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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20180076

State of North Dakota,

Plaintiff/Appellee,

v.

Travis James Morsette,

Defendant/Appellant.

Appealing the February 7, 2018 Order from the February 15, 2018 Judgment, entered by the Honorable James Hill in the County of Burleigh, State of North Dakota, South Central Judicial District.

Brief of Appellant

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Statement of the Issue

[1] Whether the District Court erred by denying Travis Morsette's ("Mr. Morsette") Motion to Suppress therein holding the officer had reasonable and articulable suspicion to conduct the traffic stop on Mr. Morsette?

Statement of the Case

[2] On December 7, 2017, Mr. Morsette filed a Motion to Suppress with the Court on grounds the officer lacked reasonable and articulable suspicion for the traffic stop. The State filed a Response on December 19, 2017, and a hearing was held on the Motion on January 29, 2018. An Order denying the Motion to Suppress was entered on February 7, 2018.

[3] Mr. Morsette has petitioned this Court on appeal, following the Judgment on the conditional plea, to review the Order on Defendant's Motion to Suppress entered on February 7, 2018, by Judge James Hill, in the Burleigh County South Central Judicial District Court. Mr. Morsette appeals pursuant to N.D.R.App.P. 4(b).

Statement of the Facts

[4] On September 8, 2017, Officer Bratsch was patrolling the area of the 600 block of South Washington in Bismarck, North Dakota. *See* Transcript ("Tr.")[1] at pg. 6:14-20. Officer Bratsch pulled up to a red traffic light next to a car and observed the driver "manipulating his cellphone" for approximately two seconds. *Id*. at pg. 6:24-25; 7:1-3; 12:5-7. The officer did not view an open message, or anything being downloaded on the phone, but did observe the driver tap on the screen of the phone ten times for a duration of approximately two seconds. *Id*. at pg. 7:9-21; 12:5-7. Nothing more could be viewed because Officer Bratsch had passed the vehicle. *Id*. at pg. 12:8-10. Officer Bratsch was training another officer that day but indicated he was driving. *Id*. at pg. 9:22-25. It was not noted if the trainee had witnessed the exact activity of the driver. *Id*. However, Officer Bratsch did not observe what was being done on the phone. *Id*. at pg. 7:22-24. Officer Bratsch conducted a stop of the vehicle and the only reason for the stop was the driver "manipulated" his cell phone. *Id*. at pg. 8:4-7 and 16-19. No other "violations" were witnessed by Officer Bratsch prior to or during the stop. *Id*. at pg. 9:19-21. The driver of the vehicle was identified as Mr. Morsette. *Id*. at pg. 8:16-19.

[5] Officer Bratsch was familiar with the law of Use of Wireless Communications Device Prohibited and was aware at the time of the stop that law prohibited any access of the internet, whether it be sending or receiving data. *Id*. at pg. 12:14-23. Officer Bratsch was also aware, at the time of the stop, there are legal reasons to use a cellphone while driving a

[1]References the transcript of the Motion Hearing held on January 29, 2018.

vehicle which include: making and receiving phone calls; using it to change music; and basically, anything except sending and receiving text messages, e-mail messages, accessing web pages, or instant messages. *Id*. at pg. 12:24-25; 13:1-11. After conducting the stop, Mr. Morsette informed the officer he was changing music. *Id*. at pg. 13:12-19. Even after discovering that information, Officer Bratsch continued the detention and his "investigation" because he did not believe Mr. Morsette had been changing music. *Id*. at pg. 13:20-25; 14:1-4.

[6] Defense counsel filed a Motion to Suppress on December 7, 2017, asking the Court to suppress the evidence following the stop of Mr. Morsette's vehicle on grounds the officer lacked reasonable and articulable suspicion to conduct a traffic stop. *See* Appendix ("App.") at 002, 004-008. The State filed their Response on December 19, 2017. *Id*. at 002, 009-012. On January 29, 2018, a Motion Hearing was held at the Burleigh County Courthouse with the Honorable James Hill presiding. *Id*. at 002. The district court made findings at the hearing and indicated, "[t]he Court would observe … [Officer Bratsch] clearly had an opportunity to view, he clearly had arranged to see, and he could see if there was light on the phone. That's what happens when you open the phone." *See* Tr. at pg. 26:2-6. The district court ultimately held, "the officer had reasonable and articulable suspicion to stop the vehicle later identified as being driven by Mr. Morsette [sic] – for the potential violation of that statute." *Id*. at pg. 27:19-22.

[7] On February 7, 2018, Judge Hill issued an Order denying the Defendant's Motion to Suppress, holding the stop of Mr. Morsette was an investigatory stop and the officer had

reasonable and articulable suspicion to conduct the traffic stop on Mr. Morsette. *See* App. at 002, 013; Tr. at pg. 23-29. The parties subsequently entered a conditional plea agreement, and the Court entered Judgment on February 15, 2018. *See* App. at 002, 014-17. On February 22, 2018, Mr. Morsette filed his Notice of Appeal. *Id*. at 002, 018-019.

Argument

[8] This Court applies a de novo review standard when reviewing a district court's decision on a Motion to Suppress evidence.

> In reviewing a district court's decision on a motion to suppress evidence, we defer to the district court's findings of fact and resolve conflicts in testimony in favor of affirmance. We will affirm a district court's decision on a motion to suppress if there is sufficient competent evidence fairly capable of supporting the trial court's findings, and the decision is not contrary to the manifest weight of the evidence. Our standard of review recognizes the importance of the district court's opportunity to observe the witnesses and assess their credibility. Questions of law are fully reviewable on appeal, and whether a finding of fact meets a legal standard is a question of law.

State v. Hawkins, 2017 ND 172, ¶ 6, 898 N.W.2d 446 (citing, State v. Odom, 2006 ND 209, ¶ 8, 722 N.W.2d 370 (quoting, State v. Graf, 2006 ND 196, ¶ 7, 721 N.W.2d 381)). Mr. Morsette argues the district court did not possess sufficient competent evidence necessary to support its decision, and the district court's decision was contrary to the manifest weight of the evidence. Based upon a de novo review, a reversal and remand are appropriate.

A. The district court erred in determining Officer Bratsch had reasonable and articulable suspicion to conduct a traffic stop on Mr. Morsette.

[9] This Court has established stopping a motor vehicle constitutes a seizure worthy of Fourth Amendment protection. State v. Wetzel, 456 N.W.2d 115, 117-18 (N.D. 1990) (citing, Delaware v. Prouse, 440 U.S. 648 (1979)). The facts are not contested that Mr. Morsette was seized as Officer Bratsch conducted a traffic stop of the vehicle in which Mr. Morsette was driving.

[10] "A traffic stop is analogous to a so-called 'Terry stop,' and must be analyzed under the same legal standard." State v. Smith, 2005 ND 21, ¶ 12, 691 N.W.2d 203, 208. "To stop

a moving vehicle for investigative purposes an officer must have a reasonable and articulable suspicion that a law has been or is being violated." *Id*. at ¶ 15. "Determining whether reasonable suspicion for an investigative traffic stop exists is based on the totality of the circumstances when viewed objectively." *Id*. "Reasonable suspicion requires more than a 'mere hunch.'" *Id*. (See also, City of West Fargo v. Ross, 2001 ND 527 ¶ 7, 634 N.W.2d 527 (citing, State v. Kenner, 1997 ND 1, ¶ 8, 559 N.W.2d 538) (quoting, Salter v. North Dakota Dept. of Transp., 505 N.W.2d 111, 114 (N.D. 1993))). This Court further determined one of the three circumstances which must be satisfied for reasonable and articulable suspicion to exist:

> (1) when the officer relied on an appropriate directive or request for action from another officer;
> (2) when the officer received tips from police officer or informants, which were then corroborated by the officer's own observations; or
> (3) when the officer directly observed illegal activity.

State v. Torkelson, 2006 ND 152, ¶ 11, 718 N.W.2d 22 (quoting, Anderson v. Director, N.D. Dept. of Trans., 2005 ND 97, ¶ 9, 696 N.W.2d 918, 920) (see also, Johnson v. Sprynczatyk, 2006 ND 137, ¶ 8, 717 N.W.2d 586)).

[11] In the present case, Officer Bratsch passed Mr. Morsette's vehicle at a red traffic light. *See* Tr. at pg. 6:24-25; 7:1-3. Any activity by Mr. Morsette was directly observed by Officer Bratsch. Officer Bratsch testified he observed Mr. Morsette "manipulating his cellphone" for approximately two seconds which involved Mr. Morsette tapping on the screen of his phone approximately ten times. *Id*. at pg. 6:24-25; 7:1-3, 9-21; 12:5-7. Officer Bratsch did not observe what Mr. Morsette was doing on his phone and indicated he did not

view Mr. Morsette open a message or download anything; in fact, he did not see anything further because he immediately drove by Mr. Morsette's vehicle. *Id*. at pg. 7:9-24; 12:5-10. Officer Bratsch conceded he was aware, prior to conducting the traffic stop on Mr. Morsette, of the law on the use of a wireless communication device and that it prohibited any access of the internet. *Id*. at pg. 12:14-23. It is not *per se* illegal to use or touch a cell phone while driving in North Dakota. The North Dakota legislature has not passed a hands-free law or total cell phone prohibition while driving despite clearly having the option to do so in the original 2011 Bill. Approximately nineteen other states have a complete prohibition; however, North Dakota is not one of them. Instead, using a cell phone while driving in North Dakota is completely legal, but for enumerated purposes which are proscribed. North Dakota law specifically details what activity is prohibited while driving:

> 1. The operator of a motor vehicle that is part of traffic may not use a wireless communications device to compose, read, or send an electronic message.
> 2. Under this section:
>   a. "Electronic message" means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. The term includes electronic mail, a text message, an instant message, a command or request to access a worldwide web page, or other data that uses a commonly recognized electronic communications protocol. <u>The term does not include</u>:
>   (1) Reading, selecting, or entering a telephone number, an extension number, or voice mail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone or cellular phone call or using voice commands to initiate or receive a telephone or cellular phone call;
>   (2) Inputting, selecting, or reading information on a global positioning system device or other navigation system device;
>   (3) Using a device capable of performing multiple functions, such as fleet management systems, dispatching devices, phones, citizen

band radios, music players, or similar devices, for a purpose that is not otherwise prohibited;
(4) Voice or other data transmitted as a result of making a telephone or cellular phone call;
(5) Data transmitted automatically by a wireless communication device without direct initiation by an individual; or
(6) A wireless communications device used in a voice-activated, voice-operated, or any other hands-free manner.

N.D.C.C. § 39-08-23 (emphasis added). Officer Bratsch acknowledged legal reasons exist under the law to use a cellphone while driving a vehicle which include: making and receiving phone calls; using it to change music on the radio; and "you can basically do anything but send and receive text messages, e-mail messages, or instant messages." *See* Tr. at pg. 12:24-25; 13:1-11. No other "violations" were witnessed by Officer Bratsch prior to or during the stop of Mr. Morsette's vehicle. *Id*. at pg. 9:19-21.

[12] There is no precedent established by the North Dakota Supreme Court which addresses this specific issue. Furthermore, neither the 8th Circuit nor the United States Supreme Court appear to have addressed what facts need to be present to establish reasonable and articulable suspicion to stop a driver for perceived texting while driving. It is, therefore, appropriate for this Court to look at out-of-district jurisprudence to guide analysis on this matter.

[13] The 7th Circuit appears to be the only higher court which has directly addressed the specific issue at hand. *See* United States v. Paniagua-Garcia, 813 F.3d 1013 (7th Cir. 2016). The facts in Paniagua are very similar to those in Mr. Morsette's case:

> An Indiana police officer, in the course of passing a car driven by Gregorio Paniagua-Garcia (whom for the sake of brevity we'll call just Paniagua) on an interstate highway, saw that the driver was holding a cellphone in his right

> hand, that his head was bent toward the phone, and that he "appeared to be texting." Paniagua denies that he was texting, the officer has never explained what created the appearance of texting as distinct from any one of the multiple other—lawful—uses of a cellphone by a driver, and the government now concedes that Paniagua was *not* texting—that as he told the officer he was just searching for music. An examination of his cellphone revealed that it hadn't been used to send a text message at the time the officer saw him fussing with the cellphone.

Paniagua, at 1014. In Paniagua, the lower court held the officer was mistaken in thinking Paniagua had been texting when the officer drove by and saw him holding the cellphone, but it was determined the officer had reasonably believed Paniagua was texting. Paniagua, at 1014. Paniagua appealed that decision, and the 7th Circuit reversed, holding:

> Most of these activities [allowed uses of a cellphone while driving] seem dangerous—though no more so, and maybe less so, than texting—and because a driver is more likely to engage in one or more of them than in texting, [citation omitted] **the most plausible inference from seeing a driver fiddling with his cellphone is that he is not texting.**
> …
> Almost all the lawful uses we've listed would create the same appearance—cellphone held in hand, head of driver bending toward it because the text on a cellphone's screen is very small and therefore difficult to read from a distance, **a finger or fingers touching an app on the cellphone's screen**. **No *fact* perceptible to a police officer glancing into a moving car and observing the driver using a cellphone would enable the officer to determine whether it was a permitted or a forbidden use**. *See* State v. Rabanales-Ramos, 273 Ore.App. 228, 359 P.3d 250, 256 (2015).
> …
> The government **failed to establish that the officer had probable cause or a reasonable suspicion that Paniagua was violating the no-texting law**. The officer hadn't seen any texting; what he had seen was consistent with any one of a number of lawful uses of cellphones. The government presented no evidence of what percentage of drivers text, and is thus reduced to arguing that a mere possibility of unlawful use is enough to create a reasonable suspicion of a criminal act. But were that so, police could always, without warrant or reasonable suspicion, search a random pedestrian for guns or narcotics. For it would always be *possible* that the pedestrian was a bank robber, a hired killer on the loose, a drug lord or drug addict, or a pedophile

> with child pornography on his thumb drive. "A suspicion so broad that [it] would permit the police to stop a substantial portion of the lawfully driving public ... is not reasonable." United States v. Flores, 798 F.3d 645, 649 (7th Cir. 2015); see also Reid v. Georgia, 448 U.S. 438, 441, 100 S.Ct. 2752, 65 L.Ed.2d 890 (1980); Delaware v. Prouse, 440 U.S. 648, 662, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979); United States v. Thompson, 772 F.3d 752, 758-60 (3rd Cir. 2014).
>
> …
>
> Just as it's possible to text without being seen to text, it is possible to consume alcohol without being observed to have done so and without having become intoxicated as a result.
>
> …
>
> Indiana is right to be worried about the dangers created by persons who fiddle with their cellphones while driving, but probably wrong to outlaw such fiddling only with respect to texting—if only because the effect of slicing up drivers' use of cellphones in this way has been to make the Indiana statute largely inefficacious, such is the difficulty of distinguishing texting from other uses of cellphones by drivers by glancing into the driver's side of a moving automobile.

Paniagua, at 1014-15 (emphasis added). The 7th Circuit Court reversed and remanded the lower court decision. *Id*. Of particular note is not only the similar fact pattern to Mr. Morsette, but the precedent the 7th Circuit cautioned of if the "hunch" observed in that case were upheld— "[f]or it would always be possible that the pedestrian was a bank robber, a hired killer on the loose, a drug lord or drug addict, or a pedophile with child pornography on his thumb drive." *Id*. at 1015. The bare bones, hunch-based facts that Officer Bratsch used to support the stop of Mr. Morsette are wholly analogous to Paniagua, as is the precedent the State of North Dakota requests the North Dakota Supreme Court to set—effectively neutering the "reasonableness" of reasonable suspicion.

[14] Just as in Paniagua, the State here fails to establish Officer Bratsch had reasonable suspicion that Mr. Morsette was violating the law. Officer Bratsch did not see any texting or

evidence of prohibited activity; alternatively, what he did observe was entirely consistent with what a cell phone is primarily used for; dialing a number and making phone calls. The State failed to produce evidence of what percentage of drivers text and drive in the City of Bismarck (or anywhere) and can only argue a mere possibility of unlawful use of a cellphone is enough to create reasonable suspicion of a criminal act. The State appears to believe any use of a phone provides police reasonable suspicion for a traffic stop. *See* Tr. at pg. 18:6-18. The State indicates the officer's suspicion must be reasonable, but then indicates it does not matter if the driver falls under one of the six acceptable statutory uses of a cell phone while driving. *Id*. The State further indicates the statutory exceptions are "beside the point for the finding of reasonable suspicion" and "as soon as the officer sees the manipulation of that phone, that [sic] is reasonable and articulate suspicion of a violation of that 39-08-23." *Id*. This creates a slippery slope which would allow law enforcement to stop any law-abiding citizen for touching their cell phone, which is not reasonable. *Id*. at pg. 20: 7-14.

[15] Under North Dakota law, just as in Paniagua, "manipulating" a cellphone is not an illegal activity. *See* N.D.C.C. § 39-08-23. Officer Bratsch indicated he observed Mr. Morsette tap his screen ten times which is ironically almost the exact digits required to enter a telephone number for a phone call—not a prohibited activity under the law. *See* Tr. at pg. 7:1-5, 17-21. Officer Bratsch specifically indicated he did not view an open message or anything being downloaded on the cellphone. *Id*. at pg. 7:9-24; 12:5-10. The record is completely devoid of any affirmative fact to support Mr. Morsette was using his phone for a prohibited purpose. There was no mention of a blue screen resembling Facebook; no

comment that a photograph was being displayed consistent with a messaging or social media application; no visual that two hands were being used which is analogous to typing an e-mail. There is simply no affirmative fact to support anything more than a hunch that Mr. Morsette was using the phone for a prohibited purpose. Furthermore, instead of having inculpatory information of a prohibited use, Officer Bratsch had exculpatory evidence—meaning he had evidence the phone was being used for an allowable purpose—*vis-à-vis* the ten taps which is consistent with the entry of a phone number.

[16] Officer Bratsch indicated he knew what the law was prior to conducting the traffic stop on Mr. Morsette's vehicle; specifically, activity the law allowed and prohibited. *Id*. at pg. 12:14-25; 13:1-11. Officer Bratsch did not observe any facts to indicate illegal activity and stopped Mr. Morsette based on a hunch. Mr. Morsette merely touching or tapping several times on his phone is insufficient indicia that criminal activity is afoot, and the district court's precedent—if followed by the North Dakota Supreme Court—would provide a basis-for-stop anytime a motorist is observed tapping the screen of their phone. It would create a presumption of illegality whenever a cell phone is used while driving. Based on the totality of the circumstances in this case, Officer Bratsch had neither reasonable suspicion that criminal activity was afoot nor evidence a violation had occurred to justify the traffic stop.

B. Officer Bratsch's actions cannot be excused as a mistake of fact or law.

[17] The State made the argument, and will likely raise it with this Court again, that "[w]hether the driver actually committed a traffic violation does not change whether the

officer had reasonable suspicion necessary to justify a traffic stop. … [as] an officer's objectively reasonable mistake, whether a mistake of fact or law, can provide the reasonable suspicion necessary to justify a traffic stop." State v. Hirschkorn, 2016 ND 117, ¶ 14, 881 N.W.2d 244 (citing, Heien v. North Carolina, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014)); App. at 010-011; Tr. at pg. 17:21-25 and 18:1-18. The law, as applied in Hirschkorn and not fully detailed by the State, does not apply in Mr. Morsette's case.

[18] In Hirschkorn, the officer stopped the defendant for exiting an alley without signaling before turning. Hirschkorn, at ¶ 2. The officer erroneously believed this was a traffic violation and conducted a traffic stop. *Id*. The district court suppressed the evidence obtained from the stop because North Dakota law does not require drivers to signal prior to exiting alleys, and because the failure to signal was not a traffic violation there was no reasonable suspicion to justify the stop. *Id*. at ¶ 3. This Court reversed and remanded the district court decision holding:

> Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: the facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law.

Hirschkorn, at ¶ 14 (emphasis added) (citing, Heien, at 536). "Where an officer makes a mistake, whether of fact or law, such mistake may provide the reasonable suspicion justifying a traffic stop only when objectively reasonable because the 'Fourth Amendment tolerates

only reasonable mistakes ….'" Hirschkorn, at ¶ 14 (citing, Heien, at 539 (emphasis contained in original)).

[19] In the present case, Officer Bratsch was not mistaken in his understanding of the facts or his understanding of the relevant law. Officer Bratsch indicated he observed Mr. Morsette tap his screen approximately ten times. *See* Tr. at pg. 7:1-5, 17-21. Officer Bratsch specifically indicated he did not view an open message or anything being downloaded on the cellphone. *Id*. at pg. 7:9-24; 12:5-10. Officer Bratsch indicated he knew what the law was prior to conducting the traffic stop on Mr. Morsette's vehicle; specifically, activity the law allowed and prohibited. *Id*. at pg. 12:14-25; 13:1-11. Officer Bratsch testified the law specifically prohibits any access of the internet, whether it be sending or receiving data. *Id*. at pg. 12:17-23. Officer Bratsch testified the law allows drivers to use their cellphone to make and receive phone calls; use phone to change music on the radio; and that basically anything is allowed but sending and receiving text messages, e-mail messages, or instant messages. *Id*. at pg. 12:24-25; 13:1-11.

[20] In 2016, the United States District Court for the Northern District of Florida analyzed the reasonableness of a mistake of fact by using the facts in the cases of Heien and Paniagua; the Court opined:

> The reasonableness of a mistake of fact (or a mistaken inference) lies in the plausibility and probability of the lawful explanations for the behavior mistakenly perceived as unlawful. The difference between the officer's mistake in Chief Justice Roberts's hypothetical in Heien and the officer's mistake in Paniagua-Garcia is that the former's mistake is surprising. Looking at it from the practical standpoint of establishing reasonable suspicion by a preponderance of the evidence, the officer's mistake in the Heien hypothetical is easy for the Government to explain—*how could the*

> *officer have known there would be children sleeping in the back seat?*—while the Paniagua-Garcia officer's mistake is not—*what is it that made the officer think the defendant was texting as opposed to doing something lawful?*

United States v. Longoria, 183 F.Supp.3d 1164, 1175 (N.D.Fla. 2016). The federal District Court concluded that rendering "the mistake 'reasonable' would basically make every stop . . . lawful . . . eviscerate[ing] the Fourth Amendment." *Id*. at 1177.

[21] In application, Officer Bratsch's actions in this matter, just as the officers' actions in Paniagua, amount to nothing other than a hunch. Excusing that hunch as a reasonable mistake not only eviscerates the Fourth Amendment but condones ignorant, hunch-based policing wherein the gathering of facts does not matter as long as the officer's "intent" appears to be good. There is no evidence which exists that made Officer Bratsch believe Mr. Morsette was texting, and there is no evidence Officer Bratsch misunderstood the law.

[22] The analysis and conclusion reached in Hirschkorn does not apply to the facts or Officer Bratsch's understanding in this case. As such, the same holding cannot be applied. "Whether an officer has reasonable and articulable suspicion is determined according to the information known to the officer at the time of the stop." State v. Robertsdahl, 512 N.W.2d 427, 428 (N.D. 1994) (citing, State v. Miller, 510 N.W.2d 638 (N.D. 1994); Bryl v. Backes, 477 N.W.2d 809, 811 n.2 (N.D. 1991); (quoting, State v. VandeHoven, 388 N.W.2d 857, 858 n.1 (N.D. 1986))) (emphasis added). Officer Bratsch's knowledge of the law at the time of the stop is accurate as to the use of a cellphone while driving, including what is allowed and what is prohibited. *See* N.D.C.C. § 39-08-23. Officer Bratsch also detailed enough facts regarding his observations prior to the stop to ascertain he was not reasonably mistaken in the

facts. There is no mistake of law or fact in this case—there is, however, a mistake of what constitutes reasonable suspicion for a traffic stop.

Conclusion

[23] Mr. Morsette was lawfully using his cellphone while driving. Under the totality of the circumstances, the observations made by Officer Bratsch of Mr. Morsette tapping on his phone for the course of two seconds do not give rise to reasonable suspicion to effectuate a lawful traffic stop.

[24] The district court incorrectly determined Officer Bratsch had reasonable and articulable suspicion to support the traffic stop, and the remedies of mistake of law or fact cannot be properly applied by the State to turn an otherwise unconstitutional seizure into an excusable one.

[25] Mr. Morsette prays this Court reverse and remand this matter to the District Court for findings consistent with the law.

Dated this 11th day of June, 2018.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota, Plaintiff/Appellee, v. Travis James Morsette, Defendant/Appellant.	)	Case No.: 20180076 **AFFIDAVIT OF SERVICE**

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Michelle Christie, being duly sworn, deposes and says that she is over the age of eighteen, that she is not a party to nor interested in the above-entitled matter, that on the 11th day of June, 2018, she emailed the following documents:

1. Brief of Appellant; and
2. Appendix of Appellant.

The aforementioned documents were served, via email, upon the following individuals:

Derek Steiner
Burleigh Co. Assistant State's Attorney
bc08@nd.gov

Supreme Clerk of Court
SupClerkofCourt@ndcourts.gov

Michelle Christie

Subscribed and sworn to before me this 11th day of June, 2018.

MCKENZIE L. CHREST
Notary Public
State of North Dakota
My Commission Expires October 11, 2022

Notary Public
Burleigh County, State of North Dakota