20200222
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
NOVEMBER 5, 2020
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

City of West Fargo,	)	
	)	
Plaintiff/Appellee,	)	Supreme Court No.
	)	20200222
vs.	)	
	)	
Bridget Rachel Medbery,	)	Cass County Case No.
	)	09-2019-CR-05110
Defendant/Appellant.	)	
	)	

ON APPEAL FROM A CRIMINAL JUDGEMENT ENTERED AUGUST 13, 2020 AFTER MS. MEDBERY CONDITIONALLY PLED GUILTY AFTER DENIAL OF HER MOTION TO SUPPRESS EVIDENCE DATED JULY 9, 2020 FROM THE DISTRICT COURT FOR THE EAST CENTRAL JUDICIAL DISTRICT, CASS COUNTY, NORTH DAKOTA, THE HONORABLE WADE WEBB, PRESIDING.

BRIEF OF APPELLANT
ORAL ARGUMENT REQUESTED

Adam Justinger (ND ID 08635)
SW&L Attorneys
4627 44th Ave S, Ste 108
Fargo, ND 58104
Phone: (701) 297-2890
adam.justinger@swlattorneys.com
ATTORNEYS FOR APPELLANT

[¶A] TABLE OF CONTENTS

[¶B] TABLE OF AUTHORITIES

Statutes

North Dakota Rules

[¶1] STATEMENT OF THE ISSUES

[¶2] I. Ms. Medbery was unlawfully seized by law enforcement, which violated her rights under the Fourth Amendment of the United States Constitution and Article I, Section 8 of the North Dakota Constitution.

[¶3] STATEMENT OF THE CASE

[¶4] Bridget Rachel Medbery (Ms. Medbery) appeals from a criminal judgment entered after she entered a conditional plea of guilty following an order denying her Motion to Suppress Evidence in the Cass County District Court. Register of Actions Index ##33, 38, 39; Appendix, 5, 12-19. On November 21, 2019, Ms. Medbery was arrested and charged with Actual Physical Control. Register of Actions Index #1; Appendix, 4. Ms. Medbery timely filed a Motion to Suppress Evidence with an accompanying brief on March 6, 2020. Register of Actions Index ##17-19; Appendix, 2. The City of West Fargo opposed the motion and filed its response brief on March 18, 2020. Register of Actions Index #22; Appendix, 2. A motion hearing was held on July 8, 2020. Register of Actions Index #26; Appendix, 2.

[¶5] On July 9, 2020, the District Court issued an Order denying Ms. Medbery's Motion to Suppress Evidence. Register of Actions Index #33; Appendix, 5-11. The District Court held: 1) law enforcement's initial contact with Ms. Medbery was a community caretaking function; and 2) law enforcement had reasonable suspicion to support a seizure. Appendix, 5-11; Transcript of Testimony, Motion Hearing, July 8, 2020 (**"Tr."**), at 52:23-53:11. On August 13, 2020, Ms. Medbery entered a conditional plea of guilty reserving her right to appeal the denial of her motion and judgment was entered.

Register of Actions Index ##38-39; Appendix, 12-19. On August 20, 2020 Ms. Medbery timely filed her notice of appeal. Register of Actions Index #40; Appendix, 20-22.

[¶6] On appeal, Ms. Medbery argues the District Court erred when it held that the contact between law enforcement and Ms. Medbery was a community caretaking function. Further, Ms. Medby argues the District Court erred in finding that there was reasonable articulable suspicion to seize Ms. Medbery based solely on the fact that she refused to answer law enforcements questions. Therefore, the District Court erred in denying Ms. Medbery's Motion and Suppress and should be reversed.

[¶7] STATEMENT OF THE FACTS

[¶8] On November 21, 2019, Sergeant Patrck Hanson (Hanson) and Officer Dawson Rogstad (Rogstad) were dispatched to an address south of the interstate for a report of a female inside of a vehicle with an unknown problem who was possibly unconscious. Transcript of Testimony, Motion Hearing, July 8, 2020 (**"Tr."**), at 5:17-6:11; 8:22-8:24; 10:21-10:24; 18:1-18:4. The vehicle was parked in a driveway. Tr. at 8:22-8:24; 18:1-18:4. Hanson activated his emergency lights and arrived on scene. Tr. at 9:17-9:18. When Hanson arrived, paramedics were already on scene. Tr. at 6:12-6:13; 8:17-8:19. The ambulance was parked in front of the driveway and Hanson parked behind the ambulance. Register of Actions Index #21 at 17:42:22; Tr. at 24:1-24:4; 24:8-24:10.

[¶9] Hanson approached the vehicle. Tr. at 6:17-6:19. The driver, later identified as Ms. Medbery, was conscious when he approached. Tr. at 6:5-6:7; 6:17-6:19; 10:25-11:2. Hanson walked to the driver's side of the vehicle and attempted to talk with Ms. Medbery who was still inside of the vehicle. Tr. at 6:17-6:19; 9:22-9:24. While

Hanson was questioning Ms. Medbery he "didn't get a whole lot of response back." Tr. at 6:17-6:19; 16:16-16:18. Ms. Medbery then attempted to start her vehicle to leave and Hanson and a paramedic "tr[ied] to coach her to not start the vehicle." Tr. at 6:17-6:22. Ms. Medbery successfully started the vehicle. Tr. at 10:9-10:11. In response, Hanson told Ms. Medbery to turn her vehicle off. Tr. at 11:5-11:6. A paramedic then reached into the vehicle and turned off the vehicle. Tr. at 7:12-7:15. At that point, Hanson told Ms. Medbery to exit the vehicle. Tr. at 11:7-11:8.

[¶10] Prior to exiting the vehicle, Hanson believed Ms. Medbery was impaired because she would not answer his questions. Tr. at 12:12-13:7. However, Hanson did not notice an odor of alcohol, poor balance, or any other indicators prior to Ms. Medbery exiting the vehicle. Tr. at 11:13-11:18; 11:23-13:7. After conducting an investigation, Rogstad arrested Ms. Medbery for Actual Physical Control. Tr. at 18:14-19:1; 19:13-21:5.

[¶11] JURISDICTION

[¶12] The Supreme Court has jurisdiction over this matter under N.D. Const. Art. VI, §§ 2 and 6, and N.D.C.C. §§ 29-28-02; 29-28-03; and 29-28-06.

[¶13] STANDARD OF REVIEW

[¶14] "When reviewing a district court's ruling on a motion to suppress, we defer to the district court's findings of fact and resolve conflicts in testimony in favor of affirmance. State v. Gregg, 2000 ND 154, ¶ 19, 615 N.W.2d 515. "We affirm the district court's decision unless we conclude there is insufficient competent evidence to support the decision, or unless the decision goes against the manifest weight of the evidence. Id.

[¶15] "Although the underlying factual disputes are findings of fact, whether the findings meet a legal standard, in this instance a reasonable and articulable suspicion, is a question of law." Id. at ¶ 20. "Questions of law are fully reviewable." Id. "The ultimate conclusion of whether the facts support a reasonable and articulable suspicion is fully reviewable on appeal. Id.

[¶16] REQUEST FOR ORAL ARGUMENT

[¶17] Ms. Medbery requests the Court schedule oral argument in this case under N.D.R.App.P. 28(h). This matter involves what constitutes a community caretaking function, and when that encounter transforms into a seizure requiring constitutional protections. Additionally, this case addresses what is necessary to support a seizure under both the United States and North Dakota Constitution. Oral argument will be helpful for this Court's review of the District Court's order.

[¶18] ARGUMENT

[¶19] I. Ms. Medbery was unlawfully seized by law enforcement, which violated her rights under the Fourth Amendment of the United States Constitution and Article I, Section 8 of the North Dakota Constitution.

[¶20] Unreasonable searches and seizures are prohibited by the Fourth Amendment of the United States Constitution and by Section 8, Art. I of the North Dakota Constitution. State v. Ballard, 2016 ND 8, ¶ 8, 874 N.W.2d 61. "A seizure occurs, and Fourth Amendment protection is afforded a citizen, only when an officer has restrained the citizen's liberty by means of physical force or show of authority." State v. Leher, 2002 ND 171, ¶ 7, 653 N.W.2d 56. However, "Not all encounters between law enforcement officers and citizens constitute seizures implicating the Fourth Amendment."

State v. Schneider, 2014 ND 198, ¶ 7, 855 N.W.2d 399. This Court has repeatedly explained there are several permissible types of law enforcement-citizen encounters, namely 1) arrests, which must be supported by probable cause; 2) "Terry" stops, which must be supported by a reasonable and articulable suspicion of criminal activity; and 3) community caretaking encounters, which do not constitute Fourth Amendment seizures. Richter v. North Dakota Dep't of Transp., 2010 ND 150, ¶ 9, 786 N.W.2d 716.

[¶21] A. The community caretaking function does not apply because Hanson escalated the encounter with Ms. Medbery into a seizure.

[¶22] "[N]ot all personal intercourse or communications between law enforcement officers and citizens involve seizures implicating Fourth Amendment rights." City of Jamestown v. Jerome, 2002 ND 34, ¶ 5, 639 N.W.2d 478. "For example, a community caretaking encounter does not constitute a seizure within the meaning of the Fourth Amendment." Id. "Also, a police officer's approach of a parked vehicle is not a seizure if the officer inquires of the occupant in a conversational manner, does not order the person to do something, and does not demand a response." Id.

[¶23] "Law enforcement officers often serve as community caretakers." Bridgeford v. Sorel, 2019 ND 153, ¶ 8, 930 N.W.2d 136. "Community caretaking allows law enforcement-citizen contact, including stops, without an officer's reasonable suspicion of criminal conduct." Schneider, 2014 ND at ¶ 8. "The United States Supreme Court described community caretaking functions as those **totally divorced** from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Id. (quoting Cady v. Dombrowski, 413 U.S. 433, 441, (1973)) (Emphasis added).

[¶24] "In circumstances where it is obvious that a citizen is neither in need of nor desires assistance there is no community caretaking role to fill." Schneider, 2014 ND at ¶ 8. "A law enforcement officer's approach to a parked vehicle is not a seizure if the officer inquires of the occupant in a conversational manner, does not order the person to do something, and does not demand a response." Leher, 2002 ND at ¶ 10.

[¶25] In the present case, Hanson was dispatched to an address for a possibly unconscious female who was parked in a driveway with an unknown problem. Arguably, the dispatch began as a community caretaking function. However, when Hanson arrived, paramedics were already on scene with the now conscious female driver, later identified as Ms. Medbery. This is substantially different from other cases the Court has addressed where a driver is asleep inside of a vehicle, slumped over the vehicle, and/or does not respond to a knock at the window. *See* Bridgeford v. Sorel, 2019 ND 153, 930 N.W.2d 136; Rist v. N.D. Dep't of Transp., 2003 ND 113, ¶ 9, 665 N.W.2d 45; Lapp v. Department of Transp., 2001 ND 140, ¶¶ 14-15, 632 N.W.2d 419. At this point, Ms. Medbery was awake and alert and no longer needed assistance. This is further evidenced by the fact that Ms. Medbery started her car and attempted to leave prior to being ordered to turn her vehicle off and remain on scene.

[¶26] Further, even if the Court determines that Ms. Medbery still needed assistance, the community caretaking role was quickly terminated when Hanson began investigating a crime. Hanson approached the driver's side of the vehicle next to a paramedic. Hanson observed Ms. Medbery awake and conscious. Hanson began asking Ms. Medbery questions and she refused to respond and remained silent, which is her

right. Nonetheless, Hanson took this silence as an indication of impairment and initiated an investigation. At this point, the community caretaking function was terminated because it was no longer "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. Jerome, 2002 ND at ¶ 8.

[¶27] Regardless, Hanson transformed the alleged community caretaking function into a seizure. "While no seizure occurs during a community caretaking encounter, even a casual encounter can become a seizure if the officer acts in a manner that a reasonable person would view as threatening or offensive if done by another private citizen-through an order, a threat, or display of a weapon. Rist, 2003 ND at ¶ 10. A seizure occurs within the context of the Fourth Amendment only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. Jerome, 2002 ND at ¶ 5.

[¶28] "If,...an officer **directs a citizen to exit a parked vehicle**, or otherwise orders a citizen to do something, then the officer has arguably made a stop which, consistent with the Fourth Amendment rights of the citizen, requires the officer to have a reasonable and articulable suspicion that person has been or is violating the law." Leher, 2002 ND at ¶ 7 (Emphasis added). Further, law enforcement officers transform a community caretaking encounter into a seizure when they stop a vehicle attempting to leave, activate their patrol cars emergency lights, or block in a vehicle. *See* State v. Boyd, 2002 ND 203, ¶ 10, 654 N.W.2d 392 (determining that an officer pulling behind a vehicle and blocking the vehicle's rear exit was not a community caretaking function); State v.

Sarhegyi, 492 N.W.2d 284, 285–86 (N.D.1992) (determining an officer's stop of a lone vehicle parked in a farm implement dealer's lot, which attempted to leave when he approached, was not community caretaking); State v. Langseth, 492 N.W.2d 298, 301 (N.D.1992) (concluding the community caretaking exception did not apply when an officer pursued the defendant while flashing the patrol car's warning lights).

[¶29] Here, the encounter transformed from a community caretaking function and into a seizure based on the orders, commands, physical obstruction, and the officers' show of authority. In this case, Hanson arrived with his emergency lights activated, which signals that an individual is not free to leave. *See* N.D.C.C. § 39-10-71 (making it a crime to flee or elude a peace officer when given a visual or audio signal to stop the vehicle). Hanson parked behind the ambulance, which was blocking the driveway, preventing Ms. Medbery from leaving. After Hanson approached Ms. Medbery and attempted to speak with her, Ms. Medbery attempted to start her vehicle. Hanson ordered Ms. Medbery to not start her vehicle. Ms. Medbery did not comply. As a result of the noncompliance, Hanson and the paramedics ordered Ms. Medbery to turn off her vehicle, further preventing her from leaving. When Ms. Medbery refused to comply again, a paramedic reached into her vehicle and turned off the vehicle. Once the vehicle was shut off, Hanson ordered Ms. Medbery out of the vehicle. Based on the circumstances, the encounter between Hanson and Ms. Medbery was converted into a seizure.

[¶30] Ms. Medbery neither needed assistance nor desired assistance. Nonetheless, Hanson took it upon himself to continue the encounter and investigate a crime. In doing so, he used orders, physical force and his show of authority to transform

the encounter into a seizure. Thus, the community caretaking function was inapplicable and/or transformed into a seizure. Therefore, Hanson needed reasonable and articulable suspicion to support the seizure of Ms. Medbery.

[¶31] B. Hanson lacked reasonable articulable suspicion to seize Ms. Medbery which violated her constitutional rights.

[¶32] In the context of law enforcement-citizen contacts, a "Terry" stop, or investigative stop, temporarily restrains an individual's freedom, which results in a Fourth Amendment seizure. State v. Boyd, 2002 ND at ¶ 13. "A seizure occurs within the context of the Fourth Amendment only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." Jerome, 2002 ND at ¶ 5. "An investigative stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." Id. (Internal quotations omitted). "This protects the citizen's Fourth Amendment right to be free of unreasonable searches and seizures." Id.

[¶33] "The reasonable and articulable suspicion standard is an objective one and does not hinge upon the subjective beliefs of the arresting officer." Leher, 2002 ND at ¶ 11. "The determination of whether a Fourth Amendment violation has occurred turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time and not on the officer's actual state of mind when the challenged action was taken." Id. "An officer's subjective intent plays no role in ordinary probable cause Fourth Amendment analysis." Id.

[¶34] An officer has reasonable suspicion if, under the totality of the circumstances, a reasonable person in the officer's position would be justified by some

objective manifestation to believe that the person stopped engaged in or was about to engage in criminal activity. State v. Knox, 2016 ND 15, ¶ 8, 873 N.W.2d 664. "Although we have recognized that the concept of reasonable suspicion is not readily reduced to a neat set of legal rules, it does require more than a mere hunch." State v. Fields, 2003 ND 81, ¶ 13, 662 N.W.2d 242.

[¶35] In the present case, Hanson lacked reasonable suspicion to seize Ms. Medbery. Hanson was dispatched for a report of a female, parked in a driveway, with an unknown problem who was possibly unconscious. When Hanson arrived, Ms. Medbery was alert and conscious. Hanson questioned Ms. Medbery and "didn't get a whole lot of response back." Tr. at 6:17-6:19. Hanson insinuated this to be a sign of impairment caused by alcohol or drugs. Subsequently, Hanson ordered Ms. Medbery to turn off and exit her vehicle so he could conduct an investigation.

[¶36] Hanson's sole reason for the seizure was because Ms. Medbery would not respond to his questions. Hanson attempted to support his hunch by claiming that his "prior experience" indicated that an individual who does not answer his questions is impaired. This Court has previously recognized:

> [A]n officer relying on training and experience may not simply identify behavior as suspicious **without also explaining why** the officer's knowledge of particular criminal practices gives special significance to the apparently innocent facts observed. Courts generally require some explanation regarding how the officer's training endowed seemingly innocent facts with criminal significance. To support detaining or searching persons or things, **an officer cannot make a bald claim they possess training and experience** permitting them to conclude, when an ordinary citizen might not, that criminal activity is afoot. Instead the officer must articulate his or her training or experience and connect that training and experience to activity in the case. Absent such articulation and connection, the conclusory phrase training and experience fails to meet the legal standard because reasonable suspicion requires more than a mere hunch.

State v. Wills, 2019 ND 176, ¶ 18, 930 N.W.2d 77 (Internal citations omitted) (Emphasis added).

[¶37] Hanson made a bald claim that unwillingness to answer questions indicates impairment based on his prior experience. Absent any articulation and connection, Hanson's claim is nothing more than a mere hunch. Individuals have a constitutional right to remain silent. Just because an individual invokes this right, does not indicate that they are impaired. This blanket assertion, without any further corroborating information, does not rise to the level of reasonable suspicion.

[¶38] Regardless, even if this was strange to Hanson, this lone observation does not rise to the level of reasonable suspicion. During the encounter, Hanson did not notice any other signs of impairment prior to ordering Ms. Medbery out of the vehicle and effectuating a seizure. Hanson failed to notice an odor of alcohol, red bloodshot watery eyes, poor finger dexterity, slow lethargic movements, slurred speech, poor balance, failure or inability to supply driving documents, admission of drinking, or any other signs of impairment. Instead, Hanson's sole observation was that Ms. Medbery would not answer his questions. While this may be a mere hunch, it does not rise to the level of reasonable suspicion. Fields, 2003 ND at ¶ 13. Therefore, Hanson lacked reasonable articulable suspicion which resulted in an unlawful seizure of Ms. Medbery, which violated her constitutional rights.

[¶39] **CONCLUSION**

[¶40] "The Constitution demands more than respect. It requires compliance." City of Fargo v. Christiansen, 430 N.W.2d 327, 331 (N.D. 1988) (Justice Levine,

concurring specially). While there are exceptions to the Fourth Amendment, including the community caretaking function, those exceptions are not limitless. Once an officer begins investigating a crime, the community caretaking function ends. A seizure quickly follows when an officer uses physical force, a show of authority, and/or orders an individual to do something.

[¶41] What arguably began as a community caretaking function, quickly transpired into a seizure. Ms. Medbery was ordered to turn off and exit her vehicle, she was blocked in, emergency lights were activated, and she was not free to leave. This seizure was the result of Hanson's lone observation that Ms. Medbery would not answer his questions. This sole indicator does not rise to the level of reasonable suspicion. Therefore, Ms. Medbery respectfully requests this Court **REVERSE** the district court's order and remand with instructions to permit Ms. Medbery to withdraw her guilty plea.

[¶42] Dated this 5th day of November, 2020.

/s/ Adam Justinger

Adam Justinger (ND ID 08635)
SEVERSON, WOGSLAND & LIEBL, PC
4627 44th Ave S, Ste. 108
Fargo, ND 58104
Phone: (701) 297-2890
adam.justinger@swlattorneys.com
ATTORNEYS FOR APPELLANT

[¶43] **CERTIFICATE OF COMPLIANCE**

[¶44] The undersigned, as attorney representing Appellant Bridget Rachel Medbery, and authors of the Brief of Appellant, hereby certify that said brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, in that the number of pages from cover page to certificate of compliance totals 17 pages and does not exceed 38 pages. This count is automatically calculated by electronic document. The undersigned further certifies the Appellant's appendix complies with Rule 30 of the North Dakota Rules of Appellate Procedure.

[¶45] Dated this 5th day of November, 2020.

/s/ Adam Justinger

Adam Justinger (ND ID 08635)
SW&L Attorneys
4627 44th Ave S, Ste. 108
Fargo, ND 58104
Phone: (701) 297-2890
adam.justinger@swlattorneys.com
ATTORNEYS FOR APPELLANTS

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

City of West Fargo,	)	
	)	
Plaintiff/Appellee,	)	Supreme Court No.
	)	20200222
vs.	)	
	)	
Bridget Rachel Medbery,	)	Cass County Case No.
	)	09-2019-CR-05110
Defendant/Appellant.	)	
	)	

ON APPEAL FROM A CRIMINAL JUDGEMENT ENTERED AUGUST 13, 2020 AFTER MS. MEDBERY CONDITIONALLY PLED GUILTY AFTER DENIAL OF HER MOTION TO SUPPRESS EVIDENCE DATED JULY 9, 2020 FROM THE DISTRICT COURT FOR THE EAST CENTRAL JUDICIAL DISTRICT, CASS COUNTY, NORTH DAKOTA, THE HONORABLE WADE WEBB, PRESIDING.

CERTIFICATE OF SERVICE

[¶1] I, Adam Justinger, an attorney licensed in the State of North Dakota, hereby certify that on **November 5, 2020,** the following documents were filed with the North Dakota Supreme Clerk of Court:

1. **Brief of Appellant;**
2. **Appendix to Brief of Appellant; and**
3. **Certificate of Service.**

[¶2] Copies of these documents were served electronically on all separately represented parties at the e-mail addresses listed below:

Stephen Hanson
shanson@ohnstadlaw.com

Sarah Wear
swear@ohnstadlaw.com

[¶3] Dated: November 5, 2020.

/s/ Adam Justinger

Adam Justinger (ND ID #08635)
SW&L Attorneys
4627 44th Ave. S., Suite 108
Fargo, ND 58104
Phone: 701.297.2890
adam.justinger@swlattorneys.com