

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

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State of North Dakota,	)	
	)	
Plaintiff and Appellee,	)	
	)	Supreme Court No. 20200071
vs.	)	Case No. 18-2019-CR-01796
	)	
	)	<b>ORAL ARGUMENT</b>
Timothy Paul Hajicek,	)	<b>REQUESTED</b>
	)	
Defendant and Appellant.	)	

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ON APPEAL FROM A CRIMINAL JUDGMENT ENTERED MARCH 5, 2020  
AFTER MR. HAJICEK CONDITIONALLY PLED GUILTY AFTER DENIAL  
OF HIS MOTION TO SUPPRESS AND DISMISS DATED OCTOBER 31, 2019  
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE LOLITA HARTL ROMANICK, PRESIDING.

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**BRIEF OF APPELLANT  
TIMOTHY PAUL HAJICEK**

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**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** .....p. 3

**STATEMENT OF THE ISSUES**..... ¶ 1

**STATEMENT OF THE CASE**..... ¶ 2

**STATEMENT OF THE FACTS** ..... ¶ 5

**REQUEST FOR ORAL ARGUMENT**..... ¶ 9

**STANDARD OF REVIEW** ..... ¶ 10

**LAW AND ARGUMENT**..... ¶ 11

**I. The District Court erred in denying Mr. Hajicek’s Motion to Suppress because the University of North Dakota Police Officer acted outside of his jurisdiction, had not been requested to assist by an officer with jurisdiction, and was therefore without official capacity and without the official power to seize Mr. Hajicek** ..... ¶ 11

**II. Corporal Waltz did not have the authority as a private citizen to arrest Mr. Hajicek for driving under the influence pursuant to N.D.C.C. § 29-06-20 and Corporal Waltz failed to meet additional statutory requirements for a valid citizen’s arrest** ..... ¶ 22

**a. Corporal Waltz was not a private person under N.D.C.C. § 29-06-20(1)** ..... ¶ 25

**b. Corporal Waltz seized Mr. Hajicek to investigate a crime, not to effect an arrest as a private person** ..... ¶ 34

**c. Corporal Waltz did not witness a “public offense” under the citizen’s arrest statute when he witnessed mere traffic violations** ..... ¶ 42

**CONCLUSION** ..... ¶ 45

## TABLE OF AUTHORITIES

### CASES:

<u>Abernathy v. Dep't. of Transp.</u> , 2009 ND 122, ¶ 8, 768 N.W.2d 485 .....	¶ 26, 27
<u>City of Grand Forks v. Reilly</u> , 2017 ND 135, ¶ 7, 895 N.W.2d 322 .....	¶ 27
<u>City of Jamestown v. Jerome</u> , 2002 ND 34, ¶ 5, 639 N.W.2d 478 .....	¶ 26, 27
<u>In the Matter of J.O.</u> , 422 P.3d 1158 (Kan. 2018).....	¶ 13, 14
<u>Johnson v. N.D. Dep't of Transp.</u> , 2004 ND 148, ¶ 10, 683 N.W.2d 886 .....	¶ 11
<u>Kroschel v. Levi</u> , 2015 ND 185, ¶ 7, 866 N.W.2d 109 .....	¶ 11, 18
<u>Mead v. N. Dakota Dept. of Transp.</u> , 581 N.W.2d 145 (N.D. App. 1998).....	¶ 17, 19
<u>Richter v. North Dakota Dep't. of Transp.</u> , 2010 ND 150, ¶ 10, 786 N.W.2d 716 .....	¶ 26, 34
<u>Riemers v. Eslinger</u> , 2010 ND 76, ¶ 17, 781 N.W.2d 632 .....	¶ 43
<u>State v. Bergeron</u> , 326 N.W.2d 684 (N.D. 1982) .....	¶ 25, 35, 39,40, 42
<u>State v. Demars</u> , 2007 ND 145, ¶ 7, 738 N.W.2d 486 .....	¶ 31
<u>State v. Filipi</u> , 297 N.W.2d 275, 278 (Minn.1980).....	¶ 35
<u>State v. Gefroh</u> , 2011 ND 153, ¶ 7, 801 N.W.2d 429 .....	¶ 10

<u>State v. Graven,</u> 530 N.W.2d 328, 330 (N.D.1995) .....	¶ 12, 19, 20
<u>State v. Hirschhorn,</u> 2016 ND 117, ¶ 5, 881 N.W.2d 244 .....	¶ 10
<u>State v. Kaul,</u> 2017 ND 56, ¶ 5, 891 N.W.2d 352 .....	¶ 10
<u>State v. Langseth,</u> 492 N.W.2d 298, 300 (N.D. 1992) .....	¶ 27
<u>State v. Littlewind,</u> 417 N.W.2d 361, 363 (N.D. 1987) .....	¶ 11, 25, 29, 31, 32, 33, 35, 42
<u>State v. Robinson,</u> 363 P.3d 875, 964 (Kan. 2015) .....	¶ 14
<u>State v. Rowe,</u> 856 P.2d 1340, 1342 (Kan. App. 1993) .....	¶ 13
<u>State v. Tognotti,</u> 2003 ND 99, ¶5, 663 N.W.2d 642 .....	¶ 10
<u>State v. Vrabel,</u> 347 P.3d 201, 206 (Kan. 2015) .....	¶ 13, 14
<b><u>STATUTES:</u></b>	
Kan. Stat. Ann. § 22-2401a(2)(b). .....	¶ 13, 14
N.D.C.C. § 1-02-02.....	¶ 11, 18
N.D.C.C. § 1-02-07.....	¶ 11
N.D.C.C. § 15-10-17(2)(d). .....	¶ 31
N.D.C.C. § 29-06-01.....	¶ 34
N.D.C.C. § 29-06-05.....	¶ 32
N.D.C.C. § 29-06-07.....	¶ 32
N.D.C.C. § 29-06-15.....	¶ 31

N.D.C.C. § 29-06-15(1)(a).....	¶ 35
N.D.C.C. § 29-06-15(1)(f).....	¶ 35, 39, 44
N.D.C.C. § 29-06-20.....	¶ 34, 35, 44
N.D.C.C. § 29-06-20(1) .....	¶ 1, 4, 22, 23, 25, 35, 40, 42, 43, 44
N.D.C.C. § 29-06-20(2).....	¶ 42
N.D.C.C. § 29-06-20(3).....	¶ 42
N.D.C.C. § 29-06-21.....	¶ 4, 36, 38
N.D.C.C. § 29-06-23.....	¶ 4, 36, 37
N.D.C.C. § 40-20-05.....	¶ 31
N.D.C.C. § 44-08-20.....	¶ 12
N.D.C.C. § 44-08-20(3) .....	¶ 4, 11, 17, 18, 22

**OTHER:**

3 W. LaFave, Search and Seizure at 415-417 (1996).....	¶ 27
5 W. LaFave, Search and Seizure § 9.4(a) at 595-599 (2012).....	¶ 28
<u>Merriam-Webster Online Dictionary</u> , (June 18, 2020) < <a href="https://www.merriam-webster.com/dictionary/respond">https://www.merriam-webster.com/dictionary/respond</a> >.....	¶ 18
<u>Merriam-Webster Online Dictionary</u> , (June 18, 2020) < <a href="https://www.merriam-webster.com/dictionary/response">https://www.merriam-webster.com/dictionary/response</a> > .....	¶ 18
<u>Merriam-Webster Online Dictionary</u> , (June 18, 2020) < <a href="https://www.merriam-webster.com/dictionary/request">https://www.merriam-webster.com/dictionary/request</a> > .....	¶ 18
N.D.R.App.P. 28(h) .....	¶ 9

**[¶ 1] STATEMENT OF THE ISSUES**

- I. The District Court erred in denying Mr. Hajicek’s Motion to Suppress because the University of North Dakota Police Officer acted outside of his jurisdiction, had not been requested to assist by an officer with jurisdiction, and was therefore without official capacity and without the official power to seize Mr. Hajicek.**
  
- II. Corporal Waltz did not have the authority as a private citizen to arrest Mr. Hajicek for driving under the influence pursuant to N.D.C.C. § 29-06-20 and Corporal Waltz failed to meet additional statutory requirements for a valid citizen’s arrest.**
  - a. Corporal Waltz was not a private person under N.D.C.C. § 29-06-20(1).**
  
  - b. Corporal Waltz seized Mr. Hajicek to investigate a crime, not to effect an arrest as a private person.**
  
  - c. Corporal Waltz did not witness a “public offense” under the citizen’s arrest statute when he witnessed mere traffic violations.**

**STATEMENT OF THE CASE**

[¶ 2] Timothy Paul Hajicek (“Mr. Hajicek”) appeals from a criminal judgment entered after he entered a conditional plea of guilty following an order denying his Motion to Suppress and Dismiss in the District Court of Grand Forks County. (Appellant’s App. at 26-27). On August 6, 2019, Mr. Hajicek was arrested and charged with Driving Under the Influence with a BAC over .16—1st offense. (Appellant’s App. at 6). Mr. Hajicek filed a Motion to Suppress and Dismiss with an accompanying brief on October 31, 2019. (Appellant’s App. at 4 at Doc. ID# 16-17). The State opposed the motion and filed its brief on November 14, 2019. (Appellant’s App. at 4 at Doc. ID# 18). A hearing on Mr. Hajicek’s motion was held on November 21, 2019. (Appellant’s App. at 4).

[¶ 3] The District Court issued its order denying the Motion to Suppress and Dismiss on January 8, 2020, finding University of North Dakota Law Enforcement (1) acted upon requests of Grand Forks City Law Enforcement, (2) had a reasonable and articulable suspicion that Mr. Hajicek had committed traffic violations sufficient to warrant a traffic stop for further investigation, and (3) would have had authority as a private citizen to arrest Mr. Hajicek for a misdemeanor violation of the law. (Appellant’s App. at 7). Mr. Hajicek entered a conditional plea of guilty, reserving his right to appeal the denial of his motion, which was accepted by the Court on March 2, 2020 with judgment being entered on March 5, 2020. (Appellant’s App. at 26). Mr. Hajicek timely filed his notice of appeal on March 6, 2020. (Appellant’s App. at 28).

[¶ 4] Mr. Hajicek argues the District Court erred when it held that, despite being outside of his jurisdiction, Corporal Jayson Waltz (“Corporal Waltz”) of the University of North Dakota Police Department, responded to a request for assistance from Grand Forks Police Officer Adam Solar (“Officer Solar”), and therefore was permitted to seize Mr. Hajicek pursuant to N.D.C.C. § 44-08-20(3). Additionally, Mr. Hajicek argues the District Court erred in its analysis of the case that the citizen’s arrest provisions under N.D.C.C. § 29-06-20(1) provided Corporal Waltz the authority to seize Mr. Hajicek. The District Court’s erred when it did not address all the elements of a citizen’s arrest and did not address the additional requirements for a citizen’s arrest under N.D.C.C. §§ 29-06-21 and 29-06-23, with which Corporal Waltz did not comply. The District Court, therefore, erred in denying Mr. Hajicek’s Motion to Suppress and Dismiss, and resultantly, must be reversed.

## STATEMENT OF THE FACTS

[¶ 5] On August 16, 2019, Officer Solar, with the Grand Forks Police Department, was off duty and observed a dark colored pickup weaving within its lane. Hearing Transcript (hereinafter “Hr’g. Tr.”) at 30. Officer Solar believed this to be an indicator of an impaired driver and reported the vehicle to dispatch. Id. Dispatch put out a broadcast on the Grand Forks Police Department’s radio reporting the driver. Id. at 5. Corporal Waltz, a University of North Dakota Police Officer (“UND”), was listening to the Grand Forks Police Department’s radio when he heard the call about the driver Officer Solar reported. Id. at 4-5, 14. Corporal Waltz was not directly contacted for assistance. Id. at 14. Officer Solar continued to follow the black pickup as well. Id. at 32. Corporal Waltz located the driver while still within his jurisdiction as a UND officer. Id. at 6, 13-14. Corporal Waltz did not observe the black pickup exhibit poor driving or commit any traffic violations within his jurisdiction. Id. at 7, 14.

[¶ 6] Corporal Waltz continued to follow the black pickup out of his jurisdiction. Id. at 7. Corporal Waltz continued to follow in case there was a request for his assistance. Id. at 17. Corporal Waltz did not activate his lights or siren and never attempted to stop the black pickup while in his jurisdiction. Id. at 8, 32. After leaving his jurisdiction, Corporal Waltz observed the black pickup commit two traffic violations; failure to stop at a stop sign and improper use of a turn signal. Id. at 7-8, 25. Corporal Waltz reported his observations over the police radio and made several attempts to obtain permission to stop the vehicle. Id. at 8, 17. Corporal Waltz’s requests were not answered over the radio. Id.



[¶ 7] The black pickup came to a stop in a driveway in a residential neighborhood. Id. at 8, 32. Corporal Waltz parked his marked patrol vehicle in the driveway, blocking the vehicle's exit. Id. at 19-20. Corporal Waltz did not activate his lights or siren. Id. at 20. Corporal Waltz, knowing he was outside of his jurisdiction, approached Officer Solar and informed Officer Solar of the jurisdiction issue. Id. at 9, 17. Corporal Waltz then asked Officer Solar if he could assist and seize the driver of the black pickup. Id. at 9, 17, 34, 37. Officer Solar acquiesced to Corporal Waltz's request, stating the driver should be stopped and he would standby. Id. at 9, 17, 33.

[¶ 8] Corporal Waltz engaged the driver while in the driveway and identified the driver as Mr. Hajicek. Id. at 10-11, 23-24. Corporal Waltz conversed with Mr. Hajicek about several topics and Corporal Waltz allegedly observed Mr. Hajicek to have slurred speech as well as an odor of alcoholic beverages emanating from his person. Id. at 10, 23-24. At this point, Corporal Waltz informed Mr. Hajicek he was being detained for a traffic violation. Id. at 24. As other officers arrived, Corporal Waltz turned the investigation over to the Grand Forks County Sheriff's Office. Id. Mr. Hajicek was subsequently arrested and charged for DUI. (Appellant's App. at 6).

### **REQUEST FOR ORAL ARGUMENT**

[¶ 9] Mr. Hajicek requests the Court schedule oral argument in this case under N.D.R.App.P. 28(h). This matter involves a jurisdictional argument and what constitutes a request for assistance granting law enforcement officers with authority to conduct investigatory stops outside their respective jurisdictions. Additionally, this case presents an issue of the power of a citizen to conduct an investigatory stop but not effectuate an

arrest. Oral argument would be helpful for this Court’s review of the District Court’s order.

### **STANDARD OF REVIEW**

[¶ 10] This Court gives deference to the district court’s findings of fact and resolves conflicts in testimony in favor of affirmance. State v. Kaul, 2017 ND 56, ¶ 5, 891 N.W.2d 352 (citing State v. Tognotti, 2003 ND 99, ¶5, 663 N.W.2d 642). This Court “will not reverse a district court decision on a motion to suppress . . . if there is sufficient competent evidence capable of supporting the court’s findings, and if the decision is not contrary to the manifest weight of the evidence.” Id. (quoting State v. Gefroh, 2011 ND 153, ¶ 7, 801 N.W.2d 429). Statutory interpretation is a question of law fully reviewable on appeal. State v. Hirschhorn, 2016 ND 117, ¶ 5, 881 N.W.2d 244.

### **LAW AND ARGUMENT**

**I. The District Court erred in denying Mr. Hajicek’s Motion to Suppress because the University of North Dakota Police Officer acted outside of his jurisdiction, had not been requested to assist by an officer with jurisdiction, and was therefore without official capacity and without the official power to seize Mr. Hajicek.**

[¶ 11] “[A]s a general rule a police officer acting outside his jurisdiction is without official capacity and without official power to arrest.” Kroschel v. Levi, 2015 ND 185, ¶ 7, 866 N.W.2d 109 (quoting Johnson v. N.D. Dep’t of Transp., 2004 ND 148, ¶ 10, 683 N.W.2d 886) (citing State v. Littlewind, 417 N.W.2d 361, 363 (N.D. 1987)). North Dakota officers are permitted to act outside their jurisdiction “**[w]hen responding to requests from other law enforcement agencies or officers for aid and assistance.**” N.D.C.C. § 44-08-20(3). It is undisputed Mr. Hajicek’s initial seizure was outside of Corporal Waltz’ jurisdiction as a University Police Officer. In interpreting a statute, words in the statute

are given their plain, ordinary, and commonly understood meaning unless defined by statute or unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. Statutes are construed as a whole and are harmonized to give meaning to related provisions. N.D.C.C. § 1-02-07.

[¶ 12] An officer acting outside his jurisdiction has the authority of a peace officer when responding to requests from other law enforcement agencies or officers for aid and assistance. See State v. Graven, 530 N.W.2d 328, 330 (N.D.1995); N.D.C.C. § 44-08-20. The plain reading of N.D.C.C. 40-08-20(3) makes it clear that the request for assistance must originate with the host jurisdiction – Officers may act outside their jurisdiction “[w]hen **responding to requests from** other law enforcement agencies or officers for aid and assistance.” N.D.C.C. 40-08-20(3) (emphasis added). The statute, as it is plainly written, does not provide for an officer without jurisdiction to make the request to assist.

[¶ 13] The state of Kansas has a similar statute to North Dakota’s, wherein a Kansas police officer outside of his designated jurisdiction may exercise his duties as a police officer when there has been a request for his assistance by an officer from the host jurisdiction. See Kan. Stat. Ann. § 22-2401a(2)(b). The Kansas courts have held that the “acquiescence or acceptance of assistance is insufficient to establish a request for assistance.” State v. Vrabel, 347 P.3d 201, 206 (Kan. 2015) (citing State v. Rowe, 856 P.2d 1340, 1342 (Kan. App. 1993) (where a host jurisdiction officer’s “actions and statements amounted at best to acquiescence or acceptance of [an outside jurisdiction officers’] assistance but did not constitute a request.”)). Recently, the Kansas Supreme Court, in In the Matter of J.O., reiterated this point when it determined an appellate court

erred in its analysis of the statute as applied to facts very similar to the case at hand. 422 P.3d 1158 (Kan. 2018).

[¶ 14] In the Matter of J.O., officers from the Prairie Village Police Department (PVPD) developed plans to initiate undercover drug buys from defendant J.O. in the city of Shawnee, Kansas, which was outside the PVPD officers' jurisdiction. Id. at 1160. The PVPD officers contacted the Shawnee Police Department (SPD) and made their proposal to them. Id. at 1160-1161. The SPD told PVPD that SPD was unable to participate, but agreed to the PVPD proposal, and the SPD even made a request for assistance. Id. at 1161. J.O. was arrested by the PVPD officers and later charged with drug related crimes. Id. The Kansas Supreme Court subsequently held that the PVPD officers had violated the Kansas statute, despite testimony from officers Mahoney (PVPD) and Hayselden (SPD), who each "testified that Hayselden [SPD] had asked for Mahoney's [PVPD] assistance in completing the controlled buy." Id. at 1165 (citation omitted). The Kansas Supreme Court made it clear that:

**A request for assistance must originate in the host jurisdiction, i.e., the jurisdiction in which the law enforcement powers are to be exercised. Here, that means Shawnee must have initiated the request, not merely acquiesced** in a proposal that originated outside the boundaries of Shawnee.

Id. (citing Kan. Stat. Ann. § 22-2401a(2)(b); State v. Robinson, 363 P.3d 875, 964 (Kan. 2015); Vrabel, 347 P.3d 201) (emphasis added).

[¶ 15] Here, we have the same issue of an officer who is outside of his jurisdiction who is requesting to assist another officer with jurisdiction. Corporal Waltz overheard on the Grand Forks Police Department radio Officer Solar's situation with the black pickup. Corporal Waltz responded by tracking down the black pickup and following it, eventually

leaving his statutorily defined jurisdiction. Corporal Waltz was not requested for assistance over the radio. On the contrary, he tried several times to obtain permission to initiate a traffic stop over the radio--permission he was never given. Corporal Waltz additionally testified, several times, he was not on the University broadcast, but was listening in on the Grand Forks Police broadcast and that the two departments operate their day-to-day operations on separate channels. Hr'g. Tr. at p. 14.

[¶ 16] Once the black pickup came to a stop, Corporal Waltz immediately blocked in the vehicle and then went to speak with Officer Solar. The conversation between Corporal Waltz and Officer Solar began with Corporal Waltz requesting permission to assist. Officer Solar did not request Corporal Waltz's assistance. From Corporal Waltz' testimony at the motion hearing it is clear Corporal Waltz was the requesting party for assistance in an area in which he did not possess jurisdiction.

Q. And you actually requested to assist in this matter; right?

[Corporal Waltz] A. I asked if he wanted me to make contact with the driver, yes.

Tr. at 17; see also Tr. at 9. Officer Solar, at the same motion hearing, provided factually similar testimony:

Q. So what did you mean by "we"?

A. I informed him that I would stand by as a kind of safety assist, but I didn't want to engage with the driver at all because I didn't have all of my equipment on.

Tr. at 33. This continued:

Q. ... Officer Solar, did you direct Officer Waltz to – or Corporal Waltz to approach the vehicle?

[Officer Solar] A. Yeah. If I remember right, he said something like, “Should I stop him?” and I said, “Yeah, stop him.”

Tr. at 34. Again, on redirect from the State, Officer Solar reiterated that Corporal Waltz asked to be of assistance:

Q. And did Corporal Waltz approach you before making contact with the driver?

[Officer Solar] A. Yes.

Q. And he asked for you permission to approach?

A. Yeah, that’s my recollection, asked something about, “Should I stop him?”

Tr. at 37. There was clearly an understanding between the officers that Corporal Waltz requested to be of assistance.

[¶ 17] The District Court relied substantially on Mead in its decision. (see generally Appellant’s App. at 15-16). Mead v. N.D. Dept. of Transp., 581 N.W.2d 145 (N.D. App. 1998). However, while the facts in Mead are, in some respects, similar to Mr. Hajicek’s case, the legal issue raised before the court was quite different. The defendant in Mead was not disputing the “request” element of N.C.C.C. 44-08-20(3), he was arguing that the arresting officer did not have the authority to make an arrest. Mead, 581 N.W.2d at 147 (“Mead does not dispute Kaiser requested Middleton's aid and assistance in stopping Mead's vehicle.”). The Mead court only analyzed the “aid and assistance” element, ultimately concluding that the officer in that case had the authority to make an arrest. Id. at 148. Because the defendant in Mead conceded the “request” element, the Court did not analyze what a “request” truly entails. The District Court erred in relying on Mead as an authority on the issue of a valid “request.” Additionally, a finding in Mr. Hajicek’s favor

in this case on the issue of what qualifies as a valid request would not run counter to the holding in Mead, because the defendant in Mead conceded this issue.

[¶ 18] Words in a statute are given their plain, ordinary, and commonly understood meaning unless defined by statute or unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. N.D.C.C. § 44-08-20(3) grants peace officers employed by a law enforcement agency within the state the power of a peace officer “when **responding to requests** from other law enforcement agencies or officers for aid and assistance.” (Emphasis added). “Under section 44-08-20(3), additionally powers of peace officers permit giving assistance **only by request**, and only for a particular instance . . .” Kroschel v. Levi, 2018 ND 185, ¶ 19, 866 N.W.2d 109 (emphasis added). “Respond” (verb) means “to react in response” Merriam-Webster Online Dictionary, (June 18, 2020), <https://www.merriam-webster.com/dictionary/respond>, and a “response” is “something constituting a reply or a reaction: make an answer” Merriam-Webster Online Dictionary, (June 18, 2020), <https://www.merriam-webster.com/dictionary/response>. “Request” (noun) means “the act or an instance of asking for something.” Merriam-Webster Online Dictionary, (June 18, 2020). <https://www.merriam-webster.com/dictionary/request>. The plain, ordinary meaning of section 44-08-20(3) therefore requires an officer with jurisdiction to ask another officer for assistance, not merely acquiesce to the out-of-jurisdiction officer’s request to assist. The district court erred in concluding Officer Solar’s acquiescence to Corporal Waltz’ request to assist was a valid request for assistance by an officer with jurisdiction.

[¶ 19] The District Court also substantially relied on Graven in its decision,

however, just as with Mead, the holding of Graven is easily distinguishable from Mr. Hajicek's case. (See generally Appellant's App. at 14-15). In Graven, an anonymous tip about a potential intoxicated driver went out over the state radio. State v. Graven, 530 N.W.2d 328, 329 (N.D. 1995). Highway Patrolman Stanley proceeded to the reported location, and at the same time, Casselton Chief of Police Barnes departed from the opposite direction. Id. Chief Barnes was outside of his jurisdiction when he first located the described vehicle and observed several lane violations. Id. Chief Barnes contacted Patrolman Stanley and Chief Barnes described his observations to Patrolman Stanley. Id. Chief Barnes did not request permission to stop the vehicle, Patrolman Stanley made a direct request to Chief Barnes to "pull him over." Id.

[¶ 20] The North Dakota Supreme Court agreed with the trial court that Chief Barnes was responding to Patrolman Stanley's request for assistance. Id. at 330. This factual basis for a "request" is easily distinguishable from the case at hand. Chief Barnes was responding to a "request from" and not making a request to assist. See N.D.C.C. 40-08-20(3). Chief Barnes initiated a conversation about observed traffic violations and then received a request from the host jurisdiction. Here, there is a distinct difference in Corporal Waltz' immediate request to be of assistance. Therefore, the Graven case is not factually similar and it was clearly erroneous for the District Court to rely on Graven given that the District Court made a finding in its statement of facts that Corporal Waltz was the first party to mention his assistance when request to assist. Furthermore, a finding in this case that Corporal Waltz's assistance was not requested pursuant to the statute would not be inconsistent with the Court's holding in Graven.



[¶ 21] It was clearly erroneous for the District Court to hold that a request for Corporal Waltz's assistance was made here. Corporal Waltz requested to assist Officer Solar, and Officers Solar's acquiescence was not a request. Therefore, the Court should reverse the District Court's order denying Mr. Hajicek's Motion to Suppress and Dismiss and permit him to withdraw his guilty plea.

**II. Corporal Waltz did not have the authority as a private citizen to arrest Mr. Hajicek for driving under the influence pursuant to N.D.C.C. § 29-06-20 and because Corporal Waltz failed to meet additional statutory requirements for a valid citizen's arrest.**

[¶ 22] In its response to Mr. Hajicek's Motion to Suppress, the State raised an alternative argument that Corporal Waltz merely made a citizen's arrest. The District Court addressed this issue, *arguendo*, and agreed with the State that if Corporal Waltz was not acting pursuant to N.D.C.C. § 44-08-20(3) his actions were consistent with a citizen's arrest pursuant to N.D.C.C. § 29-06-20(1). However, the District Court erred in its analysis and Corporal Waltz was in fact not engaged in a citizen's arrest. The District Court's analysis is flawed from the outset because it still concluded several times that Officer Solar had requested assistance from Corporal Waltz. If that were truly the case, there would be no need to analyze the citizen's arrest statute.

[¶ 23] The District Court did not address the issue and did not sufficiently complete fact finding for each of the elements of N.D.C.C. § 29-06-20(1). The elements for a non-felony citizen's arrest under the statute can be broken down as follows:

- (1) A private person
- (2) may arrest another
- (3) for a public offense

(4) committed or attempted in the arresting person's presence.

See N.D.C.C. § 29-06-20(1). Because the District Court did not adequately address each element, this Court will have to engage in a deeper analysis of the facts to ensure the elements are met, and properly complied with in conjunction with case law and mandatory actions under additional statutes.

[¶ 24] Corporal Waltz's seizure of Mr. Hajicek cannot be considered as a citizen's arrest under the statute because: (1) Corporal Waltz's actions are not consistent with those of a private person because he acted under color of law when he seized Mr. Hajicek; (2) Corporal Waltz did not arrest Mr. Hajicek; (3) Corporal Waltz did not actually witness Mr. Hajicek commit a "public offense;" and (4) the if the Court determines a private person can arrest for a DUI, the DUI in this case was not actually committed or attempted in Corporal Waltz's presence.

**a. Corporal Waltz was not a private person under N.D.C.C. § 29-06-20(1).**

[¶ 25] For a citizen's arrest under N.D.C.C. § 29-06-20(1) the arresting person must be a private person. The Court has held that officers can qualify as private persons under the statute. See State v. Littlewind, 417 N.W.2d 361 (N.D. 1987); State v. Bergeron, 326 N.W.2d 684 (N.D. 1982). Corporal Waltz was not acting as a private person when he seized Mr. Hajicek under the color of law. First, Corporal Waltz was in a fully marked squad car which he used to block Mr. Hajicek's vehicle; and second, Corporal Waltz was in full police uniform when he initiated contact with Mr. Hajicek. The fact that Corporal Waltz did not activate his overhead lights is irrelevant because on first contact, Corporal Waltz indeed told Mr. Hajicek who he was and that he was employed with the UND Police

Department. See Exhibit #1 (Body Cam Video), offered and admitted into evidence at the motion hearing. Hr’g Tr. at p. 21.

[¶ 26] The Fourth Amendment prohibits unreasonable searches and seizures. Abernathey v. Dep’t. of Transp., 2009 ND 122, ¶ 8, 768 N.W.2d 485. A temporary restraint of an individual’s freedom is a seizure within the meaning of the Fourth Amendment. City of Jamestown v. Jerome, 2002 ND 34, ¶ 5, 639 N.W.2d 478. A person has been seized within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave. Richter v. North Dakota Dep’t. of Transp., 2010 ND 150, ¶ 10, 786 N.W.2d 716.

[¶ 27] However, not all personal intercourse or communications between law enforcement officers and citizens involve seizures implicating Fourth Amendment rights. Jerome, 2002 ND 34 at ¶ 5. “For example, a community caretaking encounter does not constitute a seizure within the meaning of the Fourth Amendment.” Id. In State v. Langseth, 492 N.W.2d 298, 300 (N.D. 1992), the North Dakota Supreme Court held an officer’s approach of a parked vehicle is not a seizure if the officer “inquires of the occupant in a conversational manner, does not order the person to do something, and does not demand a response.” The Court has also held it is not a seizure for an officer to walk up to and talk to a person in a public place. City of Grand Forks v. Reilly, 2017 ND 135, ¶ 7, 895 N.W.2d 322. An officer escalates a casual encounter into a seizure by ordering a person “to do something, by demanding a response, or by threatening [him] with a show of authority of command. Jerome, 2002 ND 34 at ¶ 9. A show of authority, as outlined in Abernathey, such as boxing the car in or using flashing lights as a show of authority will

likely convert the event into a Fourth Amendment seizure. Id. at ¶ 11 (quoting 3 W. LaFave, Search and Seizure at 415-417 (1996)).

[¶ 28] In this case, Corporal Waltz did in fact seize Mr. Hajicek when Corporal Waltz positioned his vehicle to block Mr. Hajicek’s driveway in an attempt to prevent Mr. Hajicek from leaving. Corporal Waltz approached Mr. Hajicek and immediately told him he wanted to talk to him, Corporal Waltz was in his uniform., Mr. Hajicek was informed Corporal Waltz was with UND Police, and Mr. Hajicek was made aware of Officer Solar’s presence as well. This initial interaction between Corporal Waltz and Mr. Hajicek was outside the scope of any recognized casual encounter. “So too, other police action one would not expect if the encounter was between two private citizens—boxing the car in . . .—will likely convert the event into a Fourth Amendment seizure.” 5 W. LaFave, Search and Seizure § 9.4(a) at 595-599 (2012).

[¶ 29] Assuming, *arguendo*, that Corporal Waltz’ seizure of Mr. Hajicek was an arrest, Corporal Waltz acted under color of law when he arrested Mr. Hajicek. The District Court relied on Littlewind when holding that Corporal Waltz did not act under color of law. However, the District Court erred when it applied Littlewind and held that a private person could have arrested Mr. Hajicek. First, the Court in Littlewind did not address the issue of whether a private citizen could have made the stop in that case. State v. Littlewind, 417 N.W.2d 361, 363 f.n. 3 (N.D. 1987) (“No issue having been raised whether a private citizen could have either stopped or arrested Littlewind under the circumstances in this case, we do not address those questions.”). Second, the District Court did not address the fresh pursuit requirement stated in Littlewind. The District Court ignored that Corporal

Waltz was not in fresh pursuit and did in fact use the color of law to seize and arrest Mr. Hajicek.

[¶ 31] “An officer’s authority to arrest also extends beyond the officer’s geographical jurisdiction when in ‘hot pursuit’ under N.D.C.C. § 40-20-05.” Demars, 2007 ND 145 at ¶ 11 (citing Littlewind, 417 N.W.2d at 362). Like § 40-20-05, relating to city police officers, N.D.C.C. § 15-10-17(2)(d) indicates that a law enforcement officer employed by an institution under the control of the state board of higher education may pursue a suspect beyond their jurisdiction to make an arrest without a warrant under the conditions of § 29-06-15, whenever obtaining the aid of peace officers having jurisdiction would cause a delay permitting escape. N.D.C.C. § 15-10-17(2)(d) defines hot pursuit as “the immediate pursuit of a person who is endeavoring to avoid arrest.”

[¶ 32] The Court in Littlewind, as it relates to citizen’s arrests, stands for the rule that when an officer is in fresh pursuit, his actions under the color of law do not negate a citizen’s arrest. Littlewind, 417 N.W.2d at 363. Fresh pursuit under the statute is defined as:

As used in section 29-06-05, the term "fresh pursuit" shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed or who is reasonably suspected of having committed a felony, misdemeanor, or traffic violation. It also shall include the pursuit of a person suspected of having committed a supposed felony, misdemeanor, or traffic violation, though no felony, misdemeanor, or traffic violation has been actually committed, if there is reasonable ground for believing that a felony, misdemeanor, or traffic violation has been committed. Fresh pursuit, as the term is used in this chapter, shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

N.D.C.C. § 29-06-07. The Littlewind ruling does not stand for an officer’s use of the color of law to arrest a suspect of whom he was not in fresh pursuit. Private persons are not

granted the same authority to pursue as police officers.

[¶ 33] In this case, it is impossible Mr. Hajicek was “endeavoring to avoid arrest” while within Corporal Waltz’s jurisdiction because Corporal Waltz was never within his jurisdiction during his observations of Mr. Hajicek’s vehicle as it committed traffic violations, nor did Corporal Waltz give any indication to Mr. Hajicek of his intention to stop the vehicle. Because Corporal Waltz could not have been in “hot pursuit” as defined in the North Dakota Century Code, the exception to him acting outside his geographical jurisdiction to prevent the escape of an individual does not apply. Additionally, Corporal Waltz was not in fresh pursuit, because Corporal Waltz did not witness any crimes for which he could pursue Mr. Hajicek while in Corporal Waltz’s jurisdiction. Therefore, Littlewind does not stand for the rule that the District Court held it out to stand for, and the Court must overturn the District Court’s decision.

**b. Corporal Waltz seized Mr. Hajicek to investigate a crime, not to effect an arrest as a private person.**

[¶ 34] Arrest is defined as “the taking of a person into custody in the manner authorized by law to answer for the commission of an offense.” N.D.C.C. § 29-06-01. This Court has repeatedly differentiated between the various types of citizen-law enforcement encounters. See Richter v. N.D. Dep’t. of Transp., 2010 ND 150, ¶ 9, 786 N.W.2d 716. The same criteria would likely apply to citizen-citizen encounters if a citizen were effectuating a seizure. “. . .[T]here are several permissible types of law enforcement-citizen encounters, including: (1) arrests, which must be supported by probable cause; (2) “Terry” stops, seizures which must be supported by a reasonable and articulable suspicion of criminal activity; and (3) community caretaking encounters, which do not constitute

Fourth Amendment seizures.” *Id.* Corporal Waltz never effectuated an arrest supported by probable cause, therefore his actions fell outside the purview of N.D.C.C. § 29-06-20. The district court erred in concluding otherwise and this Court can disregard the citizen’s arrest determination made by the district court.

[¶ 35] Again assuming, *arguendo*, Corporal Waltz’ seizure was an arrest, there is a distinct difference in what is authorized for an arrest by a private citizen and a police officer. “[A] police officer acting outside of his jurisdiction has the same power of arrest as does a private citizen.” *State v. Littlewind*, 417 N.W.2d 361, 363 (N.D. 1987) (citing *State v. Filipi*, 297 N.W.2d 275 (Minn.1980)). A private person is permitted to effect an arrest “[f]or a public offense committed or attempted in the arresting person’s presence.” N.D.C.C. § 29-06-20(1). The statute for police officer arrests, in relevant part, allows for greater leeway in what is in an officer’s presence:

1. A law enforcement officer, without a warrant, may arrest a person:

a. For a public offense, committed or attempted in the officer’s presence **and for the purpose of this subdivision, a crime must be deemed committed or attempted in the officer’s presence when what the officer observes through the officer’s senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer’s presence by the person arrested.**

...

N.D.C.C. § 29-06-15(1)(a) (emphasis added).

The legislature, in 1967, amended Section 29–06–15 to permit a peace officer to make a warrantless arrest for a “public offense committed or attempted in his presence” on the basis of reasonable cause. Inasmuch as the legislature did not amend the identical statutory language in the citizen’s arrest statute, **we must conclude that it intended to distinguish between a peace officer and citizen’s authority to execute a warrantless arrest for a public offense.**

State v. Bergeron, 326 N.W.2d 684, 686, f.n. 3 (N.D. 1982) (emphasis added) (additional citation omitted). Additionally, a police officer may arrest “[o]n a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.” N.D.C.C. § 29-06-15(1)(f). Private citizen’s do not have the benefit under the statute to make an arrest for a public offense under a reasonable cause standard and must be treated differently. See N.D.C.C. § 29-06-20.

[¶ 36] Private persons have additional requirements imposed on them after they have made the arrest. “A private person who has arrested another for the commission of a public offense, **without unnecessary delay**, shall take the person before a magistrate or deliver the person to a peace officer.” N.D.C.C. § 29-06-23 (emphasis added). This rule does not permit private persons to investigate additional crimes or do additional fact finding after making an arrest. A private person executing a citizen’s arrest has an affirmative duty to notify the arrestee of the arrest:

A private person making an arrest must inform the person to be arrested of the intention to arrest the person, and of the cause of the arrest, unless:

1. The person to be arrested then is engaged in the commission of an offense;
2. Such person is pursued immediately after its commission or after an escape;
3. Such person flees or forcibly resists before the person making the arrest has opportunity to inform the person; or
4. The giving of such information will imperil the arrest.

N.D.C.C. § 29-06-21.

[¶ 37] Here, if Corporal Waltz had made an arrest as a private person, he had an affirmative duty to “take the person before a magistrate or deliver the person to a peace



officer.” See N.D.C.C. § 29-06-23. . Instead, Corporal Waltz merely began an investigation into a potential DUI and then turned the investigation over to the Grand Forks Sheriff’s Department.

[¶ 38] Corporal Waltz, as a private citizen, failed in his affirmative duty under N.D.C.C. § 29-06-21 to both inform Mr. Hajicek of his intention to arrest him and to inform him of the cause of the arrest. From Corporal Waltz’s body camera recording it can be seen and heard that Corporal Waltz approaches Mr. Hajicek, introduces himself as law enforcement, and begins by telling Mr. Hajicek that he is “talking” to Mr. Hajicek about 9-1-1 calls related to Mr. Hajicek’s driving. This statement that Corporal Waltz was merely “talking” to Mr. Hajicek cannot be understood as Corporal Waltz informing Mr. Hajicek of his intention to arrest, nor can this statement be understood as informing Mr. Hajicek as to the cause for the arrest. Corporal Waltz then engages in a conversation with Mr. Hajicek about whose house they were parked at, Corporal Waltz asked for Mr. Hajicek’s driver’s license, they discussed Mr. Hajicek’s family living in East Grand Forks, Corporal Waltz asks where Mr. Hajicek was driving from, and they discussed Mr. Hajicek’s golf game. Corporal Waltz then informs Mr. Hajicek that their interaction was “turning into a traffic stop.” This statement is the closest statement to meeting the statutory requirement to “inform the person to be arrested of the intention to arrest the person.” This statement still fails however, because there are no words indicating there is an arrest, only an indication there is a transformation into a traffic stop. As discussed above, Mr. Hajicek was already seized by Corporal Waltz at the outset of their interaction, therefore this statement comes far too late in the conversation to inform Mr. Hajicek of the arrest.

[¶ 39] Corporal Waltz then further investigated by asking Mr. Hajicek about his drinking during the day at the golf course. This further investigation into other potential criminal activity is not permitted for private persons, particularly DUI investigations. Only police officers, not private persons, may arrest “[o]n a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.” N.D.C.C. § 29-06-15(1)(f). Corporal Waltz, as a private person, could not have arrested Mr. Hajicek for DUI on a reasonable cause standard, and he must have had actual knowledge of Mr. Hajicek’s level of intoxication to do so, or know for certain Mr. Hajicek was under the influence of intoxicating liquor. This is not a situation where a person could affirmatively know that a person was driving with a suspended license, such as in Bergeron. The Bergeron court did not address how the arresting officer could have observed the detections of the commission of driving under the influence. Id. at 686 (“Because the charge of driving a motor vehicle while under the influence of intoxicating liquor was dismissed, we will not discuss that matter in this appeal.”).

[¶ 40] Recall that a private person is permitted to effect an arrest “[f]or a public offense committed or attempted in the arresting person's presence.” N.D.C.C. § 29-06-20(1). “[P]resence should be determined by whether or not the citizen detected commission of the offense through use of his senses.” State v. Bergeron, 326 N.W.2d 684, 686 (N.D. 1982). “Senses include those of sight, hearing and smell.” Id. (citations omitted). The use of the senses must still rise to the proper level of suspicion, which for private citizens is actual knowledge, or at least something greater than reasonable cause.

[¶ 41] Corporal Waltz, as a private citizen, could have only made an arrest for what

he perceived as traffic violations before he had affirmative knowledge Mr. Hajicek was driving under the influence, therefore, this Court must reject any assertion that Corporal Waltz could have arrested Mr. Hajicek for DUI as a private citizen.

**c. Corporal Waltz did not witness a “public offense” under the citizen’s arrest statute when he witnessed mere traffic violations.**

[¶ 42] The Supreme Court has not extended the definition of a “public offense” under N.D.C.C. § 29-06-20(1) to include traffic violations. “A misdemeanor is a public offense.” State v. Littlewind, 417 N.W.2d 361, 363 (N.D. 1987) (citing State v. Bergeron, 326 N.W.2d 684 (N.D.1982)). Felonies have their own requirements under the citizen’s arrest statute, which indicates that “public offense” for the purposes of a citizen’s arrest does not include all offenses that may be criminally charged, but only serious offenses have been contemplated. See N.D.C.C. § 29-06-20(2)-(3).

[¶ 43] The Court should not extend petty offenses, such as traffic violations, to fit under the umbrella of a “public offense” under N.D.C.C. § 29-06-20(1). See, e.g., Riemers v. Eslinger, 2010 ND 76, ¶ 17, 781 N.W.2d 632 (“Where the authorized prison term is less than six months, courts presume the offense is petty unless the legislature authorized additional penalties severe enough to indicate it considered the offense serious.”).

[¶ 44] Here, Corporal Waltz did not witness anything beyond mere traffic violations. He personally witnessed two traffic violations: Mr. Hajicek allegedly failed to come to a complete stop at a stop sign and Mr. Hajicek allegedly failed to use a turn signal. Corporal Waltz did not observe any misdemeanor crimes or felony crimes. As discussed above, only police officers, not private persons, may arrest “[o]n a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the

influence of alcoholic beverages.” N.D.C.C. § 29-06-15(1)(f). This exception for DUI arrests is not existent in the citizen’s arrest statute. See N.D.C.C. § 29-06-20. Therefore, for purposes of citizen’s arrests, should the Court decline to include traffic violations in the definition of “public offense” under N.D.C.C. § 29-06-20(1), the Court must conclude that Corporal Waltz was without the authority to effect a citizen’s arrest on Mr. Hajicek.

### **CONCLUSION**

[¶ 45] The District Court’s denial of Mr. Hajicek’s Motion to Suppress and Dismiss was in error because the Corporal Waltz was outside his jurisdiction and would not have had the authority as a private citizen to arrest Mr. Hajicek for driving under the influence. Therefore, Mr. Hajicek respectfully requests this Court **REVERSE** the district court’s order and remand with instructions to permit Mr. Hajicek to withdraw his guilty plea.

Dated this 19th day of June, 2020.

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**/s/Challis D. Williams**

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

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State of North Dakota,	)	
	)	
	)	Appellee,
	)	
vs.	)	Supreme Court No. 20200071
	)	Case No. 18-2019-CR-01796
	)	
	)	
Timothy Paul Hajicek,	)	
	)	
	)	
	)	Appellant.

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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 28 pages.

[¶ 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 19th day of June, 2020.

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State of North Dakota,	)	
	)	
Plaintiff and Appellee,	)	
	)	Supreme Court No. 20200071
vs.	)	Case No. 18-2019-CR-01796
	)	
	)	
Timothy Paul Hajicek,	)	
	)	
Defendant and Appellant.	)	

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[¶ 1] I hereby certify that on June 19, 2020, the following documents: **BRIEF OF APPELLANT, CERTIFICATE OF COMPLIANCE, and APPELLANT’S APPENDIX** were filed electronically with the Clerk of Supreme Court through E-Filing Portal and served on Sarah Gereszek at [sasupportstaff@gfcounty.org](mailto:sasupportstaff@gfcounty.org).

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

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State of North Dakota,	)	
	)	
Plaintiff and Appellee,	)	
	)	Supreme Court No. 20200071
vs.	)	Case No. 18-2019-CR-01796
	)	
	)	
Timothy Paul Hajicek,	)	
	)	
Defendant and Appellant.	)	

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[¶ 1] I hereby certify that on June 23, 2020, the following documents: **BRIEF OF APPELLANT, CERTIFICATE OF COMPLIANCE, and APPELLANT’S APPENDIX** were filed electronically with the Clerk of Supreme Court through E-Filing Portal and served on Sarah Gereszek at sasupportstaff@gfcounty.org.

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