

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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State of North Dakota,  
Plaintiff/Appellee,

vs.

Todd Albert Wilkie,  
Defendant/Appellant.

Supreme Court No. 20160401

Grand Forks Co. No. 18-2016-CR-01621

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APPEAL FROM THE CRIMINAL JUDGMENT ENTERED DECEMBER 12, 2016 BY  
THE DISTRICT COURT FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT  
THE HONORABLE JON JENSEN PRESIDING.

## BRIEF OF THE APPELLANT

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### **Statement of Issue Presented for Review**

- I. Whether the trial court erred by concluding that the University of North Dakota campus police officer had jurisdiction to stop the vehicle driven by Wilkie outside the campus jurisdiction?

### **Nature of the Case and Procedural History**

¶1 Appellant has appealed a Criminal Judgment from the District Court, Grand Forks County. [Docket 54; App. 118-122].

¶2 On August 18, 2016, the state charged Wilkie with Reckless Endangerment, Fleeing or Attempting to Elude a Peace officer, Leaving the Scene of an Accident, and Driving Under Suspension. [Docket 2; App. 5-6].

¶3 On October 11, 2016, defense filed a motion to suppress evidence and dismiss arguing the campus police officer lacked jurisdiction to stop Wilkie's vehicle. [Docket 22-30; App. 7-19].

¶4 On October 24, 2016, State filed a brief in opposition to the motion to suppress evidence arguing the campus police officer did have jurisdiction to stop the vehicle. [Docket 31-37; App. 20-43].

¶5 Oral arguments were held and on November 10, 2016, the court issued an order denying resolving motion to suppress evidence and dismiss. [Docket 40; App. 112-116].

¶6 On December 12, 2016, Wilkie entered a conditional guilty plea and a criminal judgment was entered. [Docket 54, 58; App. 117-122].

¶7 Appellant, Todd Albert Wilkie, timely filed a Notice of Appeal on December 14, 2016. Docket 59; App. 123].

### **Statement of the Facts**

¶8 On August 18, 2016, Officer Thiry, a University of North Dakota officer, was traveling east bound on Gateway Drive saw a vehicle also traveling eastbound at approximately the 3000 block of Gateway Drive at an appeared high rate of speed. [Tr. 40, 42]. Officer Thiry ran a check of the vehicle's license plate and it came back that the registered owner had a suspended license. [Tr. 42-43]. Officer Thiry matched the driver of the vehicle as being the owner. [Tr. 43].

¶9 Officer Thiry initiated his overhead emergency lights while the vehicle was at the intersection of Gateway Drive and Columbia Road. [Tr. 45]. The vehicle continued to travel eastbound. [Tr. 46]. Eventually the vehicle hit a median on South Washington which disabled the vehicle. [Tr. 51]. Wilkie was then handcuffed. [Tr. 53]. Wilkie was arrested, and charged with Reckless Endangerment, Fleeing or Attempting to Elude a Peace Officer, Leaving the Scene of an Accident, and Driving Under Suspension. [Docket 2; App. 5-6].

¶10 In this manner, Wilkie brings this appeal before this Court based upon Thiry acting outside his jurisdiction, and no Grand Forks police officer authorized Thiry to investigate, stop, or arrest Wilke.

### **Jurisdictional Statement**

¶11 Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law. Pursuant to constitutional provisions, the North Dakota legislature enacted §§ 29-28-03 and 29-28-06 which provide as follows:

§ 29-28-03. "*Appeals as a matter of right*. An appeal to the supreme court provided for in this chapter may be taken as a matter of right."

§ 29-28-06. "*From what defendant may appeal*. An appeal may be taken by the defendant from:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for new trial; or
5. An order made after judgment affecting any substantial right of the party."

State v. Lewis, 291 N.W.2d 735 (N.D. 1980).

¶12 The district court had jurisdiction under N.D. Const. art. VI, § 8, and N.D.C.C. § 27-05-06. Wilkie's appeal is timely under N.D.R.App.P. 4(b). This Court has jurisdiction under N.D. Const. art. VI, § 6, and N.D.C.C. § 29-28-06(1).

### **Standard of Review**

¶13 On appeal, the Court can reverse a district court's denial of a motion to suppress if the disposition lacks “sufficient competent evidence fairly capable of supporting the trial court's findings, and the decision is contrary to the manifest weight of the evidence.” State v. Boline, 1998 N.D. 67, ¶21, 575 N.W.2d 906, 909 (citing State v. Glaesman, 545 N.W.2d 178, 181 (N.D. 1996); City of Fargo v. Thompson, 520 N.W.2d 578, 581 (N.D. 1994). “Questions of law are fully reviewable on appeal.” Thompson v. Associated Potato Growers, Inc., 2000 ND 95, [¶ 7] 610 N.W.2d 53.



## **Law and Argument**

- I. The trial court erred by concluding that the University of North Dakota campus police officer had jurisdiction to stop the vehicle.

¶14 The North Dakota Supreme Court has recognized that as a general rule a police officer acting outside his jurisdiction is without official capacity and without official power to arrest. Kroschel v. Levi, 2015 ND 185, ¶7, 866 N.W.2d 109 (citing Johnson v. Dep't of Transp., 2004 ND 148, ¶10, 683 N.W.2d 886). While traveling eastbound on Gateway Drive, Officer Thiry was not within the jurisdiction of the University of North Dakota. Thiry was on a public road, situated outside of the campus of the University of North Dakota and, therefore, without the official capacity and power to arrest.

¶15 It is not disputed that the University of North Dakota, at one time, owned part of the land that is now Gateway Drive, specifically the South half from the mid-line of the road. The State argued that, “In fact, the Court has since re-affirmed that ownership of the road is held by the abutting property owner adjacent to the road, ending at the center line of the road. Ottertail Power Co. v. Von Bank, 72 N.D. 497, 508 (N.D. 1942).: [App. 27]. The State also stated that Officer Thiry initiated his lights just prior to at the intersection of Gateway Drive and Columbia Road and, therefore, would be within their jurisdiction. [App. 20].

¶16 The problem with this argument, if accepted by the Court, is that it could effectively split a road jurisdictionally. If the Court recognizes that the campus police jurisdiction extends to the mid-line of Gateway Drive, then any road that abuts a campus property in North Dakota will have a ½ jurisdiction by campus police. Campus police would then be able to initiate traffic stops only on one direction of traffic which really

doesn't make any sense, especially when Gateway Drive/U.S. Highway 2 is not a campus road.

¶17 The University of North Dakota either, through a voluntary act or through an act of eminent domain, relinquished their right to use the property beneath Gateway Drive to a government entity for the creation of a road. All owners of property do this when a road is being developed on their property by a governmental entity. The University of North Dakota can no longer use that property for campus development, such as placing a building thereon, because that right has been preempted. Because UND no longer has any developmental rights to that property it should not retain any jurisdiction to it as it now lies within the City of Grand Forks and County Sheriff's Department to police said road.

¶18 There is no question that Gateway Drive, aka ND State Highway 2, is not the jurisdiction of the UND police. The campus boundary does not overlap onto Gateway Drive. [App. 13, 18, and 31]. That is clear and definitive. The campus only has the authority to control the use of tobacco within its boundaries (App. 18), only has authority to patrol and arrest within its jurisdictional boundary (App. 13), and has indicated in its map of the 2015 UPD Clear Jurisdiction that it does not include Gateway Drive. [App. 31.]. All maps show the same border and Gateway Drive is outside of it. Therefore, Gateway Drive is beyond the jurisdiction of the UND campus police. Only if an exception applied could an arrest be upheld.

¶19 The North Dakota Supreme Court determined two instances where an officer may make an arrest outside of its jurisdiction. The first one is if an officer is responding to a request from another law enforcement agency for assistance. This is to be on a

temporary basis. Kroschel v. Levi, 2015 ND 185, ¶19-20, 866 N.W.2d 109. In this case Thiry was not acting on the request from a Grand Forks City police officer and, therefore, this exception does not apply.

¶20 The second instance where an officer may pursue a suspect beyond their jurisdiction to make an arrest when the officer is in hot pursuit. State v. Demars, 2007 ND 145, ¶11, 738 N.W.2d 486. Officer Thiry, although driving East in the South lane of Gateway Drive, was not within the jurisdiction of UND Campus and, therefore, could not be in “hot pursuit” as the pursuit would have had to have originated on campus.

¶21 Although an officer’s authority to arrest an individual extends beyond its jurisdiction when in hot pursuit, the officer must activate his lights within his geographical jurisdiction. See N.D.C.C. § 40-20-05; State v. Littlewind, 417 N.W.2d 361, 362.

¶22 Officer Thiry activated his lights just prior to the intersection of Gateway Drive and Columbia Road – not within the geographical boundaries of the University of North Dakota.

¶23 Unfortunately North Dakota has not made a determination as to what defines a campus and where does a campus police force jurisdiction extend or end. The only real guidance that can be referred to, at this time, is a determination by a North Dakota District Court as to what was found to not be campus.

¶24 The District Court of Cass County recently reviewed the suppression motion filed in City of Fargo Transfer v. Adam Solum, 09-2016-CR-00933. The District Court found that the University police did not have jurisdiction beyond their border to make and arrest Solum. The District Court ruled to suppress all evidence.

¶25 The factual circumstances are extremely close to this case. In Solum, the driver was found parked on North University Drive near where Centennial Boulevard intersects with it. North University Drive abuts to the east border of NDSU campus. There was no question, as in the current case, that the road was not part of the University. Due to this, the District Court found that North University Drive is not a part of NDSU campus and is outside the jurisdiction of NDSU police. As such, there was no jurisdiction, official capacity or official power to arrest as held in Kroschel v. Levi, 2015 ND 185, 866 N.W.2d 109.

¶26 In this case, Thiry observed a traffic violation outside of his jurisdiction. He was not responding to a request of another officer nor was he acting in hot pursuit to an offense committed on campus property. Thiry was acting outside of his official capacity and without the power to arrest.

### **CONCLUSION**

¶27 Because the arrest of Wilkie occurred outside of Thiry's jurisdiction, Thiry acted outside of his official capacity and without the power to arrest. Appellant respectfully requests that this Court find the district court's order denying the Defendant's motion to suppress evidence be overturned and the case remanded to the district court with further instructions.

Dated this 9<sup>th</sup> day of March, 2017.

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AFFIDAVIT OF SERVICE

Supreme Court No. 20160401  
Grand Forks Co. No. 18-2016-CR-01621

9 The undersigned, being of legal age, being first duly sworn deposes and says that on the day of March, 2016, she served true copies of the following documents:

Appellant's Brief  
Appellant's Appendix

And that said copies were served upon:

Carmell F. Mattison  
Grand Forks County  
Assistant State's Attorney  
Email: [sasupportstaff@gfcounty.org](mailto:sasupportstaff@gfcounty.org)

by email, and:

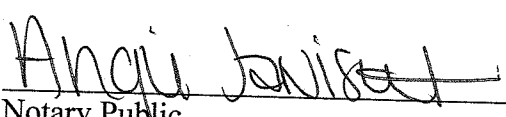
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by mail.

Dated this 9 day of March, 2017.

  
Holly Bicker

Subscribe and sworn to before me this 9 day of March, 2017.

  
Notary Public  
State of North Dakota  
County of Grand Forks

