

STATE OF INDIANA
COUNTY OF PULASKI
STATE OF INDIANA

IN THE PULASKI SUPERIOR COURT
ANNUAL TERM, 2014

VS

CAUSE NO. 66D01-1311-CM-00119

MARK D. WALLACE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendant appears in person and with Attorney Mary Welker for hearing on Defendant's Motion to Suppress and Motion to Dismiss. The State of Indiana appears by Chief Deputy Prosecuting Attorney Blair Todd.

Defendant presents evidence by witness Sheriff Michael Gayer and Defense Exhibits #1 and #2.

The State presents evidence by witness Deputy John Haley and State's Exhibits A and B.

Arguments presented to the Court.

Comes now the Court and makes the following findings:

1. That on November 9, 2013, Pulaski County Sheriff's Deputy John Haley, dressed in a regular Pulaski County Sheriff's uniform and driving a Pulaski County Sheriff's vehicle pulled over the Defendant Mark Wallace for suspected Operating a Vehicle While Intoxicated.
2. That Pulaski County Sheriff's Deputy John Haley then conducted an OWI investigation at the scene and advised the Defendant of implied consent.
3. That subsequent to the advisement of implied consent, Deputy Haley detained the Defendant, Mark Wallace, and the Defendant was transported to Pulaski Memorial Hospital for purposes of providing a chemical test in Deputy Haley's OWI investigation.
4. That Deputy Haley then applies for, executes, and serves a search warrant for a blood draw for purposes of obtaining evidence for his OWI investigation.

5. That Deputy Haley conducted all of his actions on November 9, 2013, while wearing a regular Pulaski County Sheriff's Deputy uniform and operating a Pulaski County Sheriff's vehicle.
6. That Deputy Haley began his pre-basic training course in May of 2007 until May of 2008.
7. That Deputy Haley served as a reserve deputy for the Pulaski County Sheriff's Department from approximately 2007/2008 until September of 2011.
8. That on September 7, 2011, Deputy Haley prepared and signed an Employee Status Information Hire Form for Pulaski County.
9. That on September 7, 2011, Deputy Haley prepared and signed a W-4 Employee's Withholding Allowance Form for purposes of Federal and State Income Tax Withholding.
10. That on September 7, 2011, Deputy Haley prepared and signed an Authorization Agreement for Automatic Deposits for purposes of receiving wages payable from the Pulaski County Auditor.
11. That on September 7, 2011, Deputy Haley signed and acknowledged Sheriff's Department Employee Acknowledgement Form acknowledging the receipt of Personnel Policy and Employee Handbook and its revisions.
12. That on September 7, 2011, the Pulaski County Sheriff Michael Gayer, along with Deputy Haley, executed an appointment of part time deputy officer. That Deputy Haley subscribed and swore under oath to Tasha Foerg, Clerk of Courts for Pulaski County and/or her authorized deputy. That said appointment was made on a pre-printed form for the appointment of a part time deputy/special deputy, said appointment to be effective from September 7, 2011.
13. That following the execution of the appointment of a part time deputy officer, the Pulaski County Sheriff's Department caused to be filed with the Indiana Law Enforcement Administration Board, an application for a PSID assignment for Deputy Haley. That under the comment section of the AFSS application for PSID assignment, the Pulaski County Sheriff designated that Deputy Haley's one year to complete the Indiana Law Enforcement Academy would be up in September, 2012.

14. That from September 2011, Deputy Haley received payroll benefits through the Pulaski County Sheriff's Department paid by the Pulaski County Auditor's Office.
15. That Deputy Haley continued to perform the duties of a part time/special deputy until October 21, 2013 when a second and subsequent appointment was made by Michael Gayer, Sheriff of Pulaski County appointing John Haley to serve as Deputy Sheriff for Pulaski County. That Deputy Haley was sworn in by Tasha Foerg, Clerk of Courts and/or her deputy.
16. That a second and subsequent AFSS application for PSID was not submitted on or for the October 2013 appointment for Deputy Haley.
17. That from September 7, 2011 until the date of this hearing, Deputy Haley wore a regular Pulaski County Sheriff's Deputy uniform, and drove a regular Pulaski County Sheriff's Deputy vehicle.
18. That from September 7, 2011 until the date of this hearing, Pulaski County Sheriff's Deputy John Haley was permitted by the Pulaski County Sheriff's Department to exercise the full authority and jurisdiction and responsibility of a regular Pulaski County Sheriff's Deputy.
19. That at no time from September 7, 2011 until the date of this hearing, did the Pulaski County Sheriff's Department ever provide in writing to Deputy Haley any limitations or special conditions of his duties and responsibilities as a part time/special deputy for the Pulaski County Sheriff's Department.
20. That submitted as Defendant's Exhibit 1, is the personnel file certified by the Sheriff of Pulaski County as the true and complete file of Deputy Haley.
21. That absent from said personnel file is any record of any training completed or provided to Deputy Haley.
22. That absent from said personnel file is any documentation regarding the attempt by Deputy Haley of the Pulaski County Sheriff's Department to attend the Indiana Law Enforcement Academy. That the only record of any training was submitted by the State that indicated that Deputy Haley had completed the pre-basic forty hour course required by reserve deputies.

Conclusions of Law

That the Defendant brings his Motion to Dismiss and Motion to Suppress any and all evidence obtained as a result of the illegal stop and detention of the Defendant by Deputy Haley for the reason that Deputy Haley was without any legal authority, as a law enforcement officer, to enforce the laws of the State of Indiana or any of its political subdivisions pursuant to 250 IAC 2-2-1. Furthermore, the Defendant contends that pursuant to Title 250 of the Indiana Administrative Code 2-2-3 provides:

that any law enforcement officer described in Section 1 of this rule who fails to successfully complete the required basic training course within one year after the deputy's first or original appointment shall not be empowered or authorized to enforce the laws or ordinances of the state or any political subdivision thereof as part of the duties of a law enforcement officer.

The State contends that Deputy Haley was not appointed as a part time, regular or probationary deputy, but rather was appointed as a special deputy pursuant to Indiana Code. That the State contends that Deputy Haley was appointed a special deputy pursuant to Indiana Code 36-8-10-10.6. Indiana Code 36-8-10-10.6 provides that:

a sheriff may appoint as a special deputy any person who is employed by a governmental entity as defined by Indiana Code 35-31.5-2-144 or private employer, the nature of which employment necessitates the person have the powers of a law enforcement officer. During the term of the special deputy's appointment and while the special deputy is fulfilling the specific responsibilities for which the appointment is made, a special deputy has the powers, privileges, and duties of a county police officer under this chapter, subject to any written limitations and specific requirements imposed by the sheriff and signed by the special deputy.

Furthermore, Indiana Code 36-8-10-10.6 provides:

that except as provided in subsection (d), a special deputy shall wear a uniform, the design and color of which is easily distinguishable from the

uniforms of the Indiana State Police, the regular county police force, and all municipal police and fire forces located in the county.

Under subsection (d), the sheriff may permit the special deputy to wear the uniform of the regular county police force if the special deputy: (1) has successfully completed the minimum basic training requirements under Indiana Code 5-2-1.

Indiana Code 5-2-1-9 provides in part that the Indiana Law Enforcement Board shall adopt all necessary rules to carry out the provisions of the chapter. The provisions of the chapter provide for the establishment of minimum standards of physical, educational, mental, and moral fitness which shall govern the acceptance of any person for training by any law enforcement training school or academy. Title 5 also sets out the minimum standards for basic training and education for all enforcement officers who are seeking to be employed as regular or part time law enforcement officers by the State of Indiana or any of its political subdivision.

Subparagraph (a) of Indiana Code 5-2-1-9 provides that a law enforcement officer appointed after July 5, 1972 and before July 1, 1993 may not enforce the laws or ordinances of the state or any political subdivision unless the officer has within one year from the date of appointment successfully completed the minimum basic training requirements established under Title 5. If a person fails to successfully complete the basic training requirements within one year from the date of his employment, the officer may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the powers of arrest until the officer has successfully completed the training requirements.

In the present case, Deputy Haley received his first and initial appointment as a part time/special deputy on September 7, 2011. Thereafter, Deputy Haley wearing a regular sheriff's deputy uniform and driving a regular sheriff's deputy vehicle, performed the duties of a regular Pulaski County Sheriff's Deputy. That at no time from September 7, 2011 until the stop, detention, and arrest of the Defendant, Mark Wallace herein, did Deputy Haley ever attend and complete the

Indiana Law Enforcement Academy. In addition, at no time did the Pulaski County Sheriff's Department provide in writing any instructions limiting the authority and jurisdiction of Deputy Haley.

That the intent of Title 250 of the Administrative Code and Indiana Code 5-2-1-9 et. seq. was to provide for minimum training and education standards for all Indiana law enforcement officers. That the intent of the Indiana legislatures was to provide that all Indiana law enforcement officers, whether state or local, were all highly trained, educated and professional. That the Indiana legislatures through Administrative Code 250 and Indiana Code Title 5 specifically provided that within one year of a law enforcement officers first initial appointment, that law enforcement officer would be required to complete Indiana Law Enforcement Academy. Furthermore, they provided that the failure to complete the Indiana Law Enforcement Academy within one year of the date of an officer's first or initial appointment, that that officer's ability to enforce the laws of the State of Indiana or any of its political subdivisions would terminate.

In the present case, it was clearly the intent of the Pulaski County Sheriff's Department to appoint Deputy Haley as a part time deputy on September 7, 2011. That conclusion is evidenced by the fact that they submitted the written appointment not only to the Clerk of the Pulaski County Courts, but also to the Indiana Law Enforcement Board and applied for and received a PSID from the Indiana Law Enforcement Board and Homeland Security. Furthermore, the Pulaski County Sheriff's Department evidenced the intent of appointing Deputy Haley as a part time deputy by indicating that his one year, for purposes of completing the Indiana Law Enforcement Academy, would terminate in September of 2012, one year from the date of his original appointment.

Subsequent to his appointment in September of 2011, Deputy Haley and the Pulaski County Sheriff's Department failed to ensure that Deputy Haley would attend and complete the Indiana Law Enforcement Academy. Therefore, it became necessary to re-appoint Deputy Haley the second time as a full time regular deputy in October of 2013. In an effort to provide Deputy Haley one more additional year in which to attend and complete the Indiana Law

Enforcement Academy, the Pulaski County Sheriff's Department had treated the second appointment in October of 2013 as his first original appointment. In order to treat it as such, the Pulaski County Sheriff's Department and the State now argue his original appointment in September of 2011 was as a special deputy under Indiana Code 36-8-10-10.6. This attempt to qualify the first appointment as a special deputy under Title 36-8-10-10.6, must fail, in that there is nothing in the original appointment of September of 2011 that cites or indicates that Deputy Haley is being appointed under Title 36. Furthermore, that attempt must fail, because under Title 36, as a special deputy, Deputy Haley was required to wear a uniform that was distinguishable from any state law enforcement officer, regular county law enforcement officer, and any town or municipal law enforcement officers and fire departments located within Pulaski County. The evidence submitted is that Deputy Haley wore a regular sheriff's deputy uniform of the exact same color and drove an identical sheriff's patrol car as regular Pulaski County Sheriff's Deputies. Furthermore, in order to wear a regular sheriff's deputy uniform pursuant to Title 36, Deputy Haley was required to complete the Indiana Law Enforcement Academy.

While the motives of the Pulaski County Sheriff's Department or Deputy Haley are immaterial, clearly the evidence indicates that a great effort was made to circumvent Indiana Administrative Code Title 250 and Title 5 of the Indiana Code. That as a result of Deputy Haley failing to attend and successfully complete the Indiana Law Enforcement Academy within one year of the date of his first or original appointment on September 7, 2011, Deputy Haley's ability to enforce the laws of the state of Indiana or any of its political subdivisions terminated on September 7 of 2012. That while his ability and authority to enforce the laws of the state of Indiana or any of its political subdivisions terminated, Deputy Haley certainly was capable of remaining employed by the Pulaski County Sheriff's Department in an administrative capacity. For example, Mr. Haley certainly was able to perform duties such as public relations officer, training officer, human resources officer, etc. In light of the fact that his one year expired in September of 2012, his second subsequent appointment in October of

2013 did not revive a new one year period of time in which to complete the Indiana Law Enforcement Academy. Therefore, Deputy Haley was without any legal authority to pull the Defendant over on the night in question, to detain, search, and arrest the Defendant, and to apply for a search warrant from the Pulaski County Superior Court and to execute said search warrant.

Therefore, all evidence acquired by Deputy Haley as a result of the stop, detention, arrest, and subsequent search warrant are hereby suppressed.

All of which is ordered this 25th day of August, 2014.

____ RJO YES



PATRICK BLANKENSHIP
JUDGE
PULASKI SUPERIOR COURT