

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

State of North Dakota,)	
)	
Plaintiff/Appellee,)	Supreme Court No.
)	20200022
vs.)	
)	McLean County District No.
Ryan Michael Lindquist,)	28-2019-CR-00311
)	
Defendant/Appellant.)	

ON APPEAL FROM ORDER DENYING MOTION TO SUPPRESS
DATED JANUARY 7, 2020, AND CRIMINAL JUDGMENT
ENTERED ON JANUARY 24, 2020,
FOR THE NORTHWEST JUDICIAL DISTRICT
MCLEAN COUNTY, NORTH DAKOTA
THE HONORABLE CYNTHIA FELAND, PRESIDING

BRIEF OF APPELLANT

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[¶ 1] STATEMENT OF THE ISSUES

[¶ 2] Was there sufficient competent evidence presented to support the District Court's decision to deny Appellant's motion to suppress a warrantless search of his motor vehicle where the defendant was immediately detained prior to any underlying facts being established that an emergency or exigent circumstances existed?

[¶ 3] STATEMENT OF THE CASE

[¶ 4] This is an appeal arising from an Order Denying Motion to Suppress, dated January 7, 2020, denying a motion to suppress evidence resulting from a warrantless search of his vehicle or a valid exception to the warrant requirement of the defendant, Ryan Michael Lindquist (hereinafter "Lindquist").

[¶ 5] Following the issuance of the Order, Lindquist entered a conditional guilty plea on January 23, 2020, to Possession of a Controlled Substance with Intent to Deliver, a violation of Section 19-03.1-23(1) of the North Dakota Century Code, a Class A Felony; and to Possession Of Drug Paraphernalia, a violation of Section 19-03.4-03 of the North Dakota Century Code, a Class C Felony. Lindquist reserved the conditional right to appeal the issue regarding the denial of the motion to suppress the warrantless search of his bedroom pursuant to N.D.R.Crim.P. 11(a)(2). Notice of Conditional Plea and Order (January 22, 2020), Register of Actions, Index # 41,

[¶ 6] Lindquist was sentenced on January 23, 2020, to the North Dakota Department of Corrections and Rehabilitation upon for a term of fifteen (15) years, with eight (8) years suspended, and followed by three (3) years of supervised probation for Possession of a Controlled Substance with Intent to Deliver, a violation of Section 19-03.1-23(1) of the North Dakota Century Code, a Class A Felony. Lindquist was

sentenced to five (5) years upon Possession of Drug Paraphernalia, a violation of Section 19-03.4-03 of the North Dakota Century Code, a Class C Felony. Lindquist was given credit for time previously served of one-hundred fifty-nine (159) days. This sentence was also subject to conditions of probation contained in Appendix A, including providing a sample of blood or other bodily fluids for DNA law enforcement identification purposes and inclusion in law enforcement identification databases as required by N.D.C.C. Ch. 31-13. Lindquist was ordered to pay the cost of the collection of the DNA Sample. Lindquist was ordered to undergo a chemical dependency evaluation and complete recommended treatment while incarcerated. The criminal administration fee of nine hundred dollars (\$900.00); the defense/facility administrative fee of one hundred dollars (\$100.00); and the indigent defense application fee of thirty-five dollars (\$35.00) were all waived. All sentences in this case were concurrent.

[¶ 7] STATEMENT OF THE FACTS

[¶ 8] McLean County Corporal Cody Meadows, patrol supervisor, testified he was at the scene of an incident on or about August 17, 2019. Corporal Meadows testified he arrived after other McLean County officers at the scene. Corporal Meadows testified he observed a pickup which was in a culvert with the back wheel off the ground on a prairie trail. The vehicle was unable to go anywhere. Deputy Meadows observed an EMS and his officers, together with the victim named Brianna. Suppression Hearing Tr. (hereinafter "Tr."), 5. Deputy Meadows testified he observed the victim's eyes were rolled back, was extremely pale, and had froth around her mouth. He identified the victim from two (2) photographs, which showed her condition at the scene. Tr. 6.

[¶ 9] Defense counsel objected to the admission of the two photographs of the victim on the grounds that he had just been made aware of the pictures that day. He also objected to the relevance of the images. Tr. 75-10.

[¶ 10] The State argued that it had texted defense counsel the images the morning of the hearing, since the prosecutor was not certain they had been provided to the defense. The prosecutor argued that the State believed the search of the vehicle was proper because it was an emergency with which the officers were faced, and the victim's condition was photographic evidence of her condition. Tr. 7:16-25.

[¶ 11] The trial court ruled that the exhibits were allowed and overruled the defense's objection. Tr. 8:1-3.

[¶ 12] Corporal Meadows testified that after the victim was loaded into an ambulance, he went to the pickup to search it and began looking to figure out what the victim had overdosed on or how she got into that condition. Pursuant to that search, he located methamphetamines and associated drug paraphernalia. Corporal Meadows testified he was searching the pickup to determine why the victim was in the condition she was in. He also testified that the pickup was going to be impounded, so he began doing an inventory of the pickup. Tr. 8:21-25, 9:1. Corporal Meadows testified he found a methamphetamine smoking device in the driver's door map holder, a small amount of methamphetamines, and a scale under the driver's seat with residue on it. He also located three (3) ounces of methamphetamine and unknown pills in the tool box area of the truck. Tr. 9:9-16.

[¶ 13] On cross-examination, Corporal Meadows testified he did not have any direct contact with Lindquist at the scene. After he brought two (2) doses of Narcan to

the EMS first responders because the victim was allegedly overdosing, and after the victim was loaded to get her to the EMS, Corporal Meadows went to the pickup and began a “search inventory.” He wrote in his inventory that he was doing an “impound inventory.” He testified he “was going to impound.” Tr. 10:12-24. Corporal Meadows knew he did not have any sort of a search warrant at that point. Tr. 11:1-3. After locating a methamphetamine pipe in the pickup, he located a scale and methamphetamines in the tool box. He also found a little piece of paper containing methamphetamines in the cab of the pickup. Tr. 11:11-21.

[¶ 14] McLean County Deputy Brad Nielsen, a patrolman and a K-9 handler, testified that when he arrived on the scene, he went immediately to a woman who was laying on the ground and was unresponsive. The woman’s arms and legs were stiff, and she was foaming at the mouth. Her eyes were rolled back in her head. Tr. 13:20-25. Deputy Nielsen testified that the photographs of the victim were taken from the victim’s mother’s phone, who had preceded him to the scene. Tr. 14:1-9. At an interview with the mother, who was on the scene, the mother told him she had received multiple telephone calls from the victim. The victim had told her mother that a truck was stuck, and tried to give her mother directions to where she was located. Tr. 14:13-25. The mother drove from Minot and arrived on the scene, where she called 911 because of the state she found her daughter in, laying about a hundred yards behind the pickup, with Lindquist standing over her. Lindquist told her that he thought the victim was having a seizure and then left the area. Tr. 15-16. Deputy Nielsen testified the victim was transported directly to the Garrison Memorial Hospital, where she was placed in critical condition. Because of the weather, the victim could not be air flighted, so she was

transported by ground to the Minot Hospital. Tr. 17:2-8. Deputy Nielsen testified the ambulance crew needed to find out what drugs the victim was on. He asked Lindquist, but Lindquist did not respond. Tr. 17:15-20.

[¶ 15] Deputy Nielsen testified another officer told him that a meth pipe and a scale had been observed by the open driver's side door. Since he was a certified K-9 handler and had a certified and trained dog with him, Deputy Nielsen testified he ran his dog around the pickup, and the dog immediately ran up to the back of the vehicle and indicated a positive alert. Tr. 18. After the alert, approximately 3.1 ounces of methamphetamine and fourteen (14) pills were found in the back of the truck. After a search warrant was obtained, Deputy Nielsen testified there was also evidence in the truck that indicated the victim had been in the vehicle because there was blood and hair which he assumed was from her. There were also enema bottles. Tr. 19.

[¶ 16] On cross-examination, Deputy Nielsen testified Lindquist was with McLean County Deputy Altenhofen. Deputy Nielsen testified that in situations involving an unknown medical emergency, law enforcement officers try to identify the cause of the medical emergency. He testified that if the victim had been suffering a suspected heart attack, he would not have searched the pickup. Tr. 21:13-17. Prior to having his certified dog do a K-9 sniff of the vehicle, a pipe and scale had already been located, and it was only after the dog sniff that approximately 3.1 ounces of methamphetamines and various pills were found. Tr. 18-25, 19:1. Deputy Nielsen was not present for the later search after a search warrant was issued. He testified that he was investigating a potential sex crime. Tr. 22:20-25.

[¶ 17] On redirect examination, Deputy Nielsen testified that he was instructed to do a homicide investigation by the prosecutor. He testified the victim survived. Tr. 23:9-20. Deputy Nielsen testified the search of the pickup commenced almost immediately after the victim left in an ambulance. Tr. 25:3-11. He testified that the information he obtained from the victim's mother, the pickup was in a precarious predicament, with the back tire off the ground in an unstable position, as if it had been in an accident. He testified the victim was laying on the ground when he arrived on the scene. The victim's mother had advised him that after she arrived on the scene, before anyone else, Lindquist ran away, she could not see him, and did not know where he went. Tr. 26:1-9.

[¶ 18] The State rested.

[¶ 19] The defense called Lindquist as its only witness. Lindquist testified that when law enforcement officers arrived, he was in his pickup. Lindquist explained the victim's mother had told him the victim had asthma, the victim was asking for her inhaler, and he was looking for it in the pickup. Lindquist testified when officers arrived, he shut off his pickup, gave them the keys, and was immediately detained by being placed in the back of a squad car. Tr. 28.

[¶ 20] On cross-examination, Lindquist testified he did not dispute that an emergency existed when the officers arrived on the scene. He also did not dispute that approximately thirty (30) minutes prior, the victim was coherent, talking to her mother on the phone, and suddenly "just goes out." He testified the victim fell out of the pickup, and he thought she had seriously injured herself. He saw the victim was shaking, so he gave her his shoes and helped move her away from the precariously balanced pickup in the event it was to roll over. Tr. 29. Lindquist testified that when the mother arrived at

the scene, he told her he believed the victim was having a seizure and was asking for her medicine. He agreed there was “some sort of emergency.” Tr. 30: 4-7.

[¶ 21] The defense rested.

[¶ 22] On oral argument, the State argued that State v. Karna, 2016 ND 232, 887 N.W.2d 549, was the leading case. The State argued the emergency doctrine has four (sic) elements, albeit only citing two elements:

1. There was an emergency.
2. The search of the area was connected to the emergency and was not motivated primarily by a search for evidence.

The State also briefly argued the doctrine of inevitable discovery. Tr. 30-32:1-8.

[¶ 23] On oral argument, the defense first argued that pursuant to Lindquist’s testimony, he was immediately detained prior to any evidence or testimony that there was any criminality afoot. The second argument was that when law enforcement arrived, there was a person outside the pickup who was having a medical issue, which did not necessarily create an emergency which would warrant immediately detaining Lindquist and then conducting a warrantless search of the pickup. Tr. 33-34.

[¶ 24] In the trial court’s Order Denying Motion to Suppress, the trial court summarized the testimony of the witnesses and outlined the law concerning warrantless searches. The trial court then listed the following factors at the time that Lindquist was detained:

1. Lindquist was with Brianna immediately before the police were called;
2. Brianna had called her mother to come get her because the truck she was traveling in was stuck;
3. When the officers arrived on scene, the mother was present and it was readily apparent that Brianna was experiencing a serious medical emergency. Officers noted that Brianna was lying unconscious outside the truck and on the ground some distance from the truck. Brianna’s eyes were rolled back in her head, and she was frothing at the mouth;

4. Lindquist's truck was stuck in a culvert with at least one wheel visibly stuck off the ground. (sic)
5. Lindquist was in the backseat of the truck when the officers arrived allegedly looking for an inhaler.

Order Denying Motion to Suppress, ¶17, Register of Actions, Index #32.

[¶ 25] The trial court then concluded that the brief detention of Lindquist was reasonable and lawful, based upon the situation described above. Id. ¶18.

[¶ 26] The trial court, citing State v. Huber, 2011 ND 23, ¶13, 793 N.W.2d 781, 785, outlined three requirements for applying the emergency exception to the warrant requirement:

1. The police must have reasonable grounds to believe that there was an emergency at hand and an immediate need for their assistance for the protection of life or property.
2. The search must not be primarily motivated by intent to arrest and seize evidence.
3. There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

Id. ¶22. After reviewing the applicable facts presented in testimony, the trial court then concluded that all three elements for the emergency exception to the warrant requirement had been satisfied. Id. ¶¶23-27.

[¶ 27] Again citing Huber, the trial court also noted that the officers obtained a search warrant for Lindquist's vehicle once the immediate emergency had expired and after the initial warrantless searches related to the emergency were conducted. The trial court stated that this showed that the officers' actions reinforced their respect for the Fourth Amendment to the United States Constitution. Order Denying Motion to Suppress, ¶28, Register of Actions, Index #32.

[¶ 28] Following this Order, Lindquist filed a Notice of Conditional Plea and a Request for Cancellation of Trial, and subsequently pled guilty to the charges upon Alford pleas. Register of Actions, Index #32, 40, and 50.

[¶ 29] Lindquist preserved his conditional guilty plea pursuant to Rule 11(a)(2), NDRCrimP, and filed a timely appeal therefrom.

[¶ 30] JURISDICTION

[¶ 31] The district court had jurisdiction under N.D. Const. art. VI, § 8, and N.D.C.C. § 27-05-06. Lindquist's appeal from the criminal judgment was timely under N.D.R.App.P. 4(b). This Court has jurisdiction under N.D. Const. art. VI, §§ 2 and 6, and N.D.C.C. § 29-28-06.

[¶ 32] STANDARD OF REVIEW

[¶ 33] The standard of review in appeals of warrantless searches by an appellate court is a *de novo* review of the probable cause determinations. Karna ¶¶ 6-7; State v. Huber, 2011 ND 23, ¶ 12, 793 N.W.2d 781 (quoting State v. DeCoteau, 1999 ND 77, ¶ 15, 592 N.W.2d 579).

We give deference to the district court's findings of fact when reviewing a motion to suppress evidence...The district court is in a superior position to assess the credibility of witnesses and weigh the evidence, and conflicts are resolved in favor of affirmance...A district court's findings of fact on a motion to suppress will not be reversed if there is sufficient competent evidence fairly capable of supporting the court's findings, and the decision is not contrary to the manifest weight of the evidence...Matters of law are fully reviewable by this Court on appeal. [Citations omitted.]

Id. ¶ 6.

[¶ 34] ARGUMENT

[¶ 35] Lindquist's motion to suppress was brought pursuant to the Fourth and Fourteenth Amendments to the United States Constitution which prohibit unreasonable searches and seizures, and the North Dakota Constitution, Art. I, Section 8.

In Payton v. New York, 445 U.S. 573 (1980), the United States Supreme Court recognized a physical entry into a home is the chief evil against which the Fourth Amendment is directed, and held the Fourth Amendment prohibits police from making a nonconsensual entry into a suspect's home to make a warrantless felony arrest. Under Payton, nonconsensual, warrantless searches and seizures in a home are presumptively unreasonable, absent a government showing of probable cause and exigent circumstances. See Minnesota v. Olson, 495 U.S. 91 (1990); New York v. Harris, 495 U.S. 14 (1990); Welsh v. Wisconsin, 466 U.S. 740 (1984); Steagald v. United States, 451 U.S. 204 (1981); see also Minnesota v. Carter, 119 S. Ct. 469 (1998) (the Fourth Amendment provides great protection to persons inside their home).

DeCoteau, ¶ 8.

[¶ 36] There are several exceptions to warrantless searches. Only the exceptions of exigent circumstances or emergency, and of inevitable discovery were argued to the trial court. This court has described the three requirements for the emergency exception:

- (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
- (2) The search must not be primarily motivated by intent to arrest and seize evidence.
- (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

Karna, ¶ 8, citing State v. Nelson, 2005 ND 11, ¶ 12, 691 N.W.2d 218.

[¶ 37] Exigent circumstances include:

[A]n emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence.

State v. Nagel, 308 N.W.2d 539, 543 (N.D. 1981).

[¶ 38] The United States Supreme Court has held that officers' warrantless entry into a home, as opposed to a motor vehicle, which has a lesser standard due to its ability to be easily removed from the scene, was justified under the emergency aid exception to the warrant requirement. The Supreme Court held that the officers' state of mind was irrelevant "as long as the circumstances, viewed *objectively*, justify [the] action." Scott v. United States, 436 U. S. 128, 138 (1978). (Emphasis in text.)

[¶ 39] Here, it appears that the defense's main contention upon its motion to suppress was that because Lindquist was immediately detained at the scene, before law enforcement officers had concluded that a crime had been committed, and that this detention was violative of Lindquist's Fourth Amendment rights with respect to the subsequent warrantless search of his motor vehicle because the search commenced with Lindquist's detention before there was a reasonable basis, approximating probable cause, to associate the emergency with the pickup which was subsequently searched.

[¶ 40] Lindquist, in his testimony, admitted that an emergency existed when law enforcement arrived. Tr. 30: 4-7. This admission indicates that even Lindquist acknowledged that an emergency existed, which is one requirement to invoke the emergency exception. However, Lindquist argues that simply because there was an emergency involving a victim who was found at some distance from his motor vehicle, this would not justify his immediate detention at the scene or the subsequent warrantless search of his pickup. Lindquist's argument appears to be that this would indicate that his detention and the subsequent search of the pickup was motivated by an intent to arrest him and to search for and seize evidence by law enforcement. Lindquist's argument also appears to posit that there was no reasonable basis, approximating probable cause, at the

time when he was immediately detained, that associated the area of the pickup to the emergency, thereby rendering the warrantless search of the pickup unconstitutional.

[¶ 41] CONCLUSION

[¶ 42] The warrantless search of Lindquist's pickup was not lawful and was not permissible as an emergency or exigent circumstances exception to the Fourth Amendment.

[¶ 43] The Appellant respectfully prays that the Court reverse the Order of the trial court, with directions to exclude the seized evidence, and remand this case for further proceedings.

Dated this 8th day of May, 2020.

Respectfully submitted,

/s/ Russell J. Myhre

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CERTIFICATE OF COMPLIANCE

¶1] COMES NOW Russell J. Myhre of Enderlin, North Dakota, and hereby certifies that the attached Brief of Appellant is in compliance with Rule 32(a)(8)(A), North Dakota Rules of Appellate Procedure.

¶2] The number of pages in the principal Brief, excluding any addenda, is sixteen (17) pages, according to the page count of the filed electronic document. This page count includes this Certificate of Compliance and excludes the Certificate of Service.

Dated this 8th day of May, 2020.

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Ryan Michael Lindquist,)	McLean County District No.
)	28-2019-CR-00311
)	
Defendant/Appellant.)	

CERTIFICATE OF SERVICE

[¶1] I, Russell J. Myhre, do hereby certify that on May 8, 2020, I served the following documents:

1. Brief
2. Appendix
3. Motion for Extension of Time
4. Certificate of Service

On:

Supreme Clerk of Court
ND Supreme Court
State Capitol
Judicial Wing, 1st Floor
600 East Blvd Ave., Dept. 180
Bismarck, ND 58505-0530
Eservice: supclerkofcourt@ndcourts.gov

[¶2] These documents were separately served to the following:

Ladd R. Erickson
McLean County State's Attorney
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Washburn, ND 58577-1108
Eservice: 28SA@nd.gov
Email: lrickson@nd.gov

Such service was accomplished by Electronic Filing, pursuant to N.D. Sup. Ct. Admin. Order 16.

[¶] I, Russell J. Myhre, hereby certify that pursuant to Rules 5(b) and 5(f), NDR CivP, that on the 8th day of May, 2020, I deposited, with postage prepaid by first class mail, in the United States post office at Enderlin, North Dakota, a true and correct copy of the listed document(s) securely enclosed in an envelope and addressed as follows:

Ryan Lindquist
McLean County Jail
712 5th Ave County Courthouse
Washburn, ND 58620

To the best of my knowledge, information, and belief, such address was the last known post office address of the party intended to be so served. These above-referenced documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure, Rule 5.

Dated this 8th day of May, 2020.

/s/Russell J. Myhre

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