

**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.

**REPLY BRIEF OF APPELLANT
 ORAL ARGUMENT REQUESTED**

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[¶1] ARGUMENT

[¶2] **I. Hanson was investigating a crime and was acting outside of the scope of the community caretaking function which resulted in an unlawful seizure of Ms. Medbery.**

[¶3] The City argues that Sergeant Hanson (Hanson) was acting in a community caretaking function. Appellee's Br. at ¶ 11. In support of their position, the City relies primarily on Bridgeford v. Sorel, 2019 ND 153, ¶ 8, 930 N.W.2d 136. Appellee's Br. at ¶ 10. However, Bridgeford is substantially different from the present case.

[¶4] In Bridgeford, a West Fargo Police Officer was on patrol at 1:38 a.m. and observed Bridgeford in the driver's seat of a running vehicle parked in a gas station parking lot. 2019 ND at ¶ 2. Bridgeford did not appear to be awake and was unresponsive when the officer approached the driver's door of Bridgeford's vehicle. Id. In an attempt to wake Bridgeford, the officer knocked loudly on the window and raised his voice for approximately fifteen seconds. Id. Bridgeford did not respond to the attempt to wake him up and remained asleep. Id. The officer opened Bridgeford's unlocked door, grabbed Bridgeford's shoulder, and shook him until he awoke. Id.

[¶5] The Court held that "the officer's actions remained within the community caretaker exception to the warrant requirement of the Fourth Amendment when he knocked on Bridgeford's window." Id. at ¶ 21. The Court went on and stated: "The officer's actions also remained within the community caretaker exception when entering Bridgeford's vehicle subsequent to Bridgeford's failure to respond to the officer's actions outside the vehicle." Id. As such, the Court reversed the district court's judgment and reinstated Bridgeford's license suspension. Id.

[¶6] In the present case, when Hanson arrived on scene, Ms. Medbery was awake and conscious. Tr. at 10:25-11:2. In fact, Ms. Medbery even started her vehicle in an effort to leave. Tr. at 11:3-11:4. However, Hanson ordered Ms. Medbery to turn off the vehicle. Tr. at 11:5-11:6. Hanson then ordered Ms. Medbery out of the vehicle. Tr. at 11:7-11:8. These facts are substantially different from an officer knocking on a window, shouting to an individual, **and** shaking an individual to awaken them. Bridgeford, 2019 ND at ¶ 2. As Justice Crothers notes in his dissent, while Ms. Medbery may not have communicated that she did not need or desire assistance, she clearly exemplified that she was not in need of assistance when she started her vehicle and attempted to leave. Id. at ¶ 25 (Justice Crothers dissent)(“However, it was not incumbent on Bridgeford to communicate that he did not need or desire assistance”). This was not a community caretaking function.

[¶7] Further, the United States Supreme Court, Eighth Circuit Court of Appeals, and North Dakota Supreme Court have all held that community caretaking functions are “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” Cady v. Dombrowski, 413 U.S. 433, 441 (1973); United States v. Quezada, 448 F.3d 1005, 1007 (8th Cir. 2006); and Bridgeford v. Sorel, 2019 ND 153, ¶ 8, 930 N.W.2d 136. None of the courts have held that the community caretaking function is “kind of” divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

[¶8] From the start, Hanson converted this encounter into a seizure when he arrived on scene with his emergency lights on and stopped behind Ms. Medbery’s vehicle. *See State v. Thompson*, 2011 ND 11, ¶ 10, 793 N.W.2d 185 ([A] reasonable person would not

believe he is free to leave when a police car is parked directly behind him with the police car's emergency lights activated). Regardless, when Hanson arrived he immediately began to investigate a crime after Ms. Medbery would not answer his questions. Hanson testified that because Ms. Medbery would not answer his questions, he believed she was impaired by drugs or alcohol. Tr. at 12:7-12:19. Hanson never claims that he believed Ms. Medbery's unwillingness to respond to his questions was due to a medical condition as the City asserts. Appellee's Br. at ¶ 11. Hanson was investigating a crime because Ms. Medbery refused to answer or acknowledge his questions. Therefore, Hanson's contact with Ms. Medbery was not a community caretaking function because it was not totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

[¶9] **CONCLUSION**

[¶10] Hanson was not acting in a community caretaking function. Instead, 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. As such, 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.

[¶11] Dated this 18th day of December, 2020.

/s/ Adam Justinger

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[¶12] **CERTIFICATE OF COMPLIANCE**

[¶13] The undersigned, as attorney representing Defendant/Appellant Bridget Rachel Medbery, and author of the Reply Brief of Appellant, hereby certifies that said reply 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 conclusion totals 7 pages and does not exceed 12 pages. This count is automatically calculated by electronic document.

[¶14] Dated this 18th day of December, 2020.

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CERTIFICATE OF SERVICE

¶1 I, Adam Justinger, an attorney licensed in the State of North Dakota, hereby certify that on **December 18, 2020**, the following documents were filed with the North Dakota Supreme Clerk of Court:

- 1. Reply Brief of Appellant; and**
- 2. Certificate of Service.**

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

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¶3 Dated: December 18, 2020.

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