A19-1554
STATE OF MINNESOTA
IN COURT OF APPEALS

State of Minnesota,

Respondent,

vs.

Carlos Ramone Sargent,

Appellant.

RESPONDENT'S BRIEF

OFFICE OF THE MINNESOTA
APPELLATE PUBLIC DEFENDER

DAVID M. ROBBINS
Special Asst. Appellate Public Defender
License No. 0396681
330 Second Avenue South, Suite 350
Minneapolis, MN 55104

Attorney for Appellant

CARLOS RAMONE SARGENT
Inmate-OID 162222
MCF-Moose Lake
1000 Lake Shore Drive
Moose Lake, MN 55767

Pro Se Appellant

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

BENJAMIN LINDSTROM
Cass County Attorney
License NO. 0388054
303 Minnesota Avenue West
P.O. Box 3000
Walker, MN 56484
(218) 547-7255

Attorneys for Respondent

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The District Court properly found the odor of alcohol gave officer's reasonable suspicion to expand the stop.

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II. WHETHER THE DISTRICT COURT ERRED IN DETERMINING TESTING APPELLANT UNDER PRETRIAL CONDITIONS FOR ALCOHOL USE DID NOT VIOLATE HIS FOURTH AMENDMENT RIGHTS?

The District Court properly found the court was within its discretion in ordering random testing and as such the alcohol test did not constitute an unreasonable search.

State v. Clark, 2012 WL 171380 (Minn. App. 2012).

STATEMENT OF THE FACTS

Respondent accepts Appellant's Statement of the Case and Facts.

I. ARGUMENT

A. 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).

B. The stop expansion was justified.

To determine whether a brief investigative stop is constitutionally permissible, Minnesota courts apply the principles established by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968). Under *Terry* and its progeny, a police officer may stop and temporarily seize a person to investigate if the officer reasonably suspects the person of criminal activity based on specific, articulable facts providing a particularized and objective basis for the suspicion. *State v. Cripps*, 533 N.W.2d 388, 391 (Minn.1995).

"[T]he reasonable suspicion showing is 'not high.'" *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quoting *Richards v. Wisconsin* ,

520 U.S. 385, 394 (1997)). The standard is less demanding than probable cause or a preponderance of the evidence, but requires a minimal level of objective justification for making a stop. *State v. Timberlake*, 744 N.W.2d at 390, 393. For example, an officer may stop a person when an officer observes unusual activity that leads the officer to reasonably conclude that criminal activity may be afoot based on his or her experience. *See In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). Additionally, appellate courts evaluate reasonable, articulable suspicion from the perspective of a trained police officer, who may make "inferences and deductions that might well elude an untrained person." *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

During the contested omnibus hearing here, 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). 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).

The evaluation of reasonable suspicion is based on the totality of the circumstances, not individual facts in isolation. *United States v. Arvizu*, 534 U.S. 266, 273-74, 122 S. Ct. 744, 750-51 (2002) (holding that reviewing courts must look to the totality of the circumstances, not individual facts, in determining reasonable suspicion); *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998) (holding that while none of the facts were "independently suspicious," the facts in their totality were sufficient for reasonable suspicion); *In re M.D.R.*, 693 N.W.2d 444, 449-50 (Minn. Ct. App. 2005) (holding that while facts "taken individually might not justify" the stop, the totality of the circumstances - defendant's apparent nervousness, evasive behavior, and running from the scene - provided reasonable suspicion to stop defendant). The reasonable suspicion here is based on the totality of the circumstances described above with a strong smell of

alcohol and the officers knowledge of Sargent's criminal history and active investigations. Further, the questioning of Sargent was strictly along the vein of alcohol use due to the odor that Officer Hanson smelled. He didn't ask various questions and carry out the questioning to other subjects. He strictly asked about the alcohol and if he was on conditions.

In *State v Lopez*, the smell of alcohol provided reasonable suspicion for furthering a mistaken stop and detention. 631 N.W. 2d 810 (Minn. App. 2001). There, after Officer Hill mistakenly stopped the motor vehicle, and approached the vehicle to explain her error, she smelled the odor of alcohol. Officer Hill then relied upon the odor of alcohol to continue or recommence the detention. The Lopez court determined that the officer can rely upon the odor of alcohol to continue or recommence the detention.

In the case at hand, Officer Hanson had more information than in *Lopez*, he immediately identified Sargent and held general knowledge of his criminal activities. The reasonable suspicion here of additional criminal activity and stop expansion is the odor of alcohol emanating from the vehicle. Officer Hanson had a lawful basis to continue the detention and conduct an investigation to determine the source of the odor of alcohol. Even after Elise Howard was found to not have been drinking, the identity

of Sargent was known to Officer Hanson. (V-2:50)[1] He can be seen and heard asking Defendant if he was clear or had any warrants.(V-3:40) He asked, "Carlos have you been drinking?" (V-4:00) Finally, asking him if he was on a "no-drink". (V-8:02). Officer Hanson's investigation continued in a step by step fashion as he yet had determined the source of the odor of alcohol in the motor vehicle and whether Sargent could lawfully be using or drinking the alcohol. Thus, there was valid reasonable suspicion to expand the stop to determine the source of the odor of alcohol.

C. Court Ordered Random UA tests do not implicate the fourth amendment.

The determination of whether random UA testing is an unreasonable search and seizure under a condition of a pretrial release was addressed in a Minnesota unpublished case, *State v. Clark,* 2012 WL 171380 (Minn. App. 2012). The *Clark* case directly dealt with the random UA search and seizure pretrial condition issue. The *Clark* court decided the following:

> We recognize that under the Fourth Amendment, a search is only permissible if a warrant is obtained and that a UA condition has a search quality. *See Ellingson v. Comm'r of Pub. Safety,* 800 N.W .2d 805, 807 (Minn.App.2011) (noting

[1] "V-" is the time of Officer Hanson's squad video submitted as Exhibit ID#COH001

> that collection of urine sample is a search subject to the warrant requirement), *review denied* (Minn. Aug. 24, 2011). The purpose of the constitutional warrant requirement is to ensure that a neutral magistrate, rather than police officers engaged in the investigation of crime, make determinations that citizens should be searched. *See State v. Mohs,* 743 N.W.2d 607, 611 (Minn.2008) (holding that the purpose of the warrant requirement "is served by the requirement that law enforcement officers obtain from an impartial magistrate a warrant authorizing the particular search or seizure"). But when the district court has itself issued an order directing the search or seizure, the warrant requirement is, in essence, satisfied. *See id.* at 61213 (holding that bench warrant for defendant's arrest that was based on the court's personal knowledge rather than "oath or affirmation" did not violate the Fourth Amendment).

Here, during his first appearance on this current case, the State of Minnesota in front of District Court Judge David Harrington, made a record of Appellant's extensive criminal history. ("T-7")[2]

> Mr. Sargent does have a bit of a history. He has an escape conviction from 2006, an assault in the second-degree conviction from 2008, another escape conviction from 2013, a firearm possession conviction in 2003, and another assault in

[2] "T-" represents the entire transcript from Feb. 5, 2018 to Jan. 24, 2019

the second degree from 1999. I also noted close to 20 prior warrants. I believe it was 18 for the total. The State believes Mr. Sargent is a flight risk and a risk to public safety. So on the new file, the State would ask for $75,000 without conditions, $50,000 with conditions, and that the pretrial supervision, no weapons, remain law-abiding, do not leave the State of Minnesota, no use of alcohol or controlled substances and random testing. The State would ask that on the conditional release violation filed—and that was 833—that the conditions be amended to 50,000 without and 25,000 with under the same conditions as previously imposed.

In setting Appellant's conditions, the district court acknowledged the following: (T-8):

Well, yeah, but the thing is we've got all these serious issues, and I guess—yeah. I have to set the bail, and I'm going to set the bail on file 139, and it's going to be in the amount of $40,000 unconditional bail or bond, $20,000 bond with the condition that you remain law-abiding; that you stay in the state; that you have no use of alcohol or controlled substances; subject to random testing, except for stuff that you might have a prescription for; and to remain law-abiding and of good behavior; and make court appearances.

The extensive transcripts and record reflects Appellant's lengthy history, which includes controlled substance use along with a pretrial condition violation of drug use. Further, after the district court considered Appellant's pending files during a hearing on March 21, 2018, and in response to the Public Defender's request for a cash only bail, the judge stated, "Actually, if I'm going to relook at this, I'm going to raise it, so you don't want me to relook at this." (T-16). In addition, the court recognized that Appellant already had a previous pending violation of conditions of release. (T-8).

On March 26, 2018, Appellant appeared at a hearing on his three of four pending files. Once again the Public Defender requested a possible change to the release conditions. He requested electronic home monitoring at his own expense to keep track of him. (T-19). The Court denied this request. (T-20).

On July 2, 2018, Appellant appeared on four pending criminal files for Omnibus hearings. The Court reiterated, "so we have seven criminal history points and four outstanding felonies." (T-25). The court then set the case for a July 16, 2018 dates for a review hearing on the condition of release. The July 16, 2018 hearing was continued until August 9, 2018.

Finally, on August 9, 2018, the contested omnibus hearing occurred based on the appeal issues before the Court today. Three officers testified along with the probation agent and Defense witness, Elise Howard (driver of the motor vehicle).

Although the hearings were held in regard to the current case, the knowledge and criminal familiarity with Sargent by the court, Judge Harrington, was shown through the court's comments in the various hearings. It wasn't just routine pretrial conditions that were imposed, the court addressed the fact that "we've got all these serious issues" (T-8). In addition, Sargent's previous extensive convictions are reflected in the probable cause portion of the complaint. (Index-1). Also reflected in this complaint was Sargent's current status of pretrial supervision on Case number 11-CR-17-833 for charges of controlled substance Crime in the fifth degree. In part, this complaint points out the following in respect to pretrial conditions on the current controlled substance active file:

> Sargent is on pretrial supervision in Court File 11-CR-17-17-833. In that file on 9/25/2017, conditional bail was modified by the Honorable Judge Harrington to $1,000 non-cash bond with conditions to include pretrial supervision. Probation Officer Travis Fisher met with Sargent in the Cass County Jail,

> reviewed release conditions and monthly contact requirements. On 9/28/2017, Sargent posted non-cash conditional bond. Sargent had no contact with Agent Fisher until 11/2/2017, when a home visit was conducted, and a drug test was administered. On 11/4/2017, the defendant was detained for violating release conditions and possible new charges (ICR 17409327), however released to the Sanford Medical Center in Bemidji, MN for possible medical treatment. Agent Fisher attempted to contact Sargent by phone on 11/16/17 and 12/1/2017 but the phone was disconnected. Agent Fisher conducted home visits on 12/14/17 and 12/26/2017, no contact was made, and Agent Fisher's card was left at the door. (Index-1).

To assume the court imposed a blanket order for pretrial conditions is not accurate, especially looking at the comments made during his extensive hearings and criminal history. The district court was quite familiar with Sargent and his criminality. Again, the criminal complaint also spelled out his history along with his current pending criminal files. (Index-1).

As shown above in *State v. Clark,* one of the imperative considerations if a search is permissible is if a warrant is obtained and that a UA condition has a search quality. *Clark* also stated, "when a district court itself issued an order directing the search or seizure, the warrant requirement, in essence, is satisfied." Id at 3. Here, this was not a blanket routine conditional release requirement made by a random judge at the district court as Appellant claims. Nor was this a condition that was determined by law enforcement, it was a condition placed on Sargent by the district court who had a full understanding of Sargent and not only his criminal history but also considered his current active felony files coupled with 18+ previous warrants. Also, in this case, Officer Hansen initiated a PBT while the *Clark* case deals with an even higher intrusion of a urinalysis.

Appellant claims that the court abused its discretion by utilizing a blanket policy of conditions release on abstention from drugs and alcohol and cites *State v. Martin,* 743 N.W.2d 261 (Minn. 2008). (App. Br.-12)[3]. However, *Martin* can be distinguished here. The opposite facts are present as shown above in the transcripts and complaint. The *Martin* court represented the practice of imposing conditions of release based on

[3] "Def. Br.-" refers to Appellants brief followed by page number

standard practice, without consideration of particular facts violates Minn. R. Crim. P. 6.02. *Clark* also distinguishes itself from *State. v. Martin.* The *Clark* court maintained there was no indication that Martin would commit an offense between the overdose and his first appearance. The *Clark* court dealt with a suspect that was charged with possessing precursors for the manufacture of methamphetamine, and upon his arrest he exhibited signs that indicated he had ingested drugs. The bail evaluation in *Clark* noted that he had a prior drug-related offense; thus, indicating a history of drug offenses. Also, the complaint against Clark was filed within three days after the arrest. Thereby not allowing him to hold a period of offense-free living unlike *Martin.* In the end, the distinguishing factors between *Martin* and *Clark* justified the random UA requirement even if Clark was arrested only for a precursor offense. Respondent argues similar distinguishing factors here.

Here, the conditions of release were considered and addressed in four of the seven hearings. Respondent maintains the district court properly determined the fourth amendment is not implicated by an order requiring random UA's as held in *Clark,* 2012 WL 1711380. Sargent continued his criminal activities between his new charges on his active files by not appearing for court hearings and violating the conditions of

release on his pending files. Thus, the current case is more analogous to *clark* than Martin.

C. **Pre-trial conditions are not unconstitutional**

Appellant argues that a random search under conditions subjecting probationers to suspicionless searches conducted by law enforcement under pretrial conditions set by the court is unconstitutional. (App. Br.-14). Minnesota Rule of Criminal Procedure 6.02 also controls pre-trial conditions of release. That rule provides, in part, that upon an appearance before the court, any person charged with an offense shall be ordered released without bail pending future hearings on (1) personal recognizance, (2) an order to appear, or (3) an unsecured appearance bond in a set amount. Minn.R.Crim.P. 6.02, subd. 1. However, if the court determines in the exercise of its discretion that the release of an accused on personal recognizance, an order to appear, or on an unsecured bond *"will be inimical of (to) public safety* or will not reasonably assure the appearance of the person as required," then the court shall "either in lieu of, or in addition to the above methods of release" impose conditions of release which will reasonably assure the appearance of the person. *Id.* (emphasis added).

When the court determines which conditions of release will reasonably assure the appearance of the accused, the court shall consider on the basis of available information, several factors, which include "the nature and circumstances of the offense charged," and "the safety of any other person or of the community." Minn.R.Crim.P. 6.02, subd. 2.

Here, as articulated above, the court was very familiar with Sargent and set his pretrial conditions accordingly. Officer Hansen testified that he was familiar and was able to identify him upon sight. He ran a 45 through dispatch to confirm he was on pretrial conditions of release. He then confirmed with Sargent that he was indeed on a "no drink". Upon Sargent's' affirmation, he provided a PBT test. That test came back at .03 which suggested he had been drinking. (T-38). This is not a suspcionless search as claimed by Appellant. Appellant also argues that the PBT was a violation of his fourth amendment rights under the unpublished decision, *State v. Cournoyer*, 2019 WL 114198 (Minn. Ct. App. Jan 7, 2019). Respondent argues that *State v. Clark, 2012 WL 171380 (Minn. Ct. App. Jan 23, 2012)* takes precedent and *Cournoyer* is distinguishable from the current case. The *Cournoyer* court's determination relied heavily on the relationship between probation officers and probationers. "Based on this relationship, the probation officer is required to work toward the

probationer's rehabilitation, as well as protecting the public interest. *Id citing Earnest*, 293 N.W.2d 365, 368(Minn. 1980). *Cournoyer* pointed out that "the statutory authority governing probation, caselaw and policy all support our conclusion." *At 3.* Further stressing the special role that probation officers play in monitoring court-imposed conditions, that law enforcement does not play that role. However, this may be true in parolees or probationers' relationships with their agents, this does not ring true in pre-trial conditions. This special relationship does not develop nor are they working towards a rehabilitation. In Sargent's case, one single probation agent from Cass County probation department, Travis Fisher, supervises every single pretrial supervision suspect based on the court's determination of each individual case. Here, Mr. Fisher was unavailable for contact during the stop, so Officer Hanson simply went down the list of probation officers until he found someone to answer the phone. (T-39). Again, while it may be true that there is a special relationship between an agent and the probationer; this is not the case with pretrial conditions of release. Therefore, the *Cournoyer* case is distinguishable and not applicable to the facts here. The district court judge is in the best position to assess and address the needs of both the suspect and the public safety. Here, the district court judge did not apply blanket conditions on Sargent, rather

considered all his cases, history and track record including not appearing for court before imposing said conditions. Therefore, the *Clark* case is more analogous to the current facts and case.

Sargent has shown that he is not reliable in attending his court dates. There were 18 warrants placed on Sargent for not showing up for his court dates on his other pending files. Further, he did not successfully live offense-free for anytime while not in incarceration as shown by his extensive warrants. In order to ensure public safety and that Sargent attend his court dates, Sargent's special circumstances justified the random testing ordered by the district court.

III. Pro Se Argument

Sargent makes several arguments in a supplemental pro se brief. Because appellant was convicted in a stipulated-evidence court trial, the only issue preserved for appeal is whether the district court erred in allowing expansion of the stop wherein Sargent underwent a PBT test. Minn. R. Crim. P. 26.01, subd. 4(f). Under the Findings of Facts, Conclusions of Law Verdict and Order issued on June 11, 2019, "Defendant acknowledged that the appellate review would be limited to the pretrial issues, and not issues of Defendant's guilt, the sufficiency of the evidence or other issues that could arise at trial." (Index-52). As such,

Respondent will not be responding to the "separation of powers" argument as it is procedurally barred.

His remaining pro se argument deals with a pretextual stop. To conduct a limited investigatory stop, an officer must have a "particularized and objective basis for *suspecting* the particular persons stopped of criminal activity." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (emphasis in original). Caselaw does not, however, "require much of a showing in order to justify a traffic stop," and ordinarily "if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle." *Id. See also State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (holding where a district court credits an officer's testimony regarding a traffic violation, the stop is valid).

This pretextual argument fails because an officer's actual or ulterior motives for making a stop will not invalidate an otherwise valid stop. Appellate courts have consistently held that any subjective desire by police to seek evidence of other illegal activity will not invalidate an otherwise valid stop. *George*, 557 N.W.2d at 577 n.1 (citing *Whren v. United States* 517 U.S. 806, 116 S. Ct. 1769 (1996)); *State v. Battleson*, 567 N.W.2d 69, 71 (Minn. Ct. App. 1997). Thus, the stop was lawful and deemed as such by the district court, "Based on his own observation, and Ms. Howard's

admission on the scene, Officer Hanson had a reasonable objective basis for conducting an investigative stop." (App. Add.A-5)[4]

CONCLUSION

According to the above cited caselaw and stipulated facts, the district courts order should be affirmed.

Dated: 4/2/30

Respectfully submitted,

Benjamin T. Lindstrom
Cass County Attorney
License No. 0388054
303 Minnesota Avenue West
P.O. Box 3000
Walker, MN 56484
(218) 547-7255
Email: Ben.Lindstrom@co.cass.mn.us

[4] "App. Add. A"-refers to Appellants Addendum A or B followed by page number