

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

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20050020

20050021

SUPREME COURT NOS. 20050020 AND 20050021
BURLEIGH COUNTY NOS. 04-K-0589 AND 04-K-1273

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAR 30 2005

GRADY JACKSON,

STATE OF NORTH DAKOTA
PETITIONER/APPELLANT,

VS.

STATE OF NORTH DAKOTA,

RESPONDENT/APPELLEE.

BRIEF OF PETITIONER/APPELLANT

APPEAL FROM THE DISTRICT COURT ORDER DATED JANUARY 14, 2005

AND APPELLANT'S MOTION TO SUPPRESS

EVIDENCE WAS DENIED

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QUESTIONS PRESENTED FOR REVIEW

- I. DID THE DISTRICT JUDGE ABUSE HIS DISCRETION WHEN HE DENIED
THE APPELLANT'S REQUEST FOR SUPPRESSION OF EVIDENCE?

- II. WAS OBVIOUS ERROR CREATED BY THE DISTRICT COURT'S ORDER OF
JANUARY 14, 2005 UNDER RULE 52b?

- III. DID THE FACTS IN BOTH OF THE CASES WARRANT THE INTRUSION OF THE
APPELLANT'S FOURTH AMENDMENT RIGHTS?

- IV. DID THE ARRESTING OFFICERS HAVE ARTICULABLE AND REASONABLE
SUSPICION THAT A LAW HAS BEEN VIOLATED?

- V. DOES THE ACTIONS OF THE ARRESTING OFFICERS RAISE A PRIMA FACIE
QUESTION?

- VI. CAN WE REASONABLY CONCLUDE THE STATE IS UPHOLDING THE SUPREME
COURT MOTTO, "EQUAL JUSTICE UNDER LAW"?

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I. STATEMENT OF THE CASE

This is an appeal of the District Court's order of January 14, 2005. The Appellant was found guilty on two separate counts of the offense of driving under suspension in Burleigh County, criminal nos. 04-K-0589 and 04-K-1273. The Appellant had been ordered to report to the Burleigh County Detention Center on January 28th 2005, to commence a thirty day sentence for the former and a forty-five sentence for the latter.

The Appellant firmly believes that his motion to Suppress Evidence should have been granted, thereby dismissing both cases. On January 15, 2005 the Appellant requested a Stay of the District Court's order pending an appeal to the Supreme Court. The Stay was granted by the same on or about the 27th day of January 2005.

II. STATEMENT OF THE ISSUES

A) The petitioner/Appellant firmly believes that both police officers in the two cases failed to have sufficient, specific and articulable cause to support a belief the Appellant was engaging in criminal activity.

B) It is the Appellant's contention taht it was the result of the color of his skin complexion, rather than his driving that alerted and aroused police suspicion leading to further investigation.

C) It is factual that police will never stipulate the above. However, the Supreme Court has held that: "The conduct of an officer in making an arrest must be weighed in the light of the circumstances under which he acted and not by the incidental results thereof. Schell v. Collis (1957) 83 NW 2d 422.

D) There is a 29 (twenty-nine) year history/pattern of police subjecting the Appellant to investigatory stops.

E) The Appellant has never been a user of intoxicants (alcohol, drugs) nor has the Appellant been arrested for the same.

F) The Appellant has no other criminal history, yet the two police officers in these two cases demonstrate an extreme compelling interest in the Appellant for 4th amendment reasons.

G) In both cases the two police officers (Mr. Glen Valley and Mr. Jeff Ball) were completely unfamiliar with the vehicle the Appellant was driving.

H) As a fact, officer Valley (of case 04-K-0589) has since the year 1993, stopped the Appellant for investigatory reasons twice before. Valley did not 'KNOW' the Appellant the FIRST stop, and questionable whether he KNEW the Appellant the SECOND investigatory stop years later.

I) Factually, Officer Ball stopped the Appellant only ONCE before in the 29 years the Appellant has been a resident in this area. This FIRST time stop was also an investigatory stop.

J) The Appellant has been stopped at least 85 times in the 29 years of residency in this State by MANY DIFFERENT policemen. Each police would not recognize the Appellant if they met face-to-face in a State with a heavier black population. Individually, policemen in this area know the NAME Grady Jackson, and they have "got word" that Grady Jackson is a black man.

K) Officer Terry Glatt, (in assisting Officer Valley) had no independent sufficient, specific and articulable cause to support a belief that the Appellant was engaging in criminal activity.

LAW AND ARGUMENT

It is the Appellant's firm belief that the evidence in these two cases be Constitutionally suppress. In order to uphold the Supreme Court's opinion that police must establish that criminal activity was or was about to be afoot or that community care-taking function required a stop. U.S.C.A. CONST. AMEND. 4. STATE V. SARHEGYI 492 N.W. 2d page 284 . This case helps us see that Courts cannot give sanctity

to the discovered evidence merely because the police found it. here, the police discovered that Roberta Lynn Sarhegyi was driving drunk on a suspended license. Deputy Burris stopped her because he was suspicious of where her car was parked. Sarhegyi's motion to suppress the evidence was granted by the trial Court. The State appealed the decision and the Supreme Court affirmed the trial Court's decision. In the Appellant's case (04-K-0589) Officer Valley said he "believed" It's Grady Jackson that just walked out of the grocery store. Officer Valley was NOT POSITIVE that it was Jackson (the Appellant) but proceeded to conduct an investigatory stop. (see transcript). There was no criminal activity going on at the food store where Valley saw Jackson. Jackson did not appear to be intoxicated. Officer Valley did not witness any slurred speech or stumbling around as he walked out of the store. In initiating the stop that Officer Glatt ultimately concluded, Valley needed some minimal level of objective justification. STATE V. ROBERTSDAHL, 512 N.W.2d 427 (N.D. 1994) (quoting INS V. DELGADO, 466U.S. 210,217 104 S. CT. 1758, 1763. 80 lawyers ed. 247 (1984). An officer must have articulable suspicion that a law has been violated. the mere color of a suspect's skin just cannot be the motivating reason an officer goes further to investigate. STATE V. GUTHMILLER, 499 N.W. 2d 590, 592 (ND. 1993). Requires more than just a "MERE HUNCH" ID. STATE V. SARHEGYI. The conduct of an Officer must also be weighed in light of the circumstances. SCHELL V. Collis 83 N.W. 2d 422 (1957). Officers must be held to "their true reasons for stopping vehicle in questtion" and a Court should not allow to "justify" a stop with reasons upon which they (the officer) did not act. Officer Glatt (in 0589) continued his search of Jackson's vehicle after he was arrested for "D.U.S." Probably hoping to discover illegal drugs. STATE V. WIESE, 525 N.W. 2d 412, at 415. In case 04-K-1273, Officer Jeff Ball performed a U-turn after passing Jackson's vehicle in the dark early morning to follow a black man in a car that he has never seen this man in previously. Here again, Officer Ball did not witness any criminal activity afoot, nor did he see any MOVING violations,

CONTINUED LAW AND ARGUMENT

He simply sees the silhouette of a black man behind the wheel in the wee hours of the early morning. The District Judge subsequently provided information from an observatory service to ascertain whether or not the sun came up at 5:15 am on June 21, 2004. It was concluded that sunrise was not to evident until approx. a half hour later at 5:55 AM, however dawn enough to see. FACT IS, IT WAS TOO DARK OUTSIDE AT THAT HOUR OF THE MORNING FOR OFFICER BALL TO DETERMINE FOR A CERTAINTY that the SILHOUTTE of this black man he chosed to follow and investigate was in fact, Grady Jackson. It is not a question of what time the sun came up, it was a question of whether officer Ball saw and recognized it was Grady Jackson. A traffic stop significantly curtails the freedom of action of the driver. Prosecution in this case say it was not a stop, but it was in fact. BERKEMER V. McCARTY 468 U.S. 420, 439, 104 S.CT. 3138,3149-50. As Officer Ball followed this white Cadillac with a black man in the drivers seat, he called FIRST of all to dispatch to ascertain who the driver could possibly be. the information came back to Della Jackson (as it did in Glatt's case also, further disputing Officer Glatt's testimony) officer Ball did not KNOW it was Grady Jackson until the same stepped out of his vehicle. DISCRIMINATION based on color of skin is most certainly prohibited in the Constitution and the North Dakota Constitution. see under Oppression-Elections-Civil Rights 12.1-14-04, also 12. 1-14-05 and 12.1-14-01. We cite the John Terry v. Ohio case where police officer Martin Mcfadden suspected Terry and Richard Chilton of casing the Zuckers Men Store for a possible robbery. It was not because of their SKIN COLOR, it was for what they (Terry and Chilton) were DOING. Officer Mcfadden sees many blacks in downtown Cleveland. The only reason why Terry ultimately was refused suppression of evidence (two handguns) was that it was determined REASONABLE UNDER THE CIRCUMSTANCES to merit an intrusion of 4th amendment rights for SAFETY reasons. TERRY V. OHIO 392 U.S. at 21-22. 88 S. CT. at 1880, 20 L.ED 2d at 906.

CONCLUSION

For the reasons set forth above, the Appellant respectfully requests the North Dakota Supreme Court to reverse the order of the District Judge dated January 14, 2005, wherein the motion to suppress evidence was denied. Unless the Court dismisses the cases in it's entirety.

A handwritten signature in black ink, appearing to read "Grady Jackson", is written over a horizontal line.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court Nos. 20050020 and 20050021
Burleigh County Nos. 04-K-0589 and 04-K-1273

Grady Jackson,)
)
 Petitioner/Appellant,)
)
 VS.)
)
 State Of North Dakota,)
)
 Respondent/Appellee.)
)

CERTIFICATE OF SERVICE

I certify that I am Grady Jackson and the Appellant representing Pro se to this action. I made service of the Appellant's Brief and Appendix to the Brief by mailing this these true copies to Appellee's Attorney, Mr. Lloyd Clayton Suhr, Burleigh County Assistant State's Attorney at 514 East Thayer Ave, Bismarck, North Dakota 58501 on this 30th day of March 2005, in accordance and pursuant with Rule 49,N.D.R. Crim. Pro., and Rule 5 (b) N.D.R. Civ. P.



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