

**IN THE SUPREME COURT**

**STATE OF NORTH DAKOTA**

State of North Dakota,	)	
	)	
Plaintiff-Appellee,	)	
	)	Supreme Court No. 20210098
vs.	)	
	)	District Court No. 02-2020-CR-00297
Randy Scott Jensen,	)	
	)	
Defendant-Appellant.	)	

**BRIEF OF PLAINTIFF-APPELLEE**

APPEAL FROM DISTRICT COURT ORDER DENYING MOTION TO SUPPRESS  
AND/OR DISMISS DATED 03/30/2021 AND CRIMINAL JUDGMENT DATED  
03/29/2021

BARNES COUNTY DISTRICT COURT  
SOUTHWEST JUDICIAL DISTRICT  
HONORABLE JAY SCHMITZ, PRESIDING

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**STATEMENT OF THE ISSUE**

[¶ 1] Whether the District Court correctly denied the defendant's motion to suppress.

## STATEMENT OF THE CASE

[¶ 2] Appellant, Randy Scott Jensen (“Jensen”) was charged with Unlawful Possession of a Controlled Substance, in violation of N.D.C.C. § 19-03.1-23(7), a C Felony, Unlawful Possession of Drug Paraphernalia, in violation of N.D.C.C. § 19-03.4-03(2), a C Felony, and Driving under Suspension, in violation of N.D.C.C. § 39-06-42, a B Misdemeanor, by Criminal Information dated July 21, 2020.

[¶ 3] A motion to suppress was filed by Jensen on February 22, 2021. A response to the motion was filed by the State on March 9, 2021. Jensen filed a supplemental response brief on March 20, 2021. A motion hearing was held on March 29, 2021, at which time Officers Jason Runge and Ian Jacobson, of the Valley City Police Department, provided testimony. Judge Schmitz denied Jensen’s motion to suppress, and an order was signed by the Court on March 30, 2021.

[¶ 4] After the Court denied Jensen’s suppression motion, Jensen entered a conditional change his plea, preserving his right to appeal the suppression motion. This hearing was held on March 29, 2021. A criminal judgment was entered on March 29, 2021.

[¶ 5] This appeal subsequently ensued with a notice of appeal and order for transcripts on April 1, 2021.

## STATEMENT OF THE FACTS

[¶ 6] On July 21, 2020, Officer Jason Runge was working for the Valley City Police Department as a field training officer with Officer Ian Jacobson. (Tr. Suppr. Hrg. pg. 9) Officer Runge observed a vehicle traveling between 35-36mph in a 25mph zone. (Tr. Suppr. Hrg. pg. 11) Officer Jacobson stopped the vehicle near the on-ramp to interstate 94 in Barnes County. (Tr. Suppr. Hrg. pg. 11) Once the vehicle Jensen jumped out of the vehicle and started approaching the Officers squad car aggressively. (Tr. Suppr. Hrg. pg. 12) Officer Runge immediately exited the patrol vehicle and told Jensen to stop and stay with his vehicle. (Tr. Suppr. Hrg. pg. 12) Jensen engaged in conversation with the Officers and stated the Officers were targeting Jensen. (Tr. Suppr. Hrg. pg. 12) Officer Runge informed Jensen he was the only vehicle on the road at 3:00 a.m. that was speeding and that was why Jensen was pulled over. (Tr. Suppr. Hrg. pgs. 12-13) Officer Runge asked Jensen if there was anything in the vehicle that we (the officers) needed to know about. (Tr. Suppr. Hrg. pg. 13) Officer Runge testified that Jensen replied “No, search it.” (Tr. Suppr. Hrg. pg. 13) Officer Runge understood that response to be permission to search his vehicle. (Tr. Suppr. Hrg. pg. 13) Officers Runge and Jacobson subsequently searched Jensen’s vehicle. (Tr. Suppr. Hrg. pg. 14) During the duration of the search, Jensen never asked the Officers to stop searching his vehicle. (Tr. Suppr. Hrg. pg. 14) Officers subsequently learned Jensen had a revoked license. (Tr. Suppr. Hrg. pg. 17) Officer Runge explained the procedure their agency uses to ensure the radar is working properly, as well as the procedure for when they have an issue with the radar unit. (Tr. Suppr. Hrg. pgs. 15, 19) Officer Runge stated they did not have any issues with the radar detector on the night

Jensen was stopped. (Tr. Suppr. Hrg. pg. 18) Officer Runge stated that Jensen did not ask the Officers to stop searching the vehicle at any point, as he was not in the (squad) car, but in fact near the rear area of his vehicle. (Tr. Suppr. Hrg. pgs. 16-17) It was observed in the video, and also noted by the Court that there was some difficulty in getting into the back door of the vehicle. (Tr. Suppr. Hrg. pg. 35)

[¶ 7] Officer Jacobson testified that he was in a field training program back on July 21, 2020. (Tr. Suppr. Hrg. pg. 22) Officer Jacobson testified that the radar unit in his patrol vehicle was working correctly that evening. (Tr. Suppr. Hrg. pg. 22) Officer Jacobson testified that he observed a vehicle traveling at an elevated speed, or one traveling higher than the posted speed limit, at approximately 36mph in a 25mph zone. (Tr. Suppr. Hrg. pgs. 23-24) Officer Jacobson stopped Jensen's vehicle, identified him as the driver of the vehicle, as well as the only person in the vehicle. (Tr. Suppr. Hrg. pg. 24) Officer Jacobson subsequently learned Jensen's driver's license was revoked. (Tr. Suppr. Hrg. pg. 25) Officer Jacobson recalled Jensen telling the officer (Runge) "No, search it." in response to Officer Runge's question about whether there was anything in the vehicle. (Tr. Suppr. Hrg. pg. 26) Officers subsequently located drug paraphernalia and a white crystal substance, believed to be methamphetamine, in the vehicle. (Tr. Suppr. Hrg. pg. 26) A video was watched by the Court during this hearing as well; at about 3:23 in the video, the Court noted hearing Jensen say "go ahead and look." (Tr. Suppr. Hrg. pg. 34) The video showed the Officers locating a smoking device and eventually the white crystal substance, that was believed to be methamphetamine at the time, based on the Officers training and experience. (Tr. Suppr. Hrg. pg. 26, 35)

## ARGUMENT

### I. THE DISTRICT COURT DID NOT ERR IN ITS DECISION TO DENY THE DEFENDANT’S MOTION TO SUPPRESS.

#### a. Standard of Review

[¶ 8] In reviewing a district court's decision on a motion to suppress evidence, the Supreme Court defers to the district court's findings of fact and will resolve any conflicts in testimony in favor of affirmance of the district court's decision. State v. Doohen, 2006 ND 239, 8, 724 N.W.2d 158, 160. A district court's decision on a motion to suppress will be upheld if the decision is not contrary to the manifest weight of the evidence and there is sufficient competent evidence capable of supporting the trial court's findings. Id. Questions of law are fully reviewable on appeal, and whether a finding of fact meets a legal standard is a question of law. Id.

#### b. The District Court Correctly Concluded That the Search was Pursuant to Consent to Search, and Thus a Valid Exception to the Search Warrant Requirement.

[¶ 9] The Fourth Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment, and Art. I, § 8 of the North Dakota Constitution, protect individuals from unreasonable searches and seizures. State v. Boline, 1998 ND 67, ¶ 19, 575 N.W.2d 906. A warrantless search is unreasonable unless it falls within a recognized exception to the warrant requirement. State v. Kunkel, 455 N.W.2d 208, 209-10 (N.D.1990).

[¶ 10] Consent is an exception to the Fourth Amendment's prohibition against warrantless searches. State v. DeCoteau, 1999 ND 77, ¶ 9, 592 N.W.2d 579. Whether consent exists is



a question of fact determined from the totality of circumstances. State v. Mitzel, 2004 ND 157, ¶ 13, 685 N.W.2d 120. We have explained:

In order to be a valid waiver, there must be a clear and unqualified consent on the part of the defendant. The failure to object to a search is not a waiver. To be a valid waiver, it must clearly appear that the defendant voluntarily waived his rights and knowingly permitted the search by some express consent.

State v. Manning, 134 N.W.2d 91, 97 (N.D. 1965).

[¶ 11] In this case, Officer Jacobson and Officer Runge were given consent from Jensen to search the vehicle after asking if there was anything in the vehicle that they needed to know about. This consent was given by Jensen telling the Officers “go ahead and look.” Although both Officers recalled Jensen’s verbiage giving consent slightly different from the words that were actually spoken, the consent was still given freely and voluntarily. Jensen even helped the Officers search the vehicle by assisting in unlocking a door that was difficult to open. The “go ahead and look” statement permitted the Officers to search the vehicle. The assistance to the Officers demonstrated that Jensen was freely and voluntarily permitting this search to occur. Jensen did not ask to terminate the search at any time. The vehicle search was performed under a widely accepted exception to the search warrant requirement.

[¶ 12] The ultimate question really comes down to what “go ahead and look” means under the law. This issue has been litigated in other jurisdictions, with those Courts finding that phrase would be understood to be a consent that was voluntarily given. In United States v. Capps, a Trooper, Sgt. Carson, asked Capps for permission to search his vehicle. 716 F.3d 494 (8<sup>th</sup> Cir. 2013).

[¶ 13] “The boundaries of a consensual automobile search are confined to the scope of the consent.” United States v. Siwek, 453 F.3d 1079, 1084 (8<sup>th</sup> Cir.2006). We determine the scope of consent by “considering what an objectively reasonable person would have understood the consent to include.” United States v. Urbina, 431 F.3d 305, 310 (8<sup>th</sup> Cir. 2005).

[¶ 14] When Sgt. Carson initially asked Capps if he could search the car, Capps responded by telling Sgt. Carson he could look in the trunk for an additional set of license plates. Sgt. Carson specified, “I just don’t want to look in the trunk, I want consent to search your vehicle.” Capps reiterated that Sgt. Carson could look in the trunk, explaining that he never gives consent for law enforcement to search his vehicle. Sgt. Carson persisted in clarifying that he wanted to search “the vehicle, the passenger compartment, the driver area, the entire vehicle,” but reminded Capps that he could refuse this request if he wished. Capps then responded “just go ahead and look.” Sgt. Carson again clarified the scope of Capps’s consent by asking “[s]o you’re giving me consent to search your vehicle”? Capps repeated the same response, “go ahead and look.” Accordingly, the district court did not err in concluding that an objectively reasonable person would have understood Capps to have consented to a search of the entire vehicle. United States v. Capps, 716 F.3d 494, 498.

[¶ 15] Here, Jensen used almost the same language, he simply eliminated the word “just” when he spoke to Officer Runge. An objectively reasonable person would have understood Jensen the same way the Officers understood Jensen. The Court correctly found that this was a voluntary consent.

## CONCLUSION

[¶ 16] There was not an error in determining that this search was performed correctly through Jensen's consent. There was not an error in determining that Jensen gave consent freely and voluntarily. Based on the foregoing, the State respectfully asks this Court to affirm the District Court's decision to deny Jensen's Motion to Suppress.

[¶ 17] Oral argument is not requested on this matter.

Dated the 19<sup>th</sup> day of August, 2021.

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	)	<b>Supreme Court File No. 20210098</b>
Petitioner/Appellee	)	
	)	
v.	)	<b>Barnes Co. File No. 02-2020-CR-00297</b>
	)	
	)	
Randy Scott Jensen,	)	<b>CERTIFICATE OF</b>
	)	<b>COMPLIANCE</b>
Respondent/Appellant.	)	

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Pursuant to North Dakota Rules of Appellant Procedure 32(e), I certify the Appellee’s Brief is not in excess of thirty-eight (38) pages. The document consists of eleven (13) pages, including the cover page, table of contents, table of authorities, the written brief, the certificate of electronic service and the certificate of compliance.

*/s/ Tonya Duffy*

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	)	
Randy Scott Jensen,	)	<b>CERTIFICATE OF</b>
	)	<b>ELECTRONIC SERVICE</b>
Respondent/Appellant.	)	

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I hereby certify that on August 19<sup>th</sup>, 2021, I served an electronic copy of Appellee's Brief, Certificate of Compliance, and this Certificate of Electronic Service via e-mail through the Supreme Court File and Serve System, and US Mail upon:

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