

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 08-2022-CR-01415

State of North Dakota,

Plaintiff,

v.

LaRetta Lynn Schmuck,

Defendant.

**ORDER ON MOTION TO SUPPRESS  
EVIDENCE**

**BACKGROUND**

[¶1] Defendant LaRetta Lynn Schmuck (“Schmuck”) is charged with committing the offense of Driving Under the Influence of intoxicating liquor in violation of N.D.C.C. § 39-08-01(1)(a), a Class B Misdemeanor. The case is scheduled for trial on October 13, 2022.

[¶2] On August 8, 2022, Schmuck filed a *Motion to Suppress Evidence* and a *Supporting Brief* asserting law enforcement illegally stopped her vehicle for not signaling her exit from a traffic circle or roundabout. *Doc. Nos. 17-18*. Specifically, Schmuck argues the stop was illegal because she never changed lanes when exiting the roundabout, the 100 foot requirement for signaling is impracticable for roundabouts, and any statutory provision requiring signaling from exiting a roundabout is unconstitutionally vague. *Doc. No. 18*.

[¶3] The State argues the *Motion* should be denied because law enforcement had developed “reasonable and articulable suspicion” to initiate a traffic stop through the personal observations of the law enforcement officer. *Doc. No. 21*. Further, the State asserts, even if signaling before exiting a roundabout is not a requirement, any mistake of law as to this

requirement on behalf of the law enforcement officer was of the “objectively reasonable” type tolerated by the Fourth Amendment. *Id.*

[¶4] On May 20, 2022, Schmuck was traveling northbound on 66<sup>th</sup> Street NE and entered a roundabout at the intersection of 66<sup>th</sup> Street and Burleigh County Highway 10 (“Highway 10”). Schmuck exited the roundabout heading westbound on Highway 10. Deputy Long of the Burleigh County Sheriff’s Department (“Deputy Long”) observed Schmuck’s vehicle exit the roundabout without using a turn signal and conducted a traffic stop on the vehicle for that reason. Schmuck was subsequently charged with Driving Under the Influence in violation of N.D.C.C. § 39-08-01(1)(a).

[¶5] Because Schmuck did not violate any statutory driving rules, Deputy Long lacked reasonable suspicion necessary to justify the stop. The court further determines that because compliance with the applicable statutory provisions regarding the use of turn signals was impossible, the traffic stop in this case cannot be justified as an objectively reasonable mistake. According, for the reasons set forth below, Schmuck’s *Motion to Suppress Evidence* is GRANTED.

#### LAW AND DECISION

[¶6] An officer must “have a reasonable and articulable suspicion that [a] motorist has violated or is violating the law” in order “[t]o justify a traffic stop for investigative purposes.” *State v. Bachmeier*, 2007 ND 42, ¶ 6, 729 N.W.2d 141. Although this standard is less than probable cause, it requires more than a mere hunch. *State v. Brown*, 509 N.W.2d 69, 71 (N.D. 1993). Observance of a traffic violation, even if considered common or minor, provides a sufficient basis for officers to conduct an investigatory stop. *Bachmeier*, 2007 ND 42, ¶ 6, 729 N.W.2d 141. *State v. McLaren*, 2009 ND 176, ¶ 9, 773 N.W.2d 416 (internal citations and

quotations omitted).

[¶7] In addition, an “officer’s objectively reasonable mistake, whether of fact or law, may provide the reasonable suspicion necessary to justify a traffic stop.” *State v. Hirschhorn*, 2016 ND 117, ¶ 14, 881 N.W.2d 244. The North Dakota Supreme Court, quoting the U.S. Supreme Court, described how an “officer’s objectively reasonable mistake of fact or law may provide the reasonable suspicion necessary to justify a traffic stop, stating:”

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.

*Id.* Thus, “[w]here 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 mistake’” *Id.*

[¶8] The relevant statutory law applicable to the traffic stop in this case is as follow:

**39-10-16. One-way roadways and rotary traffic islands.**

3. A vehicle passing around a rotary traffic island must be driven only to the right of such island.

**39-10-17. Driving on roadways laned for traffic.**

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith apply:

1. A vehicle must be driven as nearly as practicable entirely within a single lane and may not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

**39-10-38. Turning movements and required signals.**

1. No person may turn a vehicle, move right or left upon a roadway, or merge into or from traffic unless and until such movement can be made with reasonable safety without giving an appropriate signal in the manner hereinafter provided.

2. A signal of intention to turn, move right or left, or merge into or from traffic must be given continuously during not less than the last one hundred feet [30.48 meters] traveled by the vehicle before turning, moving right or left, or changing lanes.

[¶9] The North Dakota Supreme Court has construed N.D.C.C. § 39-10-38(1) “to mean that no person may turn a vehicle or move right or left upon a roadway without giving an appropriate signal and unless and until such turn or movement can be made with reasonable safety.” *City of Lincoln v. Schuler*, 2021 ND 123, ¶ 9, 962 N.W.2d 413 (quoting *State v. Fasteen*, 2007 ND 162, ¶ 10, 740 N.W.2d 60). Regarding subsection 2, the Court has concluded “the phrase ‘when required’ refers to the giving of a signal as an intention to turn or move right or left ‘upon a roadway’ as required under subsection (1).” *Id.* The Court has not applied N.D.C.C. § 39-10-38 to roundabouts. *Id.*

[¶10] Schmuck argues subsection (1) of N.D.C.C. § 39-10-38 is not applicable to this situation because she “never turned her vehicle, or moved right or left upon a roadway, or merged into or from traffic, other than follow her lane of travel.” *Doc. No. 18*. Schmuck also asserts subsection (2) of N.D.C.C. § 39-10-38 is not applicable to this situation because complying with subsection (2), in the roundabout context, would produce conflicting results due to the constant change of direction inherent when driving around a roundabout. Thus, Schmuck asserts N.D.C.C. § 39-10-38(1-2) were never meant to apply to roundabouts.

[¶11] The testimony and evidence provided at the hearing indicates that Schmuck is correct in that she did not change lanes and that there is no statutory requirement that expressly requires the use of turn signals in a roundabout. Thus, it appears that no clear

violation of any statute occurred to justify the traffic stop. However, “statutory interpretation is secondary” to the controlling issue of whether Deputy Long had reasonable suspicion Schmuck had committed a traffic violation. *State v. Hirschhorn*, 2016 ND 117, ¶ 13, 881 N.W.2d 244.

[¶12] As the North Dakota Supreme Court has explained, “reasonable suspicion and criminality are different inquiries and ‘[t]he actual commission of a crime is not required to support a finding of reasonable suspicion.’” *City of Lincoln v. Schuler*, 2021 ND 123, ¶¶ 10-11, 962 N.W.2d 413 (quoting *State v. Bolme*, 2020 ND 55, ¶ 8, 952 N.W.2d 75). “Whether a driver committed a traffic violation does not control whether an officer had the reasonable suspicion necessary to justify a traffic stop.” *State v. Hirschhorn*, 2016 ND 117, ¶ 14, 881 N.W.2d 244. As a result, it is unnecessary to decide whether Schmuck’s failure to use a signal when exiting the roundabout constituted a violation of N.D.C.C. § 39-10-38. *City of Lincoln v. Schuler*, 2021 ND 123, ¶¶ 10-11, 962 N.W.2d 413. Instead, the relevant inquiry, under *Schuler*, is whether Deputy Long “reached an objectively reasonable conclusion that exiting a roundabout constitutes a movement requiring a signal under N.D.C.C. § 39-10-38, thus providing the reasonable suspicion necessary to justify the stop.” *Id.*

[¶13] Deputy Long in his citation states, while patrolling the area of 66<sup>th</sup> St NE and Highway 10, he observed a vehicle, later determined to be operated by Schmuck, exit the roundabout at that intersection without using a turn signal. *Doc. No. 2*. The question of whether Schmuck’s failure to use a turn signal when exiting a roundabout is a violation of N.D.C.C. § 39-10-38 was not answered by the Court in *See City of Lincoln v. Schuler*, 2021 ND 123, ¶ 11, 962 N.W.2d 413. As a result, whether turn signals are required when exiting roundabouts remains unclear. Although the Court concluded in *City of Lincoln v. Schuler* that

the officer in that case could have reached an objectively reasonable conclusion that the use of turn signals is required by § 39-10-38 when exiting a roundabout, the concurring opinion notes that since the question of whether § 39-10-38 requires the use of a turn signal when exiting a roundabout remains unanswered, it is also possible for a court to reach an objectively reasonable conclusion that no turn signal is required when exiting a roundabout.

[¶14] The only pertinent statute that addresses the use of turn signals is N.D.C.C. §39-10-38(2) which requires the use of a turn signal for not less than 100 feet before turning or moving right or left, or changing lanes. Applying this language to a roundabout situation would require a driver to signal a right hand turn a minimum of 100 feet before entering the roundabout since a right turn is required to start the counter-clockwise rotation around the roundabout island. However, §39-10-38(2) would also require a driver to simultaneously apply a left hand turn signal for the counter-clockwise movement to the left required upon entering the roundabout. Then, while in the roundabout, while continuing to signal the leftward motion, the driver would also be required to signal a right hand exit from the roundabout a minimum of 100 feet from the exit.

[¶15] It is physically impossible for a driver to comply with the turn signal requirements of N.D.C.C. §39-10-38(2) in a roundabout situation. To expect a driver to do something that is physically impossible is not objectively reasonable. Accordingly, the court determines that Deputy Long's determination that Schmuck violated N.D.C.C. § 39-10-38 by not signaling her exit from the subject roundabout was not an objectively reasonable conclusion. For that reason, the court determines that reasonable suspicion to justify the traffic stop did not exist.

CONCLUSION

[¶21] For the foregoing reasons, Schmuck's *Motion to Suppress Evidence* is hereby GRANTED.

IT IS SO ORDERED.

Dated this 10<sup>th</sup> day of October, 2022.

BY THE COURT:

A handwritten signature in cursive script, reading "David E. Reich". The signature is written in black ink and is positioned above the printed name and title.

David E. Reich, District Judge  
South Central Judicial District

