

STATE OF MINNESOTA  
IN COURT OF APPEALS

A11-2082

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Terrance Sipe,

Appellant,

vs.

STS Manufacturing, Labor Ready/  
True Blue,

Respondents.

**APPELLANT'S REPLY BRIEF**

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## SUPPLEMENTAL ARGUMENT

I. THE LARSON COURT FOCUSED ON THE ACTIONS OF THE EMPLOYER AND NOT THE EMPLOYEE TO DETERMINE WHETHER CASES UNDER THE WHISTLEBLOWER STATUTE USUALLY CAN BE THE BASIS OF CRIMINAL PROSECUTION.

In Larson v. New Richmond Care Center, 538 N.W.2d 9151986), the court held that a violation of the whistleblower was an intentional tort that met all of the criteria under the test set forth in Christenson v. Argonaut Ins. Co., 380 N.W.2d 515 (Minn. App. 1986) – including that actions giving rise to whistleblower claims can “usually” be the basis for criminal prosecution:

In the instant case, an employee claims that her employer violated state or federal law, or that her employer required her to violate the law. Minn. Stat. Section 181.932. This could involve criminal prosecution. Although the alleged facts are not before us in detail, we note that in a nursing home setting, for example, it is a gross misdemeanor for a person intentionally to abuse or neglect a vulnerable adult. Minn. Stat. Section 626.557, subd. 19 (1994). And failing to report maltreatment of a vulnerable adult is a misdemeanor. Minn. Stat. Section 626.557, subd. 7(a). We further note the myriad of state and federal regulatory requirements that are capable of enforcement under both civil and criminal laws. We conclude that conduct related to a whistleblower claim satisfies the *Christenson* requirements.

Id. at 920-21.

Appellee argues that criminal prosecution can be the basis for criminal prosecution for manslaughter if an employer knowingly lets an impaired worker operate dangerous machinery. Appellee also argues that an employer can face civil forfeiture of its equipment if an employee transports drugs on company vehicles. These arguments completely far-fetched. DATWA falls outside of the

Christenson test because employer drug testing “usually” cannot be the basis for criminal prosecution. Christenson, 80 N.W.2d at 518.

## II. MANTEUFFEL IS NOT INAPPOSITE

In Manteuffel v. City of North St. Paul, 570 N.W.2d 807 (Minn. App. 1997), the court used the Christenson test to determined that claim brought under the Data Practices Act is not governed by a two-year statute of limitations:

Except for Wild, in which the court held that a claim for “interference with business relationships by means of defamation” amounts to libel or slander for limitations purposes, Wild, 302 Minn. At 447, 234 N.W.2d at 793, every previous expansion of the scope of section 541.07(1) has involved an intentional tort. See Christenson, 380 N.W.2d at 518 (intentional infliction of emotional distress); Krause v. Farber, 379 N.W.2d 93. 97 (Minn. App. 1985) (intentional Bryant v. American Sur. Co., misrepresentation), review denied (Minn. Feb. 14, 1986); 69 Minn. 30, 71 N.W.826, 826 (1897) (malicious prosecution for crime) *see also* Larson, 538 N.W.2d at 920 (finding violation of whistleblower act to be an intentional tort. Application of section 541.07(1) here would be the first expansion of the list of torts “in the nature of strict liability” beyond actions involving defamation.

[...]

If, in applying the Christenson test, every statutory duty imposed on a government official is “in the nature of strict liability,” and if a plaintiff alleges personal injury as a result of the breach, the question of whether to apply section 541.07(1) or a six-year statute essentially turns on whether, as here, the legislature has provided a criminal penalty for a violation. See Minn. Stat. Section 13.19 (1996) (providing that a willful violation of data practices act is a misdemeanor.) Again, we are not persuaded that merely because the legislature has provided criminal consequences for an official’s breach of a statutory duty, it has indicated an intent to analogize the offense to libel and slander for statute of limitations purposes.

Id. at 810-11.

Under DATWA, unlike the Data Practices Act, the legislature did not provide a criminal penalty for violating the statute. Thus, even though the Data Practices Act does

contain criminal penalties, which DATWA does not, the Manteuffel court refused limit the statute of limitations to two years. Thus, under Christenson, a violation of the Data Practices satisfies the test more than a claim under DATWA. Despite this fact, the court ruled that a six-year limitations period applied. Clearly, the six-year statute of limitations period is applicable to Appellant's claims.

**CONCLUSION**

Based on the authority cited and the arguments presented herein, this Court should reverse the district court and hold that the statute of limitations under DATWA is six years.

Dated: May 14, 2012

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