

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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State of North Dakota,  Plaintiff-Appellee,  vs.  Scott Owen Parks,  Defendant-Appellant	Supreme Court No. 20170462  Case No. 08-2017-CR-01837
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On appeal from the Criminal Judgment entered January 4, 2018  
Burleigh County District Court  
South Central Judicial District  
State of North Dakota  
The Honorable Thomas J. Schneider, Presiding

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**APPELLANT'S BRIEF**

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[¶1]

**Statement of the Issue**

- I. Whether the district court erred by failing to suppress evidence obtained from an illegal stop of Scott Parks' vehicle.

### Statement of the Case

[¶2] This is an appeal of a Criminal Judgment entered after the denial of a motion to suppress and a subsequent conditional guilty plea entered by Scott Owen Parks, (hereinafter referred to as “Mr. Parks”). On June 19, 2017, Mr. Parks was charged with possession of a controlled substance and possession of drug paraphernalia. (Appellant’s App. at 4). The charges stemmed from a traffic stop one day prior. See id. On August 14, 2017, the district court conducted a preliminary hearing and the State filed an Information in lieu of the previously filed Complaint. (Appellant’s App. at 6). On August 30, 2017, Mr. Parks, by and through his attorney, filed a motion to suppress the evidence obtained as a result of the traffic stop of Mr. Parks, arguing that the stop was illegal because there was no reasonable and articulable suspicion for the stop. (Appellant’s App. at 8). On November 14, 2017, the district court conducted an evidentiary hearing on the motion to suppress. (Appellant’s App. at 1). On November 30, 2017, the district court issued an Order denying the motion to suppress. (Appellant’s App. at 10). On December 13, 2017, Mr. Parks filed a notice of his intent to enter a conditional guilty plea to the two charges, reserving his right to appeal the district court’s order on the motion to suppress. (Appellant’s App. at 14). On December 22, 2017, Mr. Parks entered a conditional guilty plea to the two charges. (Appellant’s App. at 16). Mr. Parks now appeals the criminal judgment and the district court’s denial of the motion to suppress. (Appellant’s App. at 18).

### **Statement of the Facts**

[¶3] On June 18, 2017, Adam Lane, a Bismarck Police Department Officer was on patrol within the City of Bismarck. (Tr. at 2, ln. 22 - 3, ln. 25). At approximately 4:40 p.m., Adam Lane noticed a pickup truck that was traveling on Rosser Avenue. (Tr. at 4, ln. 1 - 12). There was nothing unusual about the manner in which the truck was being driven and it did not appear to be violating any traffic laws. (Tr. at 4, ln. 4 - 9: at 7, ln. 16 - 22).

[¶4] Adam Lane noticed the driver of the truck was a “White male, I believe he was wearing a ball cap,” and noticed the driver “seemed to be taller,” estimating his height to be “about six foot” tall. (Tr. at 5, ln. 6 - 7: at 8, ln. 25 - 9, ln. 2). Although the driver of the vehicle was seated, Adam Lane believed that he was “taller,” because “the height that he was seated inside the vehicle, he appeared to be taller.” (Tr. at 5, ln. 8 - 10). The only other characteristic of the driver of the pickup that Adam Lane noticed was that the driver was an “Older male, I would say at that time late 40s maybe 50s”. (Tr. at 9, ln. 6 - 9). Adam Lane observed the driver for approximately three to five seconds. (Tr. at 10, ln. 24 - 11, ln. 3).

[¶5] Adam Lane performed a license plate check on the truck. (Tr. at 4, ln. 1 - 12). The license plate check of the truck revealed that Mr. Parks was the registered owner and that his license was suspended. (Tr. at 4, ln. 13 - 16). Adam Lane was given a description of the registered owner as “a male, 6'4", 190, approximately 48 years of age.” (Tr. at 5, ln. 11 - 15). Presumably, this means that the registered owner’s height was listed on his driver’s license as six feet four inches tall and his weight was listed as 190 pounds. There was no other information about the reason for the license suspension. (Tr. at 4, ln. 17 - 19).

[¶6] Adam Lane got behind the truck and followed it for approximately one minute. (Tr. at 6, ln. 5 - 6). Adam Lane did not notice any other traffic violations while following the truck. (Tr. at 6, ln. 7 - 9). After a few blocks, the truck turned into a driveway. (Tr. at 6, ln. 1 - 4). When the truck turned into the driveway, Adam Lane activated his overhead lights and initiated a traffic stop of the truck. (Tr. at 6, ln. 10 - 16). Adam Lane's only reason for stopping the vehicle was his suspicion that Mr. Parks was the driver of the vehicle and that Mr. Parks' license was under suspension at the time. (Tr. at 6, ln. 18 - 7, ln. 3).

[¶7] Upon further investigation after the traffic stop, Mr. Parks was determined to be the driver of the truck. (Appellant's App. at 11, ¶ 4). Mr. Parks was arrested for driving while under suspension. See id. While conducting a search incident to the arrest, a controlled substance and paraphernalia was discovered. See id.

[¶8] Mr. Parks was subsequently charged with possession of a controlled substance and possession of drug paraphernalia. (Appellant's App. at 4). Mr. Parks filed a motion to suppress the evidence obtained during the traffic stop, arguing that there was no reasonable and articulable suspicion for the stop. (Appellant's App. at 8). The district court conducted an evidentiary hearing and ultimately denied the motion to suppress. (Appellant's App. at 10). Mr. Parks subsequently entered a conditional guilty plea, reserving the right to appeal the district court's order on the motion to suppress. (Appellant's App. at 14).

### **Law and Argument**

[¶9] This is an appeal of a criminal judgment entered after a conditional guilty plea. (Appellant's App. at 18). This Court has jurisdiction over this appeal under N.D. Const. art.

VI § 6, N.D.C.C. § 29-28-03 and N.D.C.C. § 29-28-06. The North Dakota Rules of Criminal Procedure permit a defendant to enter a conditional plea of guilty and reserve the right to have this Court review an adverse determination of a specified pretrial motion. N.D.R.Crim.P. 11(a)(2).

### **Standard of Review**

[¶10] Mr. Parks is asking this Court to review the district court’s order denying his motion to suppress. The standard of review of a trial court’s decision on a motion to suppress evidence is well-established. State v. Mohl, 2010 ND 120, ¶ 5, 784 N.W.2d 128. With regard to the district court’s factual findings, this Court will defer to the district court’s findings of fact and will affirm the district court’s decision, unless there is insufficient competent evidence to support the decision, or unless the decision goes against the manifest weight of the evidence. See id. (quoting State v. Wolfer, 2010 ND 63, ¶ 5, 780 N.W.2d 650). However, questions of law are fully reviewable by this Court. See id. In addition, “the ultimate conclusion of whether the facts support a reasonable and articulable suspicion is fully reviewable on appeal.” Id.

**I. The district court erred by failing to grant Mr. Park’s motion to suppress in response to an illegal stop which was not supported by reasonable and articulable suspicion.**

[¶11] “The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated ...” N.D. Const. Art. I § 8. U.S. Const. Amend. IV. This U.S. and State Constitutional protection requires that an



officer have a reasonable and articulable suspicion that a law has been or is being violated, in order to stop a moving vehicle for investigative purposes. State v. Corum, 2003 ND 89, ¶ 10, 663 N.W.2d 151. Although the concept of reasonable suspicion is not readily reduced to a neat set of legal rules, it requires more than a “mere hunch.” See id.

[¶12] In this case, Adam Lane stopped the vehicle because he thought that Mr. Parks was the registered owner of the truck and that he was under suspension. (Tr. at 6, ln. 18 - 7, ln. 3). During the evidentiary hearing on the motion to suppress, Adam Lane testified that this was the only reason for the stop, that there was nothing unusual about the way the truck was being driven and that it did not appear to be violating any other traffic laws. (Tr. at 4, ln. 4 - 9; at 6, ln. 7 - 7, ln. 3, at 7, ln. 16 - 22). Although not cited by the parties or by the district court, this Court faced a similar set of facts in City of West Fargo v. Ross, 2001 ND 163, 634 N.W.2d 527. In Ross, a police officer made a records check for a vehicle license plate number after observing the vehicle driving lawfully on the City’s streets. See id. at ¶ 2. The check revealed that Ross was the registered owner of the vehicle and that his driver’s license was under suspension. See id. Most important, the officer then “drove along the side of Ross’ vehicle and observed the person driving the vehicle matched the physical description of the registered owner, found on the owner’s operator’s license.” Id. On these facts, this Court held that the stop was proper, as the officer determined that the registered owner was under suspension and then drove alongside Ross’s vehicle to observe the driver and compare the driver to the license description, to ensure that the registered owner was actually driving. See id. at ¶ 11 - 12.

[¶13] Admittedly, under Ross, an officer can stop a motor vehicle when there is reasonable

suspicion that the driver is under suspension, as Mr. Parks was. However, it is not enough to determine that the registered owner is under suspension; the officer must also determine that the driver is the registered owner, by matching the driver to the physical description, found on the owner's driver's license. If the officer fails to adequately match the driver to the physical description found on the owner's driver's license, there is no reasonable suspicion for the stop, merely a hunch that this individual may be under suspension.

[¶14] In this case, Adam Lane failed to comply with the requirements for a lawful stop as outlined in Ross. Adam Lane had an insufficient amount of time to determine whether the driver of the truck matched the physical description of the registered owner. In Ross, after learning that the registered owner was suspended, the stopping officer drove next to him for a period of time. See id. at ¶ 2. By driving next to him, the stopping officer could match the speed of Ross' vehicle, which would allow him sufficient time to observe the driver and determine whether he actually matched the physical description contained in the driver's license. Here, the officer observed Mr. Parks for 3 to 5 seconds, when the truck was in motion. (Tr. at 10, ln. 24 - 11, ln. 3). This was an insufficient amount of time to observe the driver and compare the driver's appearance to the physical characteristics of the registered owner, as found on the owner's driver's license.

[¶15] The observations of the driver made by Adam Lane were insufficient to rise to the level of reasonable suspicion that Mr. Parks was the driver. In the three to five seconds that Adam Lane had to observe the driver, he noticed the driver of the truck was a "White male," that he was "about six foot" tall and that he was an "Older male, I would say at that time late 40s maybe 50s". (Tr. at 8, ln. 25 - 9, ln. 2: at 9, ln. 6 - 9). Interestingly, Adam Lane claims

that he was able to determine the height of the driver, even though the driver was seated at the time. Given the fact that the driver was seated at the time, this provides questionable evidentiary value. When compared to the description that Adam Lane was provided, it is clear that it provides none. Adam Lane was given a description of the registered owner as “a male, 6'4", 190, approximately 48 years of age.” (Tr. at 5, ln. 11 - 15). Mr. Parks is listed as six feet four inches tall on his license. As such, Adam Lane’s observation of a “taller” driver, “about six foot” tall should be disregarded and does not provide reasonable suspicion. Beyond that, the only comparison that Adam Lane make between the driver and the physical description was that the driver was a white, older male. Given the demographics of the State of North Dakota, the description of a white, older male, should not justify a traffic stop. Under the circumstances, the limited observation made by Adam Lane does not rise to level of reasonable suspicion that Mr. Parks was actually the driver at the time of the stop. Instead, it was a mere hunch that Mr. Parks was the driver at the time. Because there was no reasonable suspicion for the stop, the stop was illegal. The district court should have granted the defendant’s motion to suppress.

### **Conclusion**

[¶16] For the foregoing reasons, Mr. Parks requests that this Court reverse and overturn the Order denying his motion to suppress and remand the case with directions to the district court to permit the withdrawal of his guilty plea and to grant his motion to suppress.

Dated this 8<sup>th</sup> day of February, 2018.

*/s/ Scott O. Diamond*

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