totality of the circumstances, the intrusion on Sargent weighed against public safety was minimal.

CONCLUSION

Therefore, the State respectfully requests the decision of the Court of Appeals be affirmed.

Dates: 2/25/21



Benjamin T. Lindstrom
Cass County Attorney
PO Box 3000
303 Minnesota Ave W
Walker, MN 56484
218/547-7255
Attorney Registration Number: 0388054
Ben.lindstrom@co.cass.mn.us