

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

The State of North Dakota,)	
)	
Plaintiff and Appellee)	
)	Supreme Court No. 20220084
)	Case No. 18-2021-CR-2119
vs.)	
)	
Emma Charlotte Pieper,)	
)	
Defendant and Appellant.)	

ON APPEAL FROM AN AMENDED CRIMINAL JUDGEMENT ENTERED
MARCH 11, 2022, AFTER MS. PIEPER CONDITIONALLY PLED GUILTY
IN THE DISTRICT COURT OF NORTH DAKOTA
NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA
THE HONORABLE M. JASON MCCARTHY, PRESIDING

BRIEF OF APPELLEE — ORAL ARGUMENT REQUESTED

Andrew C. Eyre
Assistant State's Attorney
ND Bar ID #07121
124 South 4th Street
PO Box 5607
Grand Forks, ND 58206-5607
(701) 780-8281
E-Service Address: sasupportstaff@gfcounty.org

Vanessa Sigette
Legal Intern
124 South 4th Street
PO Box 5607
Grand Forks, ND 58206-5607
(701) 780-8281
E-Service Address: sasupportstaff@gfcounty.org

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REQUEST FOR ORAL ARGUMENT

[¶1] The State is requesting oral argument because Ms. Pieper is also requesting oral argument. The State agrees with Ms. Pieper that oral arguments would give the parties an opportunity to clarify factual or legal issues for the Court.

STATEMENT OF THE ISSUES

- I. The District Court properly found law enforcement had reasonable and articulable suspicion to justify the stop of Ms. Pier's vehicle.**

STATEMENT OF THE CASE

[¶2] On September 19, 2021, Pieper was arrested for Driving Under the Influence of Alcohol-.08% or greater-Intoxicating Liquor-1st Offense. Pieper was charged by Information on September 22, 2021. (R2:1). Pieper filed a Motion to Suppress and Dismiss and an accompanying brief on December 16, 2021. Pieper argued law enforcement lacked a reasonable and articulable suspicion to conduct a traffic stop on her vehicle. (R15:2). The State filed its response on December 22, 2021. The State argued that under the totality of the circumstances, law enforcement had reasonable and articulable suspicion to stop Pieper's vehicle. (R17:2;¶8).

[¶3] A motion hearing was held on January 7, 2022. The District Court entered its order denying the motion in its entirety on February 15, 2022. The District Court found Officer VanGrinsven did have reasonable and articulable suspicion to stop Pieper's vehicle based on a totality of the circumstances. (R25:7;¶20).

[¶4] Pieper now appeals, arguing the District Court erred when it held that Officer VanGrinsven had reasonable and articulable suspicion to stop Pieper. The State respectfully requests this Court deny Pieper's appeal and find the District Court properly decided that Officer VanGrinsven did have reasonable and articulable suspicion to conduct the traffic stop of Pieper's vehicle.

STATEMENT OF THE FACTS

[¶5] On September 19, 2021, at approximately 2:21 a.m., Officer Timothy VanGrinsven was driving northbound on North 42nd Street approaching the intersection of North 42nd Street and 6th Avenue North as the light turned red for vehicles passing in his direction. (R36:5:3-9). Officer VanGrinsven observed an SUV in the right lane facing westward at the intersection of North 42nd Street and 6th Avenue North. The vehicle did not proceed on the green light. (R36:5:9-12). Officer VanGrinsven proceeded to turn right and travel eastbound on 6th Avenue. (R36:5:12-13). When Officer VanGrinsven passed the SUV, Officer VanGrinsven observed the driver and the passenger arguing. (R36:5:13-15). Officer VanGrinsven made a U-turn and got behind the SUV in the right lane. (R36:5:15-16). Officer VanGrinsven observed that the SUV had the right turn signal activated. (R36:5:25; R36:6:1).

[¶6] While behind the SUV, the traffic light had turned green again for 6th Avenue North traffic and the vehicle still did not proceed through the intersection. (R36:6:12-15). The SUV activated its hazard lights. (R36:6:15-17). Officer VanGrinsven then activated his overhead emergency lights to initiate a traffic stop. (R36:6:17-18). Pieper's vehicle was stopped at the light, while it was both green and red with her right turn signal activated for a total of one (1) minute and two (2) seconds. (R25:6:¶16). Officer VanGrinsven testified his reason for the stop was based on a totality of the circumstances; Pieper's vehicle was impeding him from proceeding through the intersection, it was 2:21 a.m., and the vehicle's blinker indicated it would be making a right turn but sat through two green lights and one red light cycle. (R36:8:22-25; R36:9:1-5). Officer VanGrinsven testified that vehicles are allowed to turn right on red at

the intersection of North 42nd Street and 6th Avenue North. (R36:6:6-8). Officer VanGrinsven testified that another vehicle was in the area approaching his patrol vehicle and Pieper's SUV, but that vehicle made a left turn onto North 42nd Street from 6th Avenue North. (R36:7:7-8).

[¶7] Officer VanGrinsven approached Pieper's vehicle and saw that Pieper was the driver. (R17:2:¶7). He detected the odor of alcohol inside the vehicle. (R17:2:¶7). During the course of the DUI investigation, Pieper took a preliminary breath test which showed .187. (R17:2:¶7). Pieper took the intoxilyzer test with a reported result of .158. (R17:2:¶7).

ARGUMENT

[¶8] Officer VanGrinsven had reasonable and articulable suspicion to justify the stop of Pieper's vehicle. There is no requirement that a traffic violation or a criminal act occur. All that is required is reasonable suspicion, which is a low burden. "It is a standard less than that required for probable cause, but more than that of a mere hunch." *State v. Sarhegyi*, 492 N.W.2d 284, 286 (N.D. 1992) (citing *United States v. Montoya de Hernandez*, 473 U.S. 531, 105 S.Ct. 3304, 87 L.Ed.2d 381 (1985); (*State v. Smith*, 452 N.W.2d 86, 88 (N.D. 1990)). There is no requirement for an officer to identify a specific traffic violation to justify a stop. *State v. Bolme*, 952 N.W.2d 75, 2020 ND 255.

I. The District Court properly found law enforcement had reasonable and articulable suspicion to justify the stop of Ms. Pieper's vehicle.

[¶9] There is no requirement for an officer to observe a traffic violation before the officer initiates a traffic stop under the reasonable suspicion standard. An officer can even be justified in initiating a traffic stop based on a mistake of fact or law.

Reasonable suspicion of a minor traffic violation will provide a sufficient basis to justify a stop. *State v. Leher*, 2002 ND 171, ¶12, 653 N.W.2d 56. A traffic stop may also be valid in the absence of a traffic violation where "an officer's objectively reasonable mistake, whether of fact or law, may provide the reasonable suspicion necessary to justify a traffic stop." *State v. Hirschhorn*, 2016 ND 117, ¶14, 881 N.W.2d 244. "[T]he reasonable suspicion standard does not require an officer to see a motorist violating a traffic law or to rule out every potential innocent excuse for the behavior in question before stopping a vehicle for investigation." *Kappel v. Dir., N.D. Dep't of Transp.*, 1999 ND 213, ¶10, 602 N.W.2d 718. The actual commission of a crime is not required to support a finding of reasonable suspicion. *State v. Morsette*, 2019 ND 84, ¶6, 924 N.W.2d 434.

State v. Bolme, 2020 ND 255, ¶8, 952 N.W.2d 75.

[¶10] In *Bolme*, the Supreme Court considered a case involving a cracked windshield. The Supreme Court concluded that "the cracked windshield was not in

violation of N.D.C.C. § 39-21-39(1)[.]” *State v. Bolme*, 2020 ND 255, ¶11, 952 N.W.2d 75. The North Dakota Supreme Court wrote, “[w]hether or not Bolme violated any traffic laws, or actually had a view-obstructing crack in his windshield, does not control whether Officer Seim had the reasonable suspicion necessary to justify the traffic stop.” *State v. Bolme*, 2020 ND 255, ¶11-13, 952 N.W.2d 75. Bolme tells us that we are not simply looking to whether we can establish a traffic violation. Rather, we must look to the totality of the circumstances, and we must consider the officer’s observations and experience, to determine whether the officer had reasonable suspicion.

[¶11] The Supreme Court considered another similar case in *Goeman*. In *Goeman*, Trooper Salvatore heard a noise which sounded like tires skidding on a road surface. *State v. Goeman*, 431 N.W.2d 290, 290 (N.D. 1988).

[The trooper] turned and saw a vehicle come to an abrupt stop at a stoplight and the driver lurch forward, almost striking the steering wheel. Salvatore noticed that although the vehicle stopped at the stoplight, the light appeared to be green. Salvatore followed the vehicle for a short distance and observed the vehicle weave within its own lane. At one point, Salvatore testified, the vehicle almost struck another car in an adjacent lane. Relying upon these observations, Salvatore stopped the vehicle.

State v. Goeman, 431 N.W.2d 290, 291-91 (N.D. 1988).

[¶12] In *Goeman*, the first thing that drew the trooper’s attention was the vehicle stopping at a green light. The same is true here. Officer VanGrinsven saw Pieper stopped at a green light. He became suspicious. His suspicion grew as Pieper continued to sit through three light changes. His suspicion grew further as Pieper’s vehicle indicated she was going to be making a right turn but failed to turn right on the red when she was permitted and safely able to do so.

[¶13] The North Dakota Supreme Court decided in *Pesanti* that the time of day can be relevant to an officer's reasonable suspicion determination. "An officer's inferences may be influenced by the time of day an observation occurs. *In City of Fargo v. Ovind*, 1998 ND 69, ¶17, 575 N.W.2d 901, an officer's suspicion could have been "rendered less reasonable ... if the report had come at a different time of day." Conversely, the time of day may render an officer's suspicion more reasonable." *Pesanti v. North Dakota Dep't of Transp.*, 2013 ND 210, ¶11, 839 N.W.2d 851.

Weaving within the lane constituted reasonable and articulable suspicion when an officer, with six years of experience, observed a vehicle touching the center and fog lines an unusual number of times at 1:27 a.m. *Mohl*, 2010 ND 120, ¶9, 784 N.W.2d 128. Officers had a reasonable and articulable suspicion to justify a traffic stop when weaving within the lane was observed for approximately one-eighth to one-quarter of a mile, shortly before 1:00 a.m., and the officers had seven and nine years of experience. *Dorendorf*, at 116-17.

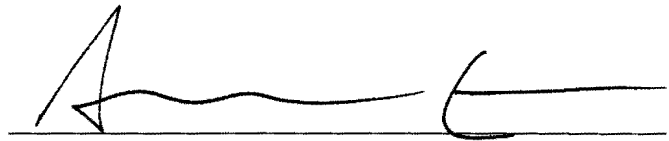
Pesanti v. North Dakota Dep't of Transp., 2013 ND 210, ¶10, 839 N.W.2d 851.

[¶14] In this case, Officer VanGrinsven saw Pieper stopped at a green light at about 2:21 a.m. The time of the stop can be considered in the reasonable suspicion analysis. *Pesanti v. North Dakota Dep't of Transp.*, 2013 ND 210, ¶10, 839 N.W.2d 851. Behavior that might not be suspicious at 2:21 p.m. might be suspicious at 2:21 a.m., under the Supreme Court's reasoning in *Pesanti*, *Mohl*, and *Dorendorf*.

CONCLUSION

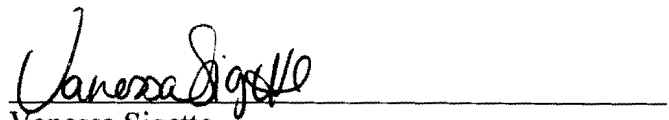
[¶15] The District Court properly found law enforcement had reasonable and articulable suspicion to justify the stop of Pieper's vehicle. The State respectfully requests that this Court affirm the District Court's finding that law enforcement had reasonable and articulable suspicion to stop Pieper's vehicle.

Dated this 18 day of July, 2022.



Andrew C. Eyre
Assistant State's Attorney
ND Bar ID #07121
124 South 4th Street
PO Box 5607
Grand Forks, ND 58206-5607
(701) 780-8281
E-Service Address: sasupportstaff@gfcounty.org

Dated this 18 day of July, 2022.



Vanessa Sigette
Legal Intern
124 South 4th Street
PO Box 5607
Grand Forks, ND 58206-5607
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CERTIFICATE OF COMPLIANCE

[¶1] The State of North Dakota, by and through Assistant State’s Attorney Andrew C. Eyre hereby certifies that the attached brief complies with the page limitation as set forth in Rule 32 of the North Dakota Rules of Appellate Procedure. The electronically filed brief contains 12 number of pages.

Dated this 15th day of July, 2022.

/s/ *Andrew C. Eyre*
Andrew C. Eyre
Assistant State's Attorney
Attorney ND Bar ID #07121
124 South 4th Street PO Box 5607
Grand Forks, ND 58206-5607
(701) 780-8281
E-Service Address:
sasupportstaff@gfcounty.org

bjd

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STATE OF NORTH DAKOTA)
) SS
COUNTY OF GRAND FORKS)

**NOTICE OF CERTIFIED STUDENT REPRESENTATION;
CERTIFICATE OF COMPLIANCE;
BRIEF OF APPELLEE - ORAL ARGUMENT REQUESTED**
electronically through the Supreme Court Electronic Filing System to:

Challis D. Williams
Reichert Armstrong
118 Belmont Road
Grand Forks, ND 58201
supportstaff@reichertlaw.com

Signed on the 18th day of July, 2022, at Grand Forks, North Dakota, United States.

/s/ *Bobbi J Davidson*
 Bobbi J Davidson
 Legal Secretary
 GF County States Attorney's Office
 124 South 4th Street
 PO Box 5607
 Grand Forks, ND 58201-5607
 (701) 78-8281
 E-service address: sasupportstaff@gfcounty.org

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[¶1] The State of North Dakota, by and through Assistant State's Attorney Andrew C. Eyre hereby certifies that the attached brief complies with the page limitation as set forth in Rule 32 of the North Dakota Rules of Appellate Procedure. The electronically filed brief contains 11 number of pages.

Dated this 18th day of July, 2022.

/s/ **Andrew C. Eyre**
 Andrew C. Eyre
 Assistant State's Attorney
 Attorney ND Bar ID #07121
 124 South 4th Street PO Box 5607
 Grand Forks, ND 58206-5607
 (701) 780-8281
 E-Service Address:
 sasupportstaff@gfcounty.org

bjd

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DECLARATION OF SERVICE BY
BY ELECTRONIC FILING
SA#161104

STATE OF NORTH DAKOTA)
) SS
 COUNTY OF GRAND FORKS)

The undersigned, being of legal age, declares under penalty of perjury under the law of North Dakota, that the foregoing is true and correct, that on the 18th day of July, 2022, she served true copies of the following documents:

**NOTICE OF CERTIFIED STUDENT REPRESENTATION;
 CERTIFICATE OF COMPLIANCE;
 BRIEF OF APPELLEE - ORAL ARGUMENT REQUESTED**
 electronically through the Supreme Court Electronic Filing System to:

Challis D. Williams
 Reichert Armstrong
 118 Belmont Road
 Grand Forks, ND 58201
 supportstaff@reichertlaw.com

At the office of the Grand Forks County States Attorney's Office.

Signed on the 18th day of July, 2022, at Grand Forks, North Dakota, United States.

/s/ *Bobbi J Davidson*

Bobbi J Davidson
 Legal Secretary
 GF County States Attorney's Office
 124 South 4th Street
 PO Box 5607
 Grand Forks, ND 58201-5607
 (701) 78-8281
 E-service address: sasupportstaff@gfcounty.org