

**IN THE SUPREME COURT
 STATE OF NORTH DAKOTA**

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

ON APPEAL FROM AN AMENDED CRIMINAL JUDGMENT ENTERED
 MARCH 11, 2022, AFTER MS. PIEPER CONDITIONALLY PLED GUILTY
 AFTER DENIAL OF HER MOTION TO SUPPRESS AND DISMISS
 FROM THE NORTHEAST CENTRAL JUDICIAL DISTRICT
 GRAND FORKS COUNTY, NORTH DAKOTA
 THE HONORABLE M. JASON MCCARTHY, PRESIDING.

**BRIEF OF APPELLANT
 EMMA CHARLOTTE PIEPER**

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[¶ 1] **TABLE OF AUTHORITIES****CASES:****UNITED STATES SUPREME COURT:**Terry v. Ohio, 392 U.S. 1, 20 (1968) ¶ 12**NORTH DAKOTA SUPREME COURT:**City of Devils Lake v. Corrigan, 1999 ND 16, 589 N.W.2d 579 ¶ 16City of Dickinson v. Hewson, 2011 ND 187, 803 N.W.2d 814 ¶ 10City of Fargo v. Ovind, 1998 ND 69, 575 N.W.2d 901 ¶ 12City of Lincoln v. Schuler, 2021 ND 123, 962 N.W.2d 413 ¶ 10Kappel v. Dir., N.D. Dep't. of Transp., 1999 ND 213, 602 N.W.2d 718 ¶¶ 12, 19Matter of Adoption of K.S.H., 442 N.W.2d 417, 420 (N.D. 1989) ¶ 16State v. Ashby, 2017 ND 74, 892 N.W.2d 185 ¶ 11State v. Bornsen, 2018 ND 256, 920 N.W.2d 314 ¶¶ 17, 18State v. Glaser, 2015 ND 31, 858 N.W.2d 920 ¶ 16State v. Goeman, 431 N.W.2d 290 (N.D. 1988) ¶ 19State v. Guthmiller, 499 N.W.2d 590 (N.D. 1993) ¶ 19State v. Marsolek, 2021 ND 175, 964 N.W.2d 730 ¶ 10State v. Stands, 2021 ND 46, 956 N.W.2d 730 ¶ 10State v. Torkelsen, 2006 ND 152, 718 N.W.2d 22 ¶ 12State v. Van Der Heever, 2021 ND 116, 961 N.W.2d 272 ¶ 11State v. Willard, 2022 ND 34, 970 N.W.2d 197 ¶ 10State v. Wolfer, 2010 ND 63, 780 N.W.2d 650 ¶ 11**STATUTES:**

N.D.C.C. § 39-01-01 ¶ 14

N.D.C.C. § 39-09-09 ¶ 14

N.D.C.C. § 39-10-05 ¶¶ 14, 16

N.D.C.C. § 39-10-19 ¶ 14

N.D.C.C. § 39-10-49 ¶ 18

OTHER:

U.S. Const. Amend. IV ¶ 11

N.D Const., Art. 1, § 8 ¶ 11

North Dakota Rules of Appellate Procedure

N.D.R.App.P. 28(h) ¶ 9

[¶ 2] **STATEMENT OF THE ISSUES**

- I. Whether the District Court erred in determining law enforcement had reasonable and articulable suspicion to justify the stop of Ms. Pieper's vehicle.**

STATEMENT OF THE CASE

[¶ 3] Emma Charlotte Pieper ("Ms. Pieper") appeals from an amended criminal judgment entered after she entered a conditional plea of guilty following an order denying her Motion to Suppress and Dismiss in the District Court of Grand Forks County. (R30:1). On September 19, 2021, Ms. Pieper was arrested for Driving Under the Influence of Alcohol-.08% or greater-Intoxicating Liquor-1st Offense. She was charged by information on September 22, 2021 (R2:1). Ms. Pieper filed a Motion to Suppress and Dismiss and an accompanying brief on December 16, 2021, arguing law enforcement lacked a reasonable and articulable suspicion to conduct a traffic stop on her vehicle. (R15:2) The State opposed the motion and filed its brief, arguing, under the totality of the circumstances, law enforcement had reasonable articulable suspicion to stop Ms. Pieper. (R17:2;¶8).

[¶ 4] A hearing on the motion was held on January 7, 2022, and the District Court entered its order denying the motion in its entirety on February 15, 2022, reasoning, based on the totality of the circumstances, Ofc. VanGrinsven had reasonable and articulable suspicion Ms. Pieper violated or was violating the law. (R25:7;¶20).

[¶ 5] Ms. Pieper now argues the District Court erred when it held that Ofc. VanGrinsven, despite not observing any traffic violations or poor driving behavior, had reasonable and articulable suspicion Ms. Pieper violated or was violating the law. Ms. Pieper respectfully requests this Court reverse the District Court's denial of her motion to suppress, and remand to the District Court with instructions to permit her to withdraw her plea of guilty.

STATEMENT OF THE FACTS

[¶ 6] The facts of this case are generally undisputed. On September 19, 2021, at approximately 2:21 a.m., Officer Timothy VanGrinsven was driving northbound on North 42nd Street approaching the intersection of 42nd and 6th Avenue North in Grand Forks, ND. (R36:5:3-9). He observed an SUV facing westbound on 6th Avenue that remained stationary through a green light. (R36:5:10-12). Ofc. VanGrinsven turned eastbound onto 6th Avenue and observed the driver arguing with her passenger. (R36:5:13-14). He made a U-turn and got behind the SUV. (R36:5:15-16). The SUV had its right turn signal activated. (R36:5:25)

[¶ 7] The traffic light was red but turned green shortly after Ofc. VanGrinsven got behind the vehicle. (R36:5:24-25). Ofc. VanGrinsven observed the light turn green and began to slowly drive forward in anticipation the SUV was going to turn right. (R36:6:12-14). The vehicle remained stationary and briefly activated its hazard lights. (R36:6:14-17). Ofc. VanGrinsven activated his overhead emergency lights and initiated a traffic stop. (R36:6:17-18). Ofc. VanGrinsven testified his reason for the stop was Ms. Pieper's vehicle was impeding him from proceeding through the intersection, it was 2:21 a.m., and the vehicle sat through two green lights. (R36:8:23-25).

[¶ 8] Prior to initiating the traffic stop, Ofc. VanGrinsven testified he could see the driver was awake (R36:10:22-23), the passenger and driver were talking to each other (R36:11:3-5), no outward manifestations of alcohol consumption were present (R36:11:16-19), and he hadn't observed any driving behavior (R36:12:1-3). Additionally, Ofc. VanGrinsven testified he was familiar with the statute on traffic control signals and understood its meaning. (R36:12).

REQUEST FOR ORAL ARGUMENT

[¶ 9] Ms. Pieper requests the Court schedule oral argument in this case under N.D.R.App.P. 28(h). Oral arguments would be helpful to aid in any clarification on potential factual disputes and the legal issues before the Court.

STANDARD OF REVIEW

[¶ 10] This Court's standard of review for a district court's decision on a motion to suppress is well established. State v. Marsolek, 2021 ND 175, ¶ 8, 964 N.W.2d 730. In reviewing a district court's decision on a motion to suppress evidence, this Court defers to the district court's findings of fact and resolves conflicts in testimony in favor of affirmance. State v. Stands, 2021 ND 46, ¶ 7, 956 N.W.2d 730. This Court will affirm a district court's decision regarding a motion to suppress if there is "sufficient competent evidence fairly capable of supporting the district court's findings, and the decision is not contrary to the manifest weight of the evidence." State v. Willard, 2022 ND 34, ¶ 7, 970 N.W.2d 197 (quoting City of Lincoln v. Schuler, 2021 ND 123, ¶ 6, 962 N.W.2d 413). The determination of whether facts in a case support a reasonable suspicion is a question of law which is fully reviewable on appeal. City of Dickinson v. Hewson, 2011 ND 187, ¶ 6, 803 N.W.2d 814.

LAW AND ARGUMENT

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

[¶ 11] Both the Fourth Amendment of the United States Constitution and Article 1, section 8 of the North Dakota Constitution protect individuals from unreasonable searches and seizures. State v. Ashby, 2017 ND 74, ¶ 8, 892 N.W.2d 185. Temporary detention of individuals during the stop of an automobile constitutes a seizure within the

meaning of the Fourth Amendment. Id. A law enforcement officer must have a reasonable and articulable suspicion that a motorist has violated or is violating the law to justify stopping a vehicle for investigation. State v. Van Der Heever, 2021 ND 116, ¶ 7, 961 N.W.2d 272. “Whether an officer had a reasonable and articulable suspicion is a fact-specific inquiry that is evaluated under an objective standard considering the totality of the circumstances.” Id. (quoting State v. Wolfer, 2010 ND 63, ¶ 6, 780 N.W.2d 650).

[¶ 12] Police may conduct an investigatory stop if the State can “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant those intrusions.” State v. Torkelsen, 2006 ND 152, ¶ 21, 718 N.W.2d 22 (quoting Terry v. Ohio, 392 U.S. 1, 20 (1968)). Officers are to assess the situation as it unfolds and, based upon inferences and deductions drawn from their experience and training, make the determination whether all the circumstances viewed together create a reasonable suspicion of potential criminal activity. Id. (quoting City of Fargo v. Ovind, 1998 ND 69, ¶ 9, 575 N.W.2d 901). The 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.

[¶ 13] The district court found, based on the totality of the circumstances, reasonable suspicion for the stop existed because “a reasonable person in Officer VanGrinsven’s position would be justified to suspect Pieper was engaged in unlawful activity, specifically, driving under the influence.” (R25:6:¶18). The district court relied upon the following in making its determination:

1. Ms. Pieper's vehicle was in the right turn lane with its turn signal on, and the traffic light was green (R25:5:¶15);
2. Pieper impeded traffic—both civilian drivers, as well as Officer VanGrinsven—in violation of North Dakota Century Code sections 39-01-01 and 39-10-05 (R25:6:¶19);
3. Pieper briefly turned her hazard lights on, indicating she would not be proceeding through the intersection and would continue to impede traffic (R25:7:¶19; and
4. All of the above occurred at 2:21 a.m., on a Sunday morning, following Saturday night bar close. (R25:6:¶15).

[¶ 14] As a housekeeping matter, the district court cited two separate sections when it denied Ms. Pieper's motion. First, N.D.C.C. §39-01-01, which references applicable definitions to Title 39, and N.D.C.C. § 39-10-05 refers to traffic-control signal legends, which will discussed in the coming paragraphs. The district court did not rely upon N.D.C.C. § 39-09-09, one of only two places in the Century Code that references impeding traffic (the other being 39-10-19, driving on a divided highway). Even if the district court had relied upon § 39-09-09, its determination would still be in error. Section 39-09-09 prohibits an individual from driving a motor vehicle at a reduced speed so as to impede the normal and reasonable movement of traffic except when necessary, a scenario inapplicable to the case at hand.

[¶ 15] It is undisputed Ms. Pieper's vehicle was in the right turn lane with its turn signal on and its undisputed she remained at the intersection for approximately one minute and two seconds, through at least one green light. However, the district court's finding that

Ms. Pieper “impeded traffic—both civilian drivers, as well as Officer VanGrinsven” is not supported by the record. Ofc. VanGrinsven specifically testified Ms. Pieper did not impede any other traffic, besides his own vehicle. (R36:10:9-16). Had it not been for the conscious decision to turn off 42nd Street, Ms. Pieper wouldn’t have impeded Ofc. VanGrinsven’s vehicle, either. Ofc. VanGrinsven was originally proceeding northbound on 42nd Street. (R36:10:5). He turned right onto 6th Avenue, flipped a U-turn towards 42nd Street, then claimed Ms. Pieper’s vehicle was impeding him from continuing on 42nd Street. (R36:10:6-13). Ofc. VanGrinsven had every opportunity to continue northbound on 42nd Street prior to getting behind Ms. Pieper’s vehicle. Ofc. VanGrinsven created the situation of his vehicle being impeded to which he then cried foul.

[¶ 16] Additionally, North Dakota law does not require an individual to proceed through a green traffic light. N.D.C.C. § 39-10-05 governs traffic at traffic lights. Subdivision 1(a) states: “Vehicular traffic facing a circular green indication **may** proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians . . .” “The word “may” is usually used to imply permissive, optional or discretionary, and not mandatory action or conduct.” State v. Glaser, 2015 ND 31, ¶ 18, 858 N.W.2d 920 (quoting City of Devils Lake v. Corrigan, 1999 ND 16, ¶ 12, 589 N.W.2d 579). “May” in a statute is merely permissive, does not require action, and operates simply to confer discretion. Matter of Adoption of K.S.H., 442 N.W.2d 417, 420 (N.D. 1989). As clearly stated in statute, Ms. Pieper’s failure to proceed through a green light when given the opportunity is not, in and of itself, a violation of any traffic laws.

[¶ 17] To Counsel’s knowledge, this Court has only once held that reasonable suspicion existed based solely upon an individual’s failure to proceed at a stop sign or green light for an extended period. See State v. Bornsen, 2018 ND 256, 920 N.W.2d 314. In Bornsen, a Grand Forks Deputy testified he observed a vehicle come to a stop in front of a stop sign for approximately fifteen seconds. Id. at ¶ 3. The deputy stated that, in his experience at that intersection, a normal stop is often between one to two seconds. Id. Due to the extended stop, the deputy left his position and followed Bornsen. Id. The deputy subsequently observed Bornsen make a “wide” right turn where “the driver’s side wheel drove onto the centerline followed by the rear driver’s side wheel.” Id. The deputy testified the reason for the traffic stop was “stopping or standing where prohibited; and a wide turn.” Id.

[¶ 18] This Court upheld the district court’s order denying Bornsen’s motion finding it was objectively reasonable under the circumstances for the deputy to believe there had been a violation of N.D.C.C. § 39-10-49, regardless of whether Bornsen could have been found guilty of the violation. Id. at ¶ 8. However, this case is distinguishable from Bornsen. Unlike in Bornsen, Ofc. VanGrinsven did not testify as to whether he believed Ms. Pieper to be violating N.D.C.C. § 39-10-49, and the district court did not make any findings regarding it; rather, he testified the vehicle was impeding traffic. Ofc. VanGrinsven did not observe any driving behavior whatsoever. To assume Ms. Pieper was violating section 39-10-49 without testimony or evidence would be improper.

[¶ 19] In every other case, this Court has required more than what was present in this case regarding traffic control signals. See Kappel v. Dir., N.D. Dep’t. of Transp., 1999 ND 213, 602 N.W.2d 718 (reasonable suspicion existed when driver stopped longer than

usual at a stop sign and weaved within his lane); State v. Guthmiller, 499 N.W.2d 590 (N.D. 1993) (a driver's prolonged stop at the stop sign was sufficiently corroborative of an anonymous tip that the driver was under the influence of alcohol to justify the reasonable suspicion stop of the driver) (Levine, J., concurring in the result); State v. Goeman, 431 N.W.2d 290 (N.D. 1988) (abrupt stop at a green light combined with weaving and almost striking another vehicle provided reasonable suspicion to stop).

[¶ 20] Under the totality-of-the-circumstances test, there simply was not enough suspicion for Ofc. VanGrinsven to conduct a traffic stop on Ms. Pieper's vehicle. Rather, Ofc. VanGrinsven was acting on a mere hunch Ms. Pieper was operating a vehicle under the influence of alcohol. The district court erred in its determination Ofc. VanGrinsven had reasonable and articulable suspicion to justify the stop of Ms. Pieper's vehicle and that determination must be reversed. Ms. Pieper must be permitted to withdraw her guilty plea.

CONCLUSION

[¶ 21] The district court erred in determining law enforcement had reasonable and articulable suspicion to justify the stop of Ms. Pieper's vehicle. Therefore, the district court's order must be reversed. Ms. Pieper respectfully requests this Court overturn the decision of the district court denying her motion to suppress and remand with instructions to permit her to withdraw her guilty plea.

Dated this 22nd day of June, 2022.

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CERTIFICATE OF COMPLIANCE

[¶ 1] The undersigned, as the author of the Brief of Appellant, hereby certifies that said brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, in that it contains 13 pages, including this Certificate.

[¶ 2] This Brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 Word processing software in Times New Roman 12-point font.

Dated this 22nd day of June, 2022.

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[¶ 1] I hereby certify that on June 22, 2022, the following documents:
BRIEF OF APPELLANT and **CERTIFICATE OF COMPLIANCE** were filed
 electronically with the Clerk of Supreme Court through E-Filing Portal and served
 on Andrew Eyre at sasupportstaff@gfcounty.org.

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