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STATE OF NORTH DAKOTA

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Defendant and Appellant.

Cass County No. 09-08-K-04219

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### **STATUTES AND RULES**

#### **State**

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### **STATEMENT OF THE ISSUE**

[¶3] Whether the District Court erred in concluding the arresting officer lacked a reasonable and articulable suspicion to perform a traffic stop when the Defendant was observed driving a vehicle bearing a normal, ordinary temporary registration sticker.

### **STATEMENT OF THE CASE**

[¶4] The Defendant, Heather Renee McLaren, filed the Motion and Memorandum to Suppress Evidence dated January 22, 2009, in the District Court for Cass County, asking the court to suppress all evidence obtained from the warrantless stop of Defendant's vehicle occurring on October 16, 2008. Appendix to Brief of Appellee ("App.") at p. 1. Defendant stated in her motion the warrantless stop was performed in the absence of any reasonable and articulable suspicion that Defendant was or was about to be involved in criminal activity or was otherwise subject to being stopped for a violation of law. App. at p. 1.

[¶5] A hearing was held on March 17, 2009, before the Honorable Judge Steven Marquart. Transcript of hearing ("T.") at p. 4. On March 18, 2009, the court entered its Memorandum and Opinion granting Defendant's motion. (Appendix to Appellant's Brief ("App.-Appellant") at p. 3. In this Appeal, the State through the State's Attorney for Cass County asserts the court erred in its opinion and order. The State asserts the court incorrectly found a lack of a reasonable and articulable suspicion because the Defendant's vehicle, while clearly displaying a temporary registration sticker, also displayed an expired license plate tab.

[¶6] The state claims N.D.C.C. §39-04-11 is controlling, requiring all expired number plates, and evidence of licensing or registration, etc., to be removed from a

vehicle and further requiring a current annual registration tab or sticker to be displayed. The State contends the district court misapplied N.D.C.C. §39-04-17 in finding that since the Defendant had correctly displayed a clearly visible temporary registration sticker in the back window of the subject vehicle, even though the officer also observed the expired tabs on the license plate, there was no reasonable and articulable basis for the stop for a violation of the statute. The State feels the court erred in its determination that the purpose of having a temporary sticker is when there was no current license tab, and that N.D.C.C. §39-04-11 does not require someone to remove their expired plates if they have temporary registration sticker on the rear window.

[¶7] The Defendant asserts there was no error committed by the district court and the court properly read the above statutes in making its determination that the Defendant was not required to remove the expired license tab before the temporary registration sticker would be valid. Defendant asserts the State is making arguments unsupported by statute or other pertinent authority in stating the purpose of having a temporary registration sticker only applies upon a purchaser's initial application for a vehicle registration. Defendant asserts the state's argument that Section 39-04-17 doesn't authorize a purchaser to drive a vehicle while displaying the license plates of a previous owner is flawed. The state even admits that in a private sale not involving a licensed dealer, under N.D.C.C. §39-04-36(3), a purchaser is allowed to drive a vehicle for thirty days without a license plate. The State incorrectly states that §39-04-36(1) supersedes §39-04-36(3).

[¶8] The State misses the point that the officer in this case failed to have a reasonable and articulable basis for the stop, because under the above statutes, no

violation of the law was underway or about to happen. The officer had no basis to suspect the temporary sticker was invalid.

### **STATEMENT OF FACTS**

[¶9] On October 16, 2008, Deputy Daniel Hermann of the Cass County Sheriff's Department conducted a traffic stop upon the vehicle operated by the Defendant in Cass County. T. at p. 5. Deputy Hermann was traveling northbound on I-29 near the Main Avenue exit. T. at p. 5. Deputy Hermann noticed the tab on the license plate was expired. T. at p. 7. Before making the traffic stop, Deputy Hermann pulled up along side of the Defendant's vehicle and was close enough to have a clear view of the temporary registration sticker located in the rear window of the vehicle. T. at pp. 7-8, 12. Deputy Hermann was unable to clearly see the details on the temporary registration sticker before performing the stop. T. at pp. 8-9.

[¶10] Deputy Hermann testified at the hearing that he focused primarily upon the expired tab on the license plate while he was along side of the Defendant's vehicle. T. at p. 7. He testified that he noticed the temporary registration sticker as he was stopping the vehicle. The Deputy testified there was nothing unusual about the temporary registration sticker when directly asked during the hearing. T. at p. 8. There was nothing else about the driving conduct of the Defendant or the vehicle operated by the Defendant that was unusual or something that would alert the Deputy's attention. T. at p. 12. There were no other traffic violations observed by the Deputy. T. at p. 12.

## **STANDARD OF REVIEW**

[¶11] When reviewing the denial of a suppression motion we defer to the district court's findings of fact. State v. Johnson, 2006 ND 248, 724 N.W.2d 129 (N.D. 2006); State v. Oliver, 2006 ND 241, 724 N.W.2d 114 (N.D. 2006). Questions of law are fully reviewable. Johnson, 2006 ND 248.

## **LAW AND ARGUMENT**

[¶12] I. The District Court correctly ruled there was a lack of a reasonable and articulable suspicion to justify the traffic stop of the Defendant's vehicle.

[¶13] Before making an investigative stop of a vehicle, a law enforcement officer must have a reasonable and articulable suspicion that a driver has violated or is violating the law. City of Minot v. Keller, 2008 ND 38, 745 N.W.2d 638 (N.D. 2008). The reasonable suspicion standard is objective and based on the totality of the circumstances, but the "mere hunch illegal activity is taking place is not enough to justify the detention of a motorist." State v. Johnson, 2006 ND 248, 724 N.W.2d 129 (N.D. 2006). An investigative stop of a moving vehicle must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity, and mere curiosity, suspicion, vague hunches, or other non-objective facts will not suffice. Id. (citing Salter v. N.D. Dep't Transp., 505 N.W.2d 111 (N.D. 1993)).

[¶14] The facts here show Deputy Hermann noticed the tab on the license plate was expired. Before making the traffic stop, Deputy Hermann pulled up along side of the Defendant's vehicle and was close enough to have a clear view of the temporary registration sticker located in the rear window of the vehicle. Deputy Hermann testified at the hearing that he focused primarily upon the expired tab on the license plate while he was along side of the Defendant's vehicle. Although he attempted to explain that he did

not notice the temporary registration sticker until he was stopping the vehicle, it defies common sense and logic that he did not see the temporary registration sticker before making the stop. The video played at the motion hearing clearly showed the temporary registration sticker was visible and Deputy Hermann verified this at the hearing. Therefore, the District Court correctly concluded it was “a stretch” to argue that Deputy Hermann did not see the temporary registration sticker. See T. at p. 16.

[¶15] Moreover, Deputy Hermann testified there was nothing unusual about the temporary registration sticker when directly asked during the hearing. There was nothing else about the driving conduct of the Defendant or the vehicle operated by the Defendant that was unusual or something that would alert the Deputy’s attention. There were no other traffic violations observed by the Deputy. Therefore, before making the stop of Defendant’s vehicle, Deputy Hermann notice nothing unusual about the temporary registration sticker.

[¶16] The State argues that N.D.C.C. § 39-04-11 requires all vehicles to display a current registration or licensing, even when a clearly visible, ordinary looking temporary registration sticker is displayed. Such argument misapplies the statutes. Section 39-04-17, N.D.C.C., allows for a temporary paper certificate to be displayed on a vehicle while a title application is being processed. Johnson, 2006 ND 248, 724 N.W.2d 129 (N.D. 2006). This temporary certificate is valid for thirty days from the date of application. Id. Section 39-04-17, N.D.C.C., provides that possession of a temporary registration certificate is prima facie evidence of compliance with ch. 39-04. Id.

[¶17] In our facts, nothing was shown whatsoever indicating anything unusual about the temporary registration sticker. The temporary sticker was clearly visible to the



officer. The officer did not testify it appeared to be from another state or that it looked like an unusual white sheet of paper. It would have been mere speculation or a hunch on the part of the Deputy that anything suspicious was present about the temporary registration sticker.

[¶18] The State argues that Section 39-04-17 does not apply to a situation where a person already has a license plate and simply needs to renew her registration tabs under N.D.C.C. §39-04-14 or 39-04-14.1. Such an argument is flawed. The state even admits that in a private sale not involving a licensed dealer, under N.D.C.C. §39-04-36(3), a purchaser is allowed to drive a vehicle for thirty days without a license plate. See Appellant's Brief at paragraph 22. In its argument, the State incorrectly states that §39-04-36(1) requires the transferor of a vehicle to remove the license plates. In effect, the State is asking the court to rule that §39-04-36(1) supersedes §39-04-36(3). The State contradicts itself.

[¶19] The State further claims that State v. Johnson is inapplicable to this case, since Johnson was to be strictly tailored to cases involving vehicles with no license plates. The State feels that in City of Grand Forks v. Mitchell, 2008 ND 5, 743 N.W.2d 800 (N.D. 2008), this court so stated. The States goes on to claim since the facts in this case involve a vehicle with license plates attached, albeit expired plates, then Johnson is irrelevant. Such an interpretation is a misreading of City of Grand Forks v. Mitchell.

[¶20] This court stated in City of Grand Forks v. Mitchell, where the vehicle had no license plates but did display an 8 ½" x 11" sheet of white paper containing black writing, that the suspicion arose. Mitchell, 2008 ND 5, 743 N.W.2d 800. But the circumstances and the facts in Mitchell were much different than our facts. In Mitchell,

the court determined suspicion arose when a reasonable police officer saw a vehicle bearing the above described sheet of paper and in which the officer did not recognize as being authentic. Id. In such circumstances, especially when considering the officer knows the North Dakota temporary registration sticker is obviously different than the one being displayed, the officer's actions were justified. Id.

[¶21] In Mitchell, this court re-analyzed the decisions in State vs. Oliver, State vs. Johnson, and State v. Skarsgard. Id. This court did not overturn or limit its rulings in those cases, nor did it tailor those decisions to any certain set of facts. In Oliver (as re-analyzed in Mitchell), the court stated a “faded temporary registration certificate with no visible printing was indicative of a temporary certificate that was more than thirty days old and constituted an objective fact giving the officer a right to stop the defendant and check its validity.” Regarding Johnson, this court in Mitchell stated “unlike the faded registration certificate observed by the officer in Oliver, there was nothing unusual about the registration certificate in Johnson.” As for Skarsgard, the court in Mitchell stated when a law enforcement officer observes a vehicle with no license plates and no viewable registration certificate, the officer has reasonable grounds to stop the driver and check if the driver has a valid certificate in his possession.”

[¶22] The facts in Oliver were more akin to the facts in Mitchell, since the piece of paper displayed in Mitchell was unusual, even much more unusual, than the ordinary looking North Dakota temporary registration sticker. The facts in Johnson are more akin to the facts in this matter, since there was “nothing unusual” about the registration certificate being displayed. As such, the possession of a temporary registration certificate

was prima facie evidence of compliance with ch. 39-04. Johnson, 2006 ND 248, 724 N.W.2d 129 (N.D. 2006).

[¶23] Moreover, this court stated in Mitchell, that “we do not hold that an officer is justified in stopping every vehicle bearing a temporary registration certificate. . . . However, we do hold this particular temporary registration certificate under these particular circumstances did give rise to a reasonable and articulable suspicion that Mitchell may have been in violation of registration laws, justifying the officer’s investigatory stop of Mitchell’s vehicle.” Mitchell, 2008 ND 5, 743 N.W.2d 800. So the State’s argument that Johnson is irrelevant because of this court’s decision in Mitchell is erroneous.

### **CONCLUSION**

[¶24] Defendant respectfully requests the court affirm the Memorandum Opinion and Order of the District Court for Cass County dated March 19, 2009.

Dated this 8th day of June, 2009.

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**[¶ 25] CERTIFICATE OF SERVICE**

A copy of this document and the Appendix to Brief of Appellee in pdf format were e-filed with the North Dakota Supreme Court and served upon Kimberly Jo Hegvik, Assistant Cass County State's Attorney, on the 8th day of June, 2009. Specifically, this document and the Appendix to Brief of Appellee were electronically filed and served as follows:

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