

20090341

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FEBRUARY 5, 2010
STATE OF NORTH DAKOTA

IN THE SUPREME COURT

	STATE OF NORTH DAKOTA)	
	STATE OF NORTH DAKOTA)	
	Plaintiff-Appellee,)	
)	SUPREME COURT NO
)	20090341
	VS.)	
)	DISTRICT COURT NO.
	GRADY JACKSON)	08-09-K-1362
)	
	Petitioner/Appellant.)	

BRIEF OF APPELLANT

Appeal From Judgment Entered
November 3RD 2009
BURLEIGH COUNTY DISTRICT COURT
The Honorable Judge Robert O. Wefald

GRADY JACKSON Defendant-Appellant
344 Continental Ave.
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Grady's Janitorial Service (DBA)
Ph-701-258-6748
Pro se Defendant

Mr. Lloyd C. Suhr (ID 05405)
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QUESTIONS PRESENTED FOR COURT REVIEW

I.

Did the district judge in his November 3, 2009 Order denying Suppression of Evidence, abuse his discretion on the face of the Order and supplementary material?

II.

Was obvious error created by the district judge and State by not presenting any evidence to show harm or prejudice to the State if the trial had been delayed to allow for an exclusive Suppression of Evidence hearing?

III.

In view of the prima facie assumption as contended by the Appellant, that discrimination played the major role in the police stop, i.e. notwithstanding an unobstructive windshield crack and a disputed turn signal violation, did the State meet it's burden of proving that the "discretion" used by Officer Fullerton, who discovers a suspended driver's license, was in compliance with the fourth and fourteenth Amendments?

IV.

On the face of the transcript and supplementary material, did the Judiciary adjudicate in a fair and independent manner?

STATEMENT OF THE CASE

This is an appeal from criminal conviction of driving under suspension entered after court trial on November 3, 2009 (App. P. 10) and the Defendant's motion to suppress was denied. (Trans. P. 11 lines 16-25, and Pg. 12 lines 1-16)

By criminal complaint dated July 27, 2009, the Defendant Grady Jackson was charged with driving under suspension, a 4th or greater offense in 5 years, a class A misdemeanor. (App, Pg. 2,3). On October 15, 2009, Jackson filed a motion to suppress evidence, the State resisted the motion stating the trial had been set for November 3, 2009, and that "Testimony necessary to resolve the issues be taken at the time for trial." Consequently, Jackson's motion for suppression was denied and he was found guilty for driving under suspension. By court Order the Honorable Robert O. Wefald sentenced Jackson to 60 days in the Burleigh County Detention Center. (App. P. 10). Jackson then timely filed a Notice of Appeal. (App. P. 11)

STATEMENT OF THE FACTS

The Defendant-Appellant Grady Jackson appeals the denial of his motion to suppress the evidence derived from an unfair police stop that uncovered the Defendant driving on a suspended license. The Appellant Jackson contends the stop on the evening of January 22, 2009, was motivated by his minority status, rather than a cracked windshield and a disputed turn signal violation (that was raised and brought to the Appellant's attention by police report 7½ (seven and one-half) months after the stop, on July 27th 2009. The court on November 3. 2009, did not allow a motion to be brought wherein the Defendant was alleging discrimination and sought an exclusive suppression of evidence hearing at a later date. (trans. pg. 6 lines 15-21 and pg.7 lines 1-7) There was no showing of harm to any of the parties if the trial had been continued, to allow for a hearing.

... Continued STATEMENT OF FACTS

Facts Remain;

A) On the evening of January 22,2009, The Defendant, poised Westbound on Main & 3rd, and opposite Officer Fullerton waiting for the light to change, to turn left. i.e. South. Did see Officer Fullerton.

B) Officer Fullerton Did see the appearance of the Defendant, Jackson.

C) Surely in this officer's presence, Jackson used his turn signal.

D) There was one crack in the windshield, however it did not obstruct Jackson's View. And does not recall any verbal comment about turn signal.

E) Officer Fullerton did not know the Defendant Grady Jackson, nor the status of his driving privileges.

F) After the stop, Officer Matthew Fullerton searched the Defendant's vehicle and personal back pack (amusingly sharing the contents discovered with another companion policeman) for no less than 20 (twenty) minutes, while the Defendant-Appellant Jackson, was handcuffed.

G) Jackson was issued two tickets. one for D.U.S. and Warning for insurance.

H) Had there been a significant windshield crack and if there was a turn signal violation Officer Fullerton would have included on the warning ticket.

JURISDICTION

The district court had jurisdiction under N.D. Const. Art. VI S.8, and N.D.C.C. S. 27-05-06 (1). The appeal from the district court was filed in a timely manner under Rule 4 (d) of the North Dakota Rules of Appellant Procedure.

LAW AND ARGUMENT

A) Constitutional Law holds that courts cannot justify a police stop with reasons upon which they did not act. e.g. State V. James Edward Wiese 525 NW 2d 412 at 415 citing State V. Rosentiel. Agents of the Government operating under Color-of-Law must be held to their true reasons for stopping a vehicle for search and seizure.

B) Officer Fullerton had no prior knowledge of the Defendant-Appellant, nor the status of his driving privileges at the time of the stop, yet that was the sole violation at the time the officer prepared the ticket. (App.P. 7 and 8).

C) Constitutional Law holds that criminal convictions are so serious in their consequences that it is believed that an accused person should be freed if there is any fair or reasonable doubt concerning strict compliance to the Due Process standards of fairness and justice on the part of governmental agents. Note e.g., North Dakota V. Blaine L Goehring 374 NWR 2d 882 at 888. also, State V. Roberta Sarhegyi 492 NWR 2d at 286.

D) BLACKS LAW DICTIONARY describes a pretext as a weak reason, a cloak, advance to hide the actual or strong reason or motive. Hence, courts simply cannot sanction unfair police activity.

E) The Defendant-Appellant, being a black American, gave no other articulable cause for the very thorough search, for there were no blood-shot eyes or slurred speech, nor reckless driving etc. The 14TH Amend.U.S. Const. protects, Guarantees Equal Protection of the Laws. Formed with minorities at the heart of the reason for this statute.

F) Canon 1 of the North Dakota Code of Judicial Conduct, and Canon 2(b) and Canon 3 Admonishes all magistrates to conduct in an independant, fair and an impartial manner. The Defendant-Appellant though appreciative of the judges Stay Pending Appeal, questions over-all fair treatment. e.g. (trans. P.20,L.1-6)

CONCLUSION

The foregoing, evidence and supplementary material shows that Officer Matthew Fullerton was suspicious of the Defendant-Appellant Jackson, and conducted a thorough Search and Seizure for contraband, and discovered Jackson driving on a suspended license. A pattern existing for 34 years. (see Trans. Page 31, lines 1-19). The Appellant respectfully submits that with due respect for the right to be free from unreasonable searches and seizures under both the United States Constitution Amendments Fourteen and the Fourth Amendment, the North Dakota Constitution under Oppression-Elections Civil Rights 12.1-14 also 12.1-14-05, and 12.1-14-01, The Defendant is petitioning the Supreme Court to reverse the decision-conviction of the district court. Jackson's conviction should be reversed.

Respectfully submitted this 4th day of February 2010.

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CERTIFICATE OF SERVICE

True and correct copies of the Brief of Defendant-Appellant was on February 5, 2010 mailed to the following:

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Supreme Court

Grady Jackson Defendant-Appellant