

State of Minnesota,

Plaintiff,

v.

Aaron Jeffrey Buesgens,

Defendant.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER**

Court File 71-CR-10-1842

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On April 13, 2011, the above-entitled matter came before the Honorable Robert B. Varco, Judge of District Court, Sherburne County, for a *Rasmussen* hearing.

Kevin Lin, Assistant Sherburne County Attorney, appeared on behalf of the State of Minnesota.

Ryan Pacyga, Esq., appeared on behalf of Defendant, who also appeared.

Defendant moved to suppress evidence on the grounds that the seizure was illegal and to suppress his statements due to a violation of his *Miranda* rights. He also moved to dismiss the charges against him. Sergeant Jeff Mordal of the Elk River Police Department and Sergeant Greg Bratt of the Becker Police Department testified,<sup>1</sup> and the Court received a copy of the back of the implied consent form into evidence.

NOW, after consideration of the evidence presented, the files and memoranda in this matter, the arguments of counsel, and the applicable law, the Court makes the following:

**FINDINGS OF FACT**

On October 31, 2010 at approximately 1:30 a.m., Sgt. Bratt was on patrol near the intersection of Highway 10 and County Road 11 in Becker, Sherburne County, Minnesota. He initiated a traffic stop of a vehicle traveling 93 miles per hour in a 65-mile-per-hour zone. The vehicle stopped rather quickly onto the shoulder, and before Sgt. Bratt brought his squad car to a complete stop behind it, the four occupants of the vehicle took off running. Sgt. Bratt testified that

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<sup>1</sup> The witnesses were sequestered.

he saw the driver exit the vehicle wearing a "tan sweater or hoodie" and that he shared this observation with the other officers who arrived. Sgt. Bratt was unable to catch the individuals and returned to his squad car. He observed keys in the vehicle, though he could not recall if they were in the ignition, and an open container of alcohol in the rear which had a small amount left in it.

Sgt. Mordal responded to Sgt. Bratt's call for assistance. He testified that according to Sgt. Bratt's ride-along passenger, three of the vehicle's occupants ran off immediately and the fourth stayed around for awhile before taking off. Sgt. Mordal testified that the driver was described as wearing a "gray sweatshirt." Sgt. Mordal attempted to look for the fourth occupant by driving his squad car westbound around a field road. After an hour had passed, Sgt. Mordal was about to leave the area when he saw a hump in the field which looked like a person lying down. He shined his spotlight on the hump, which was about 75 to 100 yards from the road, and he saw a person wearing a gray sweatshirt look up at him. Before Sgt. Mordal said anything, the person got on his knees and put his hands in the air. Sgt. Mordal testified that he told the person not to run, to keep his hands in the air, and to turn around. He placed the person in handcuffs, which he testified meant the person was in custody, and walked him back to his squad car. Sgt. Mordal asked the person if the vehicle was his and if he was driving; the person responded that the vehicle was his but he was not driving. Sgt. Mordal testified that he recognized Defendant as the person he found in the field. Sgt. Mordal then drove Defendant back to Sgt. Bratt; Defendant said nothing during the ride.

Sgt. Bratt took Defendant out of Sgt. Mordal's squad car and talked with him. He testified that he asked Defendant if he had been drinking, but he did not recall the response. Sgt. Bratt also testified that Defendant smelled of alcohol, had an unstable walk, and was wearing a "sweater or hoodie" as he had described; however, he testified that he could not recall what color shirt Defendant was wearing. Although Sgt. Bratt did not note any signs of impairment in his police report, he marked his observations of alcohol odor

and poor balance on the implied consent form. At that point, Sgt. Bratt conducted field sobriety testing, which Defendant failed. He arrested Defendant for driving while under the influence (DWI), transported him to the Sherburne County jail, and ultimately obtained a blood test at approximately 5:10 a.m. During the nine to ten mile drive from the jail to a hospital in Monticello, Defendant asked Sgt. Bratt why he stopped him. Sgt. Bratt replied that he was going 93 miles per hour, and Defendant said he could not have been because he had his cruise control. Sgt. Bratt testified that he did not ask any questions; rather, Defendant initiated the conversation. Defendant was not given a *Miranda* warning.

Sgt. Bratt testified that he could not account for the discrepancy between his and Sgt. Mordal's testimony on the color of the driver's sweatshirt. He did not observe what the other three occupants were wearing, and he did not find sweatshirts in the vehicle. He testified that two of the four occupants were apprehended.

Defendant was charged with DWI, violating the open bottle law, fleeing a peace officer, speeding, and driving with an alcohol concentration of 0.08 or more within two hours of driving.

### ISSUES

1. Did the police officers have reasonable suspicion to stop Defendant and to investigate him for DWI?
2. Does the lack of a *Miranda* warning render Defendant's statements inadmissible?

### CONCLUSIONS OF LAW

- I. Although Sgt. Mordal Had Grounds to Seize Defendant, Sgt. Bratt Did Not Have Reasonable and Articulate Suspicion to Expand the Stop.**

The standard for determining the validity of an investigatory stop is whether, under the totality of the circumstances, the officer had a "particularized and objective basis for suspecting the particular person stopped of criminal activity." *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). The officer need

not observe an actual violation; rather, the officer may make inferences based upon his experience that would be beyond the competence of lay people. *Id.*; *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). The stop must not be the “product of mere whim, caprice or idle curiosity.” *Pike*, 551 N.W.2d at 921. The officer must point to specific facts which objectively support a suspicion of criminal activity—he must rely on more than a “hunch.” *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

The scope of a stop must be strictly tied to and justified by the circumstances authorizing the stop. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). Police may expand the scope of the stop to investigate other suspected illegal activity if the officer has reasonable and articulable suspicion of such activity. *Id.* For example, it is a crime for a person to drive or be in physical control of a motor vehicle while under the influence of alcohol. Minn. Stat. § 169A.20, subd. 1. A person is in physical control if he has the means to initiate any movement of the vehicle and is in close proximity to the operating controls of the vehicle. *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010). It is not a crime for a passenger to be intoxicated, and mere presence in or around the vehicle is not enough for physical control; the overall situation must be considered. *State v. Starfield*, 481 N.W.2d 834, 837-38 (Minn. 1992).

Here, Sgt. Mordal was justified in seizing Defendant. He spotted Defendant lying in a field near the traffic stop, from which the four occupants of the legally stopped vehicle fled from Sgt. Bratt. *See Richardson*, 622 N.W.2d at 825; Minn. Stat. § 609.487, subd. 6 (it is a crime to run from a police officer engaged in his lawful duty for the purpose of avoiding investigation). However, Sgt. Bratt did not have grounds to expand the scope of the stop. Although Defendant may have shown signs of intoxication, it does not appear that Sgt. Bratt had reasonable suspicion to believe that Defendant had driven the vehicle. The vehicle Sgt. Bratt stopped had four occupants, two of whom were apprehended. Based upon his report, Sgt. Bratt testified that the driver was wearing a tan shirt, but he could not recall what color shirt Defendant was

wearing. In contrast, Sgt. Mordal testified that the driver was described as wearing a gray shirt, which is what Defendant was wearing when he saw him in the field. Furthermore, Defendant was not in close proximity to the vehicle, he did not have the keys, and he denied that he was driving, though he admitted that the vehicle was his. Under these circumstances, Sgt. Bratt did not have articulable and reasonable suspicion to believe that Defendant had been driving or was in physical control of the vehicle. *See Fleck*, 777 N.W.2d at 236; *Starfield*, 481 N.W.2d at 837-38. Defendant may have later mentioned that he had his cruise control on, but a statement made after a DWI arrest cannot be used to create grounds to investigate the DWI. *See Reeves v. Comm'r of Pub. Safety*, 751 N.W.2d 117, 120 (Minn. Ct. App. 2008) (“probable cause to arrest a person for DWI exists when the facts and circumstances available *at the time of arrest* reasonably warrant a prudent and cautious officer to believe that an individual was driving while under the influence” (emphasis added)). Therefore, Sgt. Bratt did not have justification to request field sobriety testing or to invoke the implied consent law.

## **II. Defendant’s Statements Were Not Obtained in Violation of His *Miranda* Rights.**

The voluntariness of a defendant’s pre-arrest statement depends upon the totality of the circumstances—the court is to determine whether “the police actions were ‘so coercive, so manipulative, [or] so overpowering’ that defendant’s will was overborne.” *State v. Mills*, 562 N.W.2d 276, 283 (Minn. 1997) (quoting *State v. Pilcher*, 472 N.W.2d 327, 333 (Minn. 1991)). In other words, coercive police action is a prerequisite to finding that a statement is not voluntary. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). If a defendant is in custody, then he must be given his *Miranda* warnings before questioning, which advise a defendant of his constitutional rights to remain silent and to have an attorney present. *State v. Tibiatowski*, 590 N.W.2d 305, 308 (Minn. 1999) (citing *Miranda v. Arizona*, 384 U.S. 436 (1966)). However, *Miranda* is inapplicable unless the defendant in custody is also subject to interrogation. *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980). Interrogation refers to express questions and

any words or actions that the police officer “should know are reasonably likely to elicit an incriminating response from the suspect.” *Id.* at 300-01. A “statement given freely and voluntarily without any compelling influences” is undoubtedly admissible into evidence. *Tibiatowski*, 590 N.W.2d at 308.

Temporarily handcuffing and detaining a person while the police sort out a scene does not automatically convert a detention into an arrest. *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999); *see also State v. Walsh*, 495 N.W.2d 602, 605 (Minn. 1993) (handcuffing restraint does not mean a defendant is in “custody” for *Miranda* purposes). In fact, an officer facing suspicious circumstances should be given some latitude to detain a person temporarily to inquire into the situation. *State v. Martin*, 212 N.W.2d 847, 849 (Minn. 1973). For example, in *Martin*, police were called to look for intruders in a building and found a man inside an apartment with merchandise. *Id.* at 848. The officer asked the man to identify himself, to explain why he was in the apartment, and to explain from where the merchandise came. *Id.* The Court held that a *Miranda* warning was not necessary because the officer’s questions were of a general investigatory nature. *Id.* at 849. Similarly, initial questioning as part of a general preliminary investigation, such as asking a person his name, does not require a *Miranda* warning. *Walsh*, 495 N.W.2d at 605.

In this case, Defendant was placed in handcuffs after Sgt. Mordal pursued and caught him. Though Sgt. Mordal testified that Defendant was in custody, his questions did not amount to an interrogation which would require a *Miranda* warning. Sgt. Mordal simply asked Defendant if the stopped vehicle was his and whether he was driving. The questions were of a general investigatory nature to enable Sgt. Mordal to sort out the details of the scene. *See Martin*, 212 N.W.2d at 849. Furthermore, Defendant’s statements to Sgt. Bratt during the transport to the hospital were given voluntarily. *See Tibiatowski*, 590 N.W.2d at 308. Defendant initiated the conversation with Sgt. Bratt, and Sgt. Bratt did not ask Defendant any questions or use any words or actions to elicit an incriminating response; in other words, Defendant was not

subject to interrogation. *See Innis*, 446 U.S. at 300. Thus, a *Miranda* warning was not required.

### III. Probable Cause Does Not Exist To Charge Defendant with DWI and with Speeding.<sup>2</sup>

The standard for probable cause is whether “the facts would lead a person of ordinary care and prudence to hold an honest and strong suspicion that the person under consideration is guilty of a crime.” *State v. Hendricks*, 586 N.W.2d 413, 414 (Minn. Ct. App. 1998). In other words, it must be fair and reasonable, given the facts in the record, to require the defendant to stand trial. *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976). If the facts would entitle a defendant to a directed verdict of acquittal at trial, then the court shall dismiss the charge. *Id.* at 903. A judgment of acquittal<sup>3</sup> must be granted if the evidence is insufficient to sustain a conviction. Minn. R. Crim. P. 26.03, subd. 17(1).

As explained above, Sgt. Bratt did not have reasonable suspicion to suspect that Defendant was the driver of the vehicle. His subsequent arrest of Defendant for DWI was thus unlawful. *See* Minn. Stat. §§ 169A.40, subd. 1 (a police officer may lawfully arrest a person for DWI if the officer has probable cause that the person operated or was in physical control of a motor vehicle while under the influence). Without sufficient grounds at the time of arrest to believe that Defendant was the driver, there is also no probable cause to support the charge of driving in excess of the speed limit. Therefore, given the facts in the record, it would not be fair or reasonable to require Defendant to stand trial for the two charges of DWI and for the speeding violation.

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<sup>2</sup> Although Defendant did not challenge probable cause specifically, he did move to dismiss the charges. The Court must determine any issue that will promote a fair and expeditious trial, and sufficient evidence was presented at the hearing to permit the Court to make this determination. *See* Minn. R. Crim. P. 12.03.

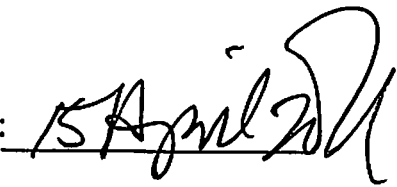
<sup>3</sup> Minn. R. Crim. P. 26.03, subd. 18 substitutes motions for judgment of acquittal in place of motions for directed verdict.

Based on the foregoing, the Court makes the following:

**ORDER**

1. Defendant's motion to suppress evidence after the initial seizure—such as the field sobriety testing, the implied consent advisory, and the chemical test results—is GRANTED.
2. Defendant's motion to suppress his statements is DENIED.
3. Defendant's motion to dismiss is GRANTED in part and DENIED in part. The charges of Driving While Under the Influence, Speeding, and Driving with an Alcohol Concentration of 0.08 or More within Two Hours are DISMISSED.

Dated: 15 April 2011



BY THE COURT:



ROBERT B. VARCO  
Judge of District Court

STATE OF MINNESOTA  
COUNTY OF [unclear] JUDGE [unclear]

APR 15 2011

STATE OF MINNESOTA  
COUNTY OF [unclear]  
By [unclear] Deputy