

IN THE SUPREME COURT  
STATE OF NORTH DAKOTASupreme Court No. 20180349  
Burleigh County No. 08-2018-CR-01003

State of North Dakota,	)
	)
Plaintiff and Appellee,	)
	)
vs.	)
	)
Lucas Michael Johnson,	)
	)
Defendant and Appellant.	)

APPEAL FROM ORDER DENYING APPELLANT'S MOTION  
TO SUPPRESS ENTERED ON AUGUST 14, 2018.

SOUTH CENTRAL JUDICIAL DISTRICT

HONORABLE JAMES HILL, PRESIDING

**BRIEF OF APPELLEE**  
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**ISSUE PRESENTED FOR REVIEW**

[¶ 1] Whether the law enforcement officers had reasonable and articulable suspicion to detain Johnson for the traffic offenses.

### **STATEMENT OF THE CASE**

[¶ 2] This case comes to this Court from an appeal brought after Lucas Johnson entered a conditional plea agreement following the district court's denial of his Motion to Suppress. Appellant's Appendix at pages 1-3 (hereinafter "Appellant's App. 1-3"). Johnson appeals the criminal judgment and/or the denial of his Motion to Suppress. See Appellant's Brief.

[¶ 3] On March 27, 2018, Johnson was charged with Possession of a Controlled Substance and Unlawful Possession of Drug Paraphernalia. Appellant's App. 2. On July 6, 2018, Johnson filed a Motion to Suppress, alleging the law enforcement officers did not have reasonable and articulable suspicion to detain him. Appellee's Appendix at pages 1-7 (hereinafter "Appellee's App. 1-7"). On July 19, 2018, the State filed its Response to Defendant's Motion to Suppress, opposing the defendant's motion. Appellee's App. 14-17. On August 13, 2018, the district court held a motion hearing where Officer Michael Miller testified surrounding the facts of the traffic stop. Appellant's App. 2. On August 14, 2018, the district court entered its Order Denying Motion to Suppress. Appellant's App. 6-10. On August 23, 2018, Johnson conditionally plead guilty to the offenses. Appellant's App. 1-3, 11-15. On September 18, 2018, Johnson filed a Notice of Appeal. Appellant's App. 1-3, 37.

### **STATEMENT OF THE FACTS**

[¶ 4] On February 18, 2018, at approximately 12:30 a.m. Officer Joseph Benke, of the Bismarck Police Department, was on patrol when he radioed to other officers that a silver Buick Lacern he was attempting to follow eluded him. Appellee's App. 8. Officers Michael Miller and Cody Berger, of the Bismarck Police Department, were in the area in an unmarked vehicle, but were wearing full police uniforms. Appellee's App. 8. Officers

Miller and Berger located the vehicle travelling around the 800 block of East Divide Avenue and noticed the vehicle appeared to be going over the speed limit. Appellee's App. 8. Officer Miller testified that the speed limit in that area is twenty-five miles per hour. Transcript at page 6 (hereinafter Tr. at 6). Officer Miller further testified that he believed Johnson's vehicle was travelling around thirty to thirty-five miles per hour based on his experience of vehicles travelling on that road Tr. at 6.

[¶ 5] After following the vehicle for a short time, Johnson merged his vehicle to the side of the road without using a turn signal. Tr. at 7. After witnessing this traffic violation, Officers Miller and Berger contacted Officer Benke and informed him they located the vehicle, observed a traffic violation, and had a reason to stop the vehicle. Tr. at 7-8. Once pulling over to the side of the road without signaling, Johnson quickly exited his vehicle. Tr. at 9. Officers Miller and Berger made contact with Johnson outside of the vehicle and inquired about his driving. Tr. at 9. Officer Miller stated at this point the officers were conducting a traffic stop of Johnson. Tr. at 9. Officer Miller testified that the officers stated this was a traffic stop and that Johnson made a traffic violation. Tr. at 9-10. During the initial conversation with the law enforcement officers, Johnson stated that there was marijuana in his vehicle. Tr. 10-11.

[¶ 6] Officer Benke arrived at the traffic stop and deployed his K9 to do a free air sniff of the vehicle. Appellee's App. 12. The K9 indicated controlled substances were in the vehicle. Appellee's App. 12. Officers searched the vehicle and found controlled substances and drug paraphernalia. Appellee's App. 12. After searching the vehicle, the officers searched Johnson's person and located tetrahydrocannabinol wax. Appellee's

App. 12. Johnson was subsequently charged with possession of a schedule one hallucinogenic and unlawful possession of drug paraphernalia. Appellant's App. 1, 4-5.

## **LAW AND ARGUMENT**

### **I. Standard of review**

[¶ 7] The North Dakota Supreme Court reviews a district court's decision on a motion to suppress as follows:

In reviewing a district court's decision on a motion to suppress evidence, we defer to the district court's findings of fact and resolve conflicts in testimony in favor of affirmance. We will affirm a district court's decision on a motion to suppress if there is sufficient competent evidence fairly capable of supporting the trial court's findings, and the decision is not contrary to the manifest weight of evidence. Our standard of review recognized the importance of the district court's opportunity to observe the witnesses and assess their credibility. Questions of law are fully reviewable on appeal, and whether a finding of fact meets a legal standard is a question of law.

State v. Hawkins, 2017 ND 172, ¶ 6, 898 N.W.2d 446 (internal citation and quotation omitted).

### **II. The law enforcement officers had reasonable and articulable suspicion to detain Johnson for the traffic offenses.**

[¶ 8] The Fourth Amendment of the United States Constitution and Article I, Section 8 of the North Dakota Constitution protect "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." U.S. Const. am. IV; N.D. Const. art. I, § 8. "Investigatory traffic stops are valid when the officer conducting the stop has a reasonable and articulable suspicion the motorist has violated or is violating the law." State v. Wolfer, 2010 ND 63, ¶ 6, 780 N.W.2d 650 (internal citation and quotation omitted).

[¶ 9] Whether an officer has reasonable and articulable suspicion is evaluated under an objective standard, taking into account the totality of the circumstances. Id. “The severity of the observed legal violation is not relevant, and even common and minor violations constitute prohibited conduct which provide officers with requisite suspicion for conducting investigatory stops.” Id. (internal citation and quotation omitted).

Furthermore, “[w]hether the driver actually committed a traffic violation does not change whether the officer had reasonable suspicion necessary to justify a traffic stop.” State v. Hirschhorn, 2016 ND 117, ¶ 14, 881 N.W.2d 244. When conducting a traffic stop, an officer can temporarily detain the traffic violator at the scene of the violation to conduct duties relating to the traffic stop. State v. Fields, 2003 ND 81, ¶ 8, 662 N.W.2d 242 (laying out multiple duties which officers can look into during a traffic stop).

[¶ 10] The officers had two valid reasons for conducting the traffic stop of Johnson. First, the officers observed that Johnson vehicle appeared to be speeding. Second, the officers observed Johnson’s vehicle pulled over to the side of road without signaling. Both of these reasons justify the officers conducting the traffic stop.

[¶ 11] Law enforcement officers may conduct a traffic stop for speeding if they have a reasonable and articulable suspicion that a vehicle is speeding. Law enforcement officers are not required to use a radar in order to have reasonable and articulable suspicion to stop a vehicle for speeding. This Court has stated that officers “must rely on their sense of sight for speeding violations[.]” Wolf v. North Dakota Dept. of Transp., 523 N.W.2d 545, 547 (ND 1994). Here, the officers observed that Johnson’s vehicle was traveling approximately thirty to thirty-five miles per hour in a twenty-five mile per hour zone. Officer Miller testified that based on his experience of seeing vehicles traveling on



Divide Avenue that Johnson's vehicle was speeding and going quicker than normal traffic. Therefore, the officers had sufficient justification to stop Johnson for a speeding violation.

[¶ 12] Additionally, the law enforcement officers had reasonable and articulable suspicion to justify the traffic stop because Johnson failed to signal before pulling over to the side of the road. North Dakota Century Code § 39-10-38 states:

1. No person may turn or move right or left upon a roadway unless and until such movement can be made with reasonable safety without given an appropriate signal in the manner hereinafter provided.
2. A signal of intention to turn or move right or left when required must be given continuously during not less than the last one hundred feet [30.48 meters] traveled by the vehicle turning.

[¶ 13] In State v. Fasteen, this Court interpreted this statute stating:

We construe N.D.C.C. § 39-10-38(1) to mean that no person may turn a vehicle or move right or left upon a roadway without giving an appropriate signal and unless and until such turn or movement can be made with reasonable safety. Under, N.D.C.C. § 39-10-38(2), the phrase "when required" refers to the giving of a signal as an intention to turn or move right or left "upon a roadway" as required under subsection (1). Under this interpretation of the statute, prior to executing a right or left turn upon a roadway, a driver must give an appropriate signal and must ascertain that the turn can be made with reasonable safety.

State v. Fasteen, 2007 ND 162, ¶ 10, 740 N.W.2d 60.

[¶ 14] Applying this Court's interpretation of N.D.C.C. § 39-10-38 to the facts of this case, it is clear that Johnson committed a traffic violation in pulling over to the side of the road without signaling. Johnson moved his vehicle to the right, upon a roadway, without giving a signal. Therefore, the officers were justified in conducting a traffic stop on Johnson for this traffic violation.

[¶ 15] Johnson cites State v. Fields, to support his argument; however, his reliance on this case is misplaced. In Fields, the Supreme Court of North Dakota held that the officer's initial stop of the vehicle was valid after they observed a traffic violation. Id. at ¶ 7. This Court in Fields held that the officers were not justified in extending the traffic stop once the officer had already issued that individual the traffic ticket and ended the traffic stop. Id. at ¶¶ 2-4, 18. Just as in Fields, the traffic stop was justified because the officers witnessed a traffic violation. However, unlike Fields, Johnson does not argue that the detention was extended, just that there was not reasonable and articulable suspicion for the stop in the first place. Therefore, Fields is inapplicable to Johnson argument.

[¶ 16] It is unclear whether Johnson is arguing his detention was unlawfully extended through this Court's reasoning in Fields. However, if that is the case, Johnson's argument is still without merit. Unlike in Fields, the traffic stop of Johnson was not extended. Instead, this entire encounter lasted approximately 20 minutes and the officers were still conducting their duties relating to the traffic stop when Johnson admitted to marijuana being in the vehicle. Therefore, the traffic stop was not unlawfully extended before officers had a reasonable suspicion to extend the traffic stop. See Id. at ¶ 10.


[¶ 17] In this case, the law enforcement officers had two valid reasons to conduct a traffic stop on Johnson. First, the officers observed Johnson's vehicle speeding. Second, the officers observed Johnson's vehicle pull over to the side of the road without signaling. Either one of these violations was sufficient to initiate the traffic stop on Johnson. Therefore, because the officers witnessed Johnson commit two traffic violations, the officers had reasonable and articulable suspicion to conduct the traffic stop.

### CONCLUSION

[¶ 18] For the reasons stated in this brief, the State respectfully requests that the district court Order Denying Motion to Suppress and Johnson's criminal judgment be affirmed.

RESPECTFULLY SUBMITTED:

Dated this 17<sup>th</sup> day of January, 2019.

  
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Defendant and Appellant.	)	District Ct. No. 08-2018-CR-01003
	)	

I, Michelle E. Leary, being first duly sworn, depose and say that I am a Legal Resident over 21 years old, and on the 22<sup>nd</sup> day of January, 2019, I served a true copy of the following:

1. Brief of Plaintiff-Appellee
2. Appendix of Appellee
3. Affidavit of Mailing

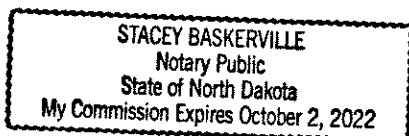
by attaching the documents in PDF format and e-filing with the North Dakota Supreme Court at [supclerkofcourt@ndcourts.gov](mailto:supclerkofcourt@ndcourts.gov) and sending a courtesy copy via e-mail to:


Yancy Contrill  
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which address is the last known address of the addressee.

  
Michelle E. Leary

Subscribed and sworn to before me this 22<sup>nd</sup> day of January, 2019.



  
Notary Public  
Burleigh County, North Dakota