

2023 HOUSE TRANSPORTATION

HB 1061

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

HB 1061
1/5/2023

A bill relating to windows impairing vision of a driver and relating to stop and yield signs.

Chairman Ruby opened the hearing at 9:45am.

Members present: Chairman Ruby, Vice Chairman Grueneich, Representatives Anderson, Christensen, Dyk, Frelich, Hauck, Koppelman, Murphy, Timmons, Wagner, Weisz, Dakane, Dobervich. No members absent.

Discussion Topics:

- Right of way at intersections
- Damaged window penalties

Wade Kadrmas, Safety and Education Officer for the North Dakota Highway Patrol, testified in support (#12411) and distributed a proposed amendment (#12413).

Chairman Ruby closed the hearing at 10:21am.

Representative Koppelman proposed an amendment on page 1 line 17 strike “or more” and on line 18 after “proceed” add “and the intersection is clear for each driver to proceed.” Also, on page 2 line 11 strike “cracked”.

Representative Koppelman moved this amendment.

Representative Weisz seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	Y
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	Y
Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y
Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	Y

Motion passed to adopt the amendment 14-0-0.

Representative Koppelman moved a Do Pass as Amended.

Representative Weisz seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	N
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	Y
Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y
Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	Y

Motion passed 13-1-0

Representative Murphy is the bill carrier.

Meeting adjourned at 10:36am.

Mary Brucker, Committee Clerk

January 5, 2023

JA 111

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1061

Page 1, line 17, remove "or more "

Page 1, line 19, replace "followed by the" with "when the intersection is clear. The"

Page 1, line 19, after "stopped" insert "may proceed when the intersection is clear again"

Page 2, line 11, remove "cracked,"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1061: Transportation Committee (Rep. D. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1061 was placed on the Sixth order on the calendar.

Page 1, line 17, remove "or more."

Page 1, line 19, replace "followed by the" with "when the intersection is clear. The"

Page 1, line 19, after "stopped" insert "may proceed when the intersection is clear again"

Page 2, line 11, remove "cracked."

Renumber accordingly

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

HB 1061
1/12/2023

A bill relating to windows impairing vision of a driver and relating to stop and yield signs.

Chairman D. Ruby opened the discussion at 10:50 AM

Members present: Chairman Ruby, Vice Chairman Grueneich, Representatives Anderson, Christensen, Dyk, Frelich, Hauck, Koppelman, Murphy, Timmons, Wagner, Weisz, Dakane, Dobervich. No members absent.

Discussion Topics:

- Reconsideration
- Window tint
- Proposed amendment

Representative Murphy moved to reconsider our actions.

Representative Dakane seconded the motion.

Voice vote-motion carried

Chairman D. Ruby distributed a proposed amendment **23.8069.02001** (#13204).

Wade Kadrmas, Safety and Education Officer with North Dakota Highway Patrol, clarified information for the committee.

Representative Koppelman moved the amendment **23.8069.02001**.

Representative Christensen seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	Y
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	Y
Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y

Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	Y

Motion carried 14-0-0

Representative Koppelman moved a Do Pass as Amended 23.8069.01002.

Representative Timmons seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	N
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	Y
Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y
Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	N

Motion carried 12-2-0

Representative Murphy is the bill carrier.

Meeting adjourned at 11:09 AM

Mary Brucker, Committee Clerk

January 12, 2023

27 1/12/23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1061

Page 1, line 1, after "enact" insert "a new subsection to section 39-21-39 and"

Page 1, line 17, remove "or more"

Page 1, line 19, replace "followed by the" with "when the intersection is clear. The"

Page 1, line 19, after "stopped" insert "may proceed when the intersection is clear again"

Page 2, after line 8, insert:

"SECTION 2. A new subsection to section 39-21-39 of the North Dakota Century Code is created and enacted as follows:

Subsection 4 does not apply to nonreflective sunscreening or window tinting material above the AS-1 line or within the top five inches [12.7 centimeters] of the windshield."

Page 2, line 11, remove "cracked."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1061: Transportation Committee (Rep. D. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1061 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "a new subsection to section 39-21-39 and"

Page 1, line 17, remove "or more"

Page 1, line 19, replace "followed by the" with "when the intersection is clear. The"

Page 1, line 19, after "stopped" insert "may proceed when the intersection is clear again"

Page 2, after line 7, insert:

"SECTION 2. A new subsection to section 39-21-39 of the North Dakota Century Code is created and enacted as follows:

Subsection 4 does not apply to nonreflective sunscreening or window tinting material above the AS-1 line or within the top five inches [12.7 centimeters] of the windshield."

Page 2, line 11, remove "cracked."

Renumber accordingly

2023 SENATE TRANSPORTATION

HB 1061

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1061
2/16/2023

Relating to windows impairing vision of a driver and relating to stop and yield signs.
--

10:00 AM Chairman Clemens opens meeting.

Senators Present: **Clemens, Conley, Larsen, Rummel, Paulson.**

Discussion Topics:

- Broken Window definition
- Roundabout signals
- Stop sign confusion
- Drivers Ed content
- Over signaling

10:01 AM Wade Kadrmas, Safety and Education Officer for the North Dakota Highway Patrol, testified in favor. #20953

10:36 AM Robyn Krile, Chief of Police for Lincoln, testified in favor. #20963 #20964

10:43 AM Stephanie Dassinger, Chief of Police Association of ND, verbally testified in favor.

10:44 AM Vice Chairman Conley adjourns meeting.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1061
2/16/2023

Relating to windows impairing vision of a driver and relating to stop and yield signs.

10:52 AM Chairman Clemens opens meeting.

Senators Present: **Clemens, Conley, Larsen, Rummel, Paulson.**

Discussion Topics:

- Broken Window
- Bill review
- Stop signs
- Commercial vehicle standards
- Drivers education

11:03 AM Chairman Clemens adjourns meeting.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1061
3/2/2023

A BILL for an Act relating to windows impairing vision of a driver; relating to stop and yield signs.

11:15 AM Chair Clemens called the meeting to order.
Chairman Clemens, Senators Conley, Larsen, Paulson, Rummel were present.

Discussion Topics:

- Amendments
- Glass portions
- Stop sign

Chairman Clemens provided information on the progress of the bill.

Senator Rummel gave an update.

Senator Paulson gave an update.

11:18 AM Chair Clemens adjourned the meeting.

Patricia Wilkens, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB1061
3/2/2023

A BILL for an Act, relating to windows impairing vision of a driver; relating to stop and yield signs.
--

2:12 PM Chairman Clemens called the meeting to order.

Chairman Clemens, Senators Conley, Larsen, Paulson, Rummel were present.

Discussion Topics:

- Amendments
- Stop signs
- Intersections

Senator Paulson proposed amendment. #21810

Senator Larsen provided information.

Chairman Clemens provided information.

Committee discussed.

2:28 PM Chairman Clemens adjourned the meeting.

Patricia Wilkens, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1061
3/3/2023

A BILL for an Act, relating to windows impairing vision of a driver; relating to stop and yield signs.
--

11:22 AM Chairman Clemens opens hearing.

Senators present: **Clemens, Conley, Larsen, Rummel, Paulsen.**

Discussion Topics:

- Proposed amendment
- Signal language
- LC error

11:33 AM Chairman Clemens adjourned meeting.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1061
3/17/2023

Relating to windows impairing vision of a driver, relating to entries against driving record, rotary traffic islands, and stop and yield signs.

9:05 AM Chairman Clemens opened the meeting.

Chairman Clemens, Senators Conley, Larsen, Paulson, Rummel were present.

Discussion Topics:

- Amendments
- Committee Action

9:07 AM Wade Kadrmas, ND Highway Patrol, answered questions (#25691).

9:25 AM Senator D. Larsen moved to Further Amend LC 23.8069.03002 "amending page 2 starting line 15 insert the words "and shall yield the right away to any other vehicle previously stopped for another stop sign at the intersection if the intersection is clear for each driver to proceed."" Seconded by Sen. Paulson

Roll call vote.

Senators	Vote
Senator David A. Clemens	Y
Senator Cole Conley	Y
Senator Doug Larsen	Y
Senator Bob Paulson	Y
Senator Dean Rummel	Y

Passed 5-0-0

9:29 AM Senator D Larsen moved Do Pass as Amended.

9:29 AM Senator Paulson seconded.

Roll call vote.

Senators	Vote
Senator David A. Clemens	Y
Senator Cole Conley	Y
Senator Doug Larsen	Y
Senator Bob Paulson	Y
Senator Dean Rummel	Y

Passed 5-0-0

9:30 AM Senator Larsen will carry the bill.

9:30 AM Chairman Clemens closed the meeting.

Nathan Liesen, Committee Clerk

DR
182
3-17-2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1061

Page 1, line 3, replace "section" with "paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 and sections 39-10-16 and"

Page 1, line 3, after the second "to" insert "entries against driving record, rotary traffic islands, and"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- (16) Driving on wrong side of road in violation of section 39-10-08, 39-10-14, or subsection 1, 2, or 3 of section 39-10-16, or equivalent ordinances 2 points

SECTION 2. AMENDMENT. Section 39-10-16 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The director and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic-control devices.
2. Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or at such times as shall be indicated by official traffic-control devices.
3. A vehicle passing around a rotary traffic island must be driven only to the right of such island.
4. After a vehicle enters a rotary traffic island, the vehicle may not exit from any position within the rotary traffic island without first giving a signal of intention to exit the rotary traffic island.

Page 1, line 17, after "roadways" insert "and shall yield the right of way to any other vehicle previously stopped for another stop sign at the intersection if the intersection is clear for each driver to proceed"

Page 1, line 17, remove "If more than"

Page 1, remove lines 18 through 21

Page 2, line 16, replace "**Windows**" with "**Windshield**"

Page 2, line 17, replace "Glass or glazing material on the front or side windows" with "A windshield"

Page 2, line 17, remove "broken, shattered, or"

Page 2, line 18, replace "distorted to the extent it impairs the vision of the driver" with "shattered or in such a defective condition that the windshield materially impairs or obstructs the driver's clear view"

Renumber accordingly

DR
272
3-17-2023

REPORT OF STANDING COMMITTEE

HB 1061, as engrossed: Transportation Committee (Sen. Clemens, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1061 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 3, replace "section" with "paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 and sections 39-10-16 and"

Page 1, line 3, after the second "to" insert "entries against driving record, rotary traffic islands, and"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- (16) Driving on wrong side of road in violation of section 39-10-08, 39-10-14, or subsection 1, 2, or 3 of section 39-10-16, or equivalent ordinances 2 points

SECTION 2. AMENDMENT. Section 39-10-16 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The director and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic-control devices.
2. Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or at such times as shall be indicated by official traffic-control devices.
3. A vehicle passing around a rotary traffic island must be driven only to the right of such island.
4. After a vehicle enters a rotary traffic island, the vehicle may not exit from any position within the rotary traffic island without first giving a signal of intention to exit the rotary traffic island.

Page 1, line 17, after "roadways" insert "and shall yield the right of way to any other vehicle previously stopped for another stop sign at the intersection if the intersection is clear for each driver to proceed"

Page 1, line 17, remove "If more than"

Page 1, remove lines 18 through 21

Page 2, line 16, replace "**Windows**" with "**Windshield**"

Page 2, line 17, replace "Glass or glazing material on the front or side windows" with "A windshield"

Page 2, line 17, remove "broken, shattered, or"

Page 2, line 18, replace "distorted to the extent it impairs the vision of the driver" with "shattered or in such a defective condition that the windshield materially impairs or obstructs the driver's clear view"

Renumber accordingly

2023 CONFERENCE COMMITTEE

HB 1061

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

HB 1061
4/11/2023
Conference Committee

A bill relating to windows impairing vision of a driver and relating to entries against driving record, rotary traffic islands, and stop and yield signs.

Chairman Murphy opened the meeting at 10:02 AM.

Members present: Chairman Murphy, Representative Koppelman, Representative Grueneich, Senator Rummel, and Senator Conley. Member absent: Chairman Larsen.

Discussion Topics:

- Cracked/Shattered windshields
- Vehicle side windows
- Roundabouts (rotary traffic islands)
- Intersection right of ways
- Committee vote

Senator Rummel explained the Senate amendments.

Committee discussion.

Representative Koppelman moved the House accede to Senate amendments.

Representative Grueneich seconded the motion.

Chairman Murphy distributed testimony from Wade Kadrmas, North Dakota Highway Patrol, (#27429 and 27430) and explained.

Roll call vote: Motion carried 5-0-1

Chairman Murphy is the House carrier and Chairman Larsen is the Senate carrier.

Chairman Murphy adjourned at 10:18 AM.

Mary Brucker, Committee Clerk

**2023 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. HB 1061 as engrossed

House Transportation Committee

- Action Taken** **HOUSE accede to Senate Amendments**
 HOUSE accede to Senate Amendments and further amend
 SENATE recede from Senate amendments
 SENATE recede from Senate amendments and amend as follows
- Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Koppelman Seconded by: Rep. Grueneich

Representatives	4/11		Yes	No	Senators	4/11		Yes	No
<i>Chairman Murphy</i>	X		X		Chairman Larsen	AB		AB	
<i>Rep Koppelman</i>	X		X		Senator Rummel	X		X	
Rep Grueneich	X		X		Senator Conley	X		X	
Total Rep. Vote			3		Total Senate Vote			2	

Vote Count Yes: 5 No: 0 Absent: 1

House Carrier Rep. Murphy Senate Carrier Senator Larsen

LC Number _____ . _____ of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1061, as engrossed: Your conference committee (Sens. Larsen, Rummel, Conley and Reps. Murphy, Koppelman, Grueneich) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1370-1371 and place HB 1061 on the Seventh order.

Engrossed HB 1061 was placed on the Seventh order of business on the calendar.

TESTIMONY

HB 1061



68th Legislative Assembly

Testimony in **Support** of

House Bill No. 1061

House Transportation Committee

January 05, 2023

TESTIMONY OF

Sergeant Wade Kadrmas

Good morning, Chairman Ruby and members of the House Transportation Committee, my name is Wade Kadrmas, and I am the Safety and Education Officer for the North Dakota Highway Patrol. I am here today on behalf of my agency in support of House Bill 1061, which was introduced as an agency bill. The NDHP submitted this bill to clarify who has the right of way at stop signs as well as to provide guidance for when window damage is too severe for safe driving.

New drivers learn rules of the road through driver education courses and by studying North Dakota Department of Transportation's Noncommercial Driver's License Manual. One basic rule of the road is that the first vehicle to stop at a stop sign is the first vehicle that can proceed when the intersection is clear. Current law does not coincide with this basic rule as taught in driver education or through study to prepare for the permit test.

Current law requires drivers to yield the right of way to any vehicle in the intersection. This can be interpreted to mean that the first vehicle to enter the intersection has the right of way, not the first driver to stop has the right of way. The NDHP believes the attached amendment would clarify which driver has the right of way. This amendment adds the words "and the intersection is clear for each driver to proceed". The patrol believes this suggested change provides clarity for the right of way at stop signs and provides consistency to current education provided to new drivers.

Section two of the bill addresses damaged windows that impair a driver's view of the roadway. Currently under subsection 2 of section 39-21-46 of the North Dakota Century Code, an officer can stop a vehicle if they believe the damaged window is in such an unsafe condition that it endangers a person by impairing the view of a driver. The penalty for this violation is an infraction which requires a court appearance with a potential fine of two hundred and fifty dollars. The new section provides guidance that the front or side windows may not be cracked, broken, shattered, or distorted to the extent it impairs the vision of the driver. The new section would make this a \$20 fine, no points and not require a court appearance unless requested by the cited driver.

There are examples on page two of damaged windows that impair a driver's view of the roadway. These window conditions are also distractions and can reflect light from the sun, streetlights, and headlights that hinder a driver's vision. Thank you for your time and consideration of these proposed changes.



PROPOSED AMENDMENT TO House Bill No. 1061

Page 1, line 17, after "proceed", add "and the intersection is clear for each driver to proceed"

23.8069.02001
Title.

Prepared by the Legislative Council staff for
Representative D. Ruby
January 10, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1061

Page 1, line 1, after "enact" insert "a new subsection to section 39-21-39 and"

Page 2, after line 8, insert:

"SECTION 2. A new subsection to section 39-21-39 of the North Dakota Century Code is created and enacted as follows:

Subsection 4 does not apply to nonreflective sunscreening or window tinting material above the AS-1 line or within the top five inches [12.7 centimeters] of the windshield."

Renumber accordingly



68th Legislative Assembly

Testimony in **Support** of

House Bill No. 1061

Senate Transportation Committee

February 16, 2023

TESTIMONY OF

Sergeant Wade Kadrmas

Good morning, Chairman Clemens and members of the Senate Transportation Committee, my name is Wade Kadrmas, and I am the Safety and Education Officer for the North Dakota Highway Patrol. I am here today on behalf of my agency in support of House Bill 1061, which was introduced as an agency bill. The NDHP submitted this bill to clarify who has the right of way at intersections with multiple stop signs, as well as provide guidance for when window damage is too severe for safe driving.

Section one of the bill was amended in the house that adjusted the initial language in the bill for subsection 2 of section 39-10-24 of the North Dakota Century Code. The patrol doesn't believe the current language adequately addresses which driver has the right of way at intersections with multiple stop signs. The current language in the bill only addresses intersections controlled by two stop signs. Devils Lake Municipal Court Judge Peter Hallbach offered language that will sufficiently address the stop sign concern. The patrol would like the committee to amend the bill with the language in the proposed amendment at the end of my testimony.

Section two of the bill was added as a late request to allow tinting material or nonreflective sun screening above the AS-1 line or within the top five inches of the windshield. Federal law allows for this area to be tinted darker than the rest of the windshield. Subsection 4 of section 39-21-39 of the North Dakota Century Code doesn't allow for this tinting because century code currently states that the windshield has to allow a light transmittance of at least seventy percent. We believe this is a good change for the citizens of North Dakota, to allow tinting on the top portion of the windshield. It also provides clear guidance to law enforcement on what is allowed. An example of the AS-1 line on a vehicle's windshield is included as photo three in my testimony.

Section three of the bill addresses damaged windows that impair a driver's view of the roadway. Currently under subsection 2 of section 39-21-46 of the North Dakota Century Code, an officer can stop a vehicle if the officer believes the damaged window is in such an unsafe condition that it endangers a person by impairing the view of a driver. The current penalty for this violation is an infraction which requires a court appearance with a potential fine of two hundred and fifty dollars. The new section being created provides guidance that the front or side windows may not be broken, shattered, or distorted to the extent it impairs the vision of the driver. A violation of this new section would be a \$20 fine, no points, and it would not require a court appearance unless requested by the driver. The House did remove the word "cracked" from the initial draft because they didn't want officers stopping a vehicle for a simple crack in the windshield that doesn't impair a driver's view. There are examples of damaged windows that impair a driver's view of the roadway

included as photo one and photo two in my testimony. These window conditions can also be distractions and reflect light from the sun, streetlights, and headlights in a way that hinder a driver's vision.

The NDHP was recently approached by Chief Robyn Krile, from the Lincoln Police Department, about a situation her department encountered regarding roundabouts (rotary traffic islands) and a recent North Dakota Supreme Court ruling, in the case City of Lincoln vs Schuler. Chief Krile is here today to provide testimony on this proposed amendment. The patrol does feel the amendment will provide clear guidance to drivers on when to use a turn signal while navigating a roundabout. In short, the requirement to use a turn signal was added to section 39-10-16 of the North Dakota Century Code relating to one-way roadways and rotary traffic islands. A violation of this section would be a twenty dollar fine and no points, similar to a violation of 39-10-38 for failing to use a turn signal when required. There was conflicting opinions from the District Court and ND Supreme Court on whether 39-10-38 applied to roundabouts because of the 100 foot requirement to signal prior to making the movement. This proposed amendment also updates paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to entries against driving records to ensure no points are assessed for this violation.

Thank you for your time and consideration of these proposed changes. I would be happy to answer any questions.





Photo 2



Photo 3

PROPOSED AMENDMENT TO House Bill No. 1061

Page 1, after line 5 insert, "**SECTION 1. AMENDMENT.** Paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-10. Entries against driving record - Director duties - Hearings - Demerit schedule - Suspension.

3. a. (16) Driving on wrong side of road in violation of section 39-10-08, 39-10-14, or subsections 1,2, or 3 of section 39-10-16, or equivalent ordinances 2 points

SECTION 2. AMENDMENT. Section 39-10-16 of the North Dakota Century Code is amended and reenacted as follows:

39-10-16. One-way roadways and rotary traffic islands (roundabout).

1. The director and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic-control devices.
2. Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or at such times as shall be indicated by official traffic-control devices.
3. A vehicle passing around a rotary traffic island must be driven only to the right of such island.
4. After a vehicle enters a rotary traffic island it shall signal to the right its intentions to exit just prior to leaving the traffic island.

Page 1, line 6, after "**SECTION**" replace "**1**" with "**3**"

Page 1, line 17, after "roadways" replace "If more than one vehicle arrives at an intersection controlled by two or more stop signs, the driver of the vehicle that comes to a complete stop first has the right of way to proceed through the intersection when the intersection is clear. The next vehicle that stopped may proceed when the intersection is clear again." with "and shall also yield the right of way to any other vehicle previously stopped for another stop sign at the intersection."

Page 2, line 10, after "**SECTION**" replace "**2**" with "**4**"

Page 2, line 14, after "**SECTION**" replace "**3**" with "**5**"

2021-2023

Noncommercial

Drivers License Manual

Class D



Parent, if your child is under the age of 18, please read pages 1 through 6 and pages 40 through 45.

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DL0721

Greetings from the Office of the Governor!

It's my privilege to welcome you as a North Dakota driver. Whether you are operating a car, truck, motorcycle or RV, or enjoying our communities as a bicyclist or pedestrian, everyone who uses our roads shares a responsibility to make transportation safe and enjoyable. This booklet contains important information outlining the state's rules and regulations for keeping you and other drivers safe on North Dakota's roadways.

Please review this information and make the personal commitment to adhere to the rules of the road and to be aware of new laws that affect the motoring public, including distracted driving laws. We want to help you stay safe – as a driver and valued community member.

Sincerely,

A handwritten signature in black ink that reads "Darg Ryan". The signature is fluid and cursive, with the first name "Darg" and the last name "Ryan" clearly legible.

Governor

Introduction:

The privilege of driving a motor vehicle in the state of North Dakota must first be earned. This manual will help you earn and keep this privilege.

The manual is designed as a basic reference for all drivers, and should be used to prepare for the written driver's examination. It does not include some of the information needed to qualify for driving passenger buses, school buses, motorcycles, and heavy trucks. Such additional information is contained in separate manuals available at all driver license offices.

This manual will introduce you to North Dakota traffic laws, rules of the road, and other safe driving practices. You owe it to yourself to develop all the skills and knowledge needed to become a safe driver.

Drivers License Division
North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0750

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North Dakota Drivers License and Testing Locations

To obtain a North Dakota operator's license, you must visit one of the Drivers License offices, or you may take your knowledge test immediately at nd.knowtodrive.com. An appointment is required. Please visit our website to book an appointment or obtain appointment information at dot.nd.gov.

Please note: You will receive a **failed** test score if you leave the testing area while your test is in progress.

The knowledge test fee is \$5. The road test fee is \$5. The fee for a Class D permit/license is \$15. The fee for a duplicate Class D permit/license is \$8.

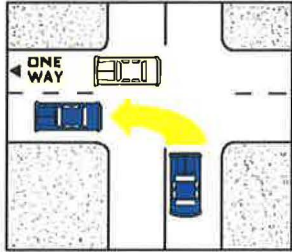
Lunch Hour Schedule: All sites closed from 12:00-1:00 p.m. except Bismarck, Minot, Grand Forks, and Fargo.

Holiday Schedule: Offices are closed on the following holidays:

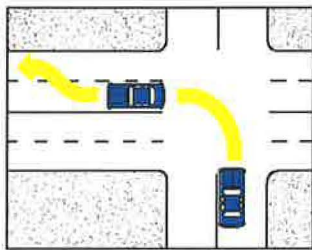
New Years Day, January 1 - Martin Luther King, Jr. Day, the third Monday in January
Presidents' Day, third Monday in February
Good Friday, the Friday preceding Easter Sunday
Memorial Day, the last Monday in May - Independence Day, July 4
Labor Day, the first Monday in September - Veteran's Day, November 11
Thanksgiving Day, the fourth Thursday in November
Christmas Eve, December 24 (offices close at noon)
Christmas Day, December 25

If January 1st, July 4th, November 11th, or December 25th fall on a Sunday, the following Monday shall be the holiday. If these holidays fall on a Saturday, the preceding Friday is the holiday.

To turn left from a two-way road onto a one-way road, approach the turn with your left wheels close to the centerline of the road. Make the turn before reaching the center of the intersection, and enter the left lane of the one-way road.



To turn left from a two-way road onto a four-lane highway, approach the turn with your left wheels close to the centerline of the road. Make the turn so that you enter the passing lane of the four-lane highway. When traffic permits, move to the right, out of the passing lane.



ROUNDAOBOUTS

A roundabout is a circular intersection where vehicles travel around a center island in a counter-clockwise direction. These intersections are designed to reduce the number and severity of collisions, as well as provide operational efficiencies. When approaching a roundabout, perform the following steps:

1. Reduce your speed.
2. If more than one lane exists, use the left lane to turn left, the right lane to turn right, and all lanes to go through unless directed otherwise by signs and pavement markings.



3. Yield to pedestrians and bicyclists.
4. Yield to circulating traffic when entering the roundabout.
5. Stay in your lane within the roundabout and use your right-turn signal when exiting.
6. Always assume trucks need all available space—do not pass them!
7. Clear the roundabout to allow emergency vehicles to pass and do not enter the roundabout if one is approaching.

Large Vehicles

Roundabouts are designed to accommodate all vehicle types, including truck and trailer combinations. To assist large trucks, the center island includes an apron to accommodate the rear wheels of the vehicle.

INTERSTATE DRIVING

Speeds are higher on the Interstate than on city streets. Because of this, your vehicle will

68th Legislative Assembly
Testimony in Support of
House Bill No. 1061
Senate Transportation Committee
February 16, 2023

Good morning, Chairman Clemens and members of the Senate Transportation Committee, my name is Robyn Krile. I have 18 years of law enforcement experience in North Dakota and currently serve as the Chief of Police for the City of Lincoln. I am here on behalf of my agency in support of House Bill 1061 as amended.

We have seen an increase in construction of roundabouts and they have become commonplace in many areas throughout the state. There are eight roundabouts in the Bismarck-Mandan Lincoln metropolitan area, and soon to be a ninth. The intent of this amendment to House Bill 1061 is not to create or change any current law, but only to clarify it for the lane merging when exiting roundabouts.

Turn signals are one of the few ways we can communicate with the drivers around us. Turn signal use by a driver preparing to exit a roundabout indicates to the drivers preparing to enter the roundabout that the lane of travel the entering vehicle is needing to obtain will be available. The efficiency of roundabouts are diminished when the driver fails to signal their intent to leave the roundabout as it causes those vehicles attempting to enter the roundabout to halt when they don't need to. This can result in delaying the traffic pattern during heavy traffic times, defeating the roundabouts' purpose of efficiently flowing traffic through the intersection from all access points.

The North Dakota non-commercial driver's license manual says,

5. Stay in your lane within the roundabout and use your right-turn signal when exiting. (Page 23 of the non-commercial manual).

However, Lincoln has had some of our traffic stops for failure to use a turn signal when exiting a roundabout, challenged in court due to North Dakota's current law not expressly stating that the use of a turn signal when exiting a roundabout is required. Two Lincoln cases were challenged in the N.D. Supreme Court. The ND Supreme Court did rule that we were reasonable in our stop; however, in the City of Lincoln V Schuler case, Justice Tufte made the statement;

"the legislature has amended this statute effective August 2021, but I do not believe the amendment provides much additional clarity about turn signal requirements in relation to roundabouts." (Page 6 Paragraph 17 of the N.D. Supreme Court ruling).

Since the N.D. Supreme court ruling, a Burleigh County Sheriffs Department case had the evidence suppressed by South Central Judicial District Judge David Reich, who says;


"it's 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 (Page 6 Paragraph 15 of the 08-2022-cr-1415.pdf).

68th Legislative Assembly
Testimony in Support of
House Bill No. 1061
Senate Transportation Committee
February 16, 2023

This amendment to House Bill 1061 addresses District Judge Reich's concern as it would do away with the 100-foot requirement required in N.D.C.C. 39-10-38(2) when concerning roundabouts which is necessary due to the size of some of the smaller roundabouts. It also addresses the North Dakota Supreme Courts concern regarding the need for clarity about turn signal requirements in relation to roundabouts.

In conclusion, this language regarding turn signal use while exiting a roundabout would provide a standard for roundabouts in North Dakota. It would provide drivers notice of what is a violation, give guidance to our law enforcement officers, and is consistent with what the North Dakota Department of Transportation is teaching in their noncommercial driver's license manual.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Chief Robyn Krile". The signature is fluid and cursive, with the first name "Chief" written in a smaller, more compact script than the last name "Robyn Krile".

Chief Robyn Krile

PROPOSED AMENDMENT TO House Bill No. 1061

Page 1, after line 5 insert, "**SECTION 1. AMENDMENT.** Paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-10. Entries against driving record - Director duties - Hearings - Demerit schedule - Suspension.

3. a. (16) Driving on wrong side of road in violation of section 39-10-08, 39-10-14, or subsections 1,2, or 3 of section 39-10-16, or equivalent ordinances 2 points

SECTION 2. AMENDMENT. Section 39-10-16 of the North Dakota Century Code is amended and reenacted as follows:

39-10-16. One-way roadways and rotary traffic islands (roundabout).

1. The director and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic-control devices.
2. Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or at such times as shall be indicated by official traffic-control devices.
3. A vehicle passing around a rotary traffic island must be driven only to the right of such island.
4. After a vehicle enters a rotary traffic island it shall signal to the right its intentions to exit just prior to leaving the traffic island.

Page 1, line 6, after "**SECTION**" replace "**1**" with "**3**"

~~Page 1, line 17, after "roadways" replace ".If more than one vehicle arrives at an intersection controlled by two or more stop signs, the driver of the vehicle that comes to a complete stop first has the right of way to proceed through the intersection when the intersection is clear. The next vehicle that stopped may proceed when the intersection is clear again."~~ with "and shall also yield the right of way to any other vehicle previously stopped for another stop sign at the intersection."

Page 2, line 10, after "**SECTION**" replace "**2**" with "**4**"

Page 2, line 14, after "**SECTION**" replace "**3**" with "**5**"

HB 1061

Section 1

After having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways and shall yield the right of way to any other vehicle previously stopped for another stop sign at the intersection if the intersection is clear for each **stopped** driver to proceed.

After having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways and shall yield the right of way to any other vehicle previously stopped for another stop sign at the intersection if the intersection is clear for each driver to proceed.

Section 3

Glass or glazing material on the front or side windows may not be ~~broken, shattered, or distorted~~ to the extent it impairs the vision of the driver.

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JULY 8, 2021
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2021 ND 123

City of Lincoln,

Plaintiff and Appellee

v.

Gary Lee Schuler,

Defendant and Appellant

No. 20200314

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable John W. Grinsteiner, Judge.

AFFIRMED.

Opinion of the Court by Crothers, Justice, in which Chief Justice Jensen, Justices McEvers, Tufte and District Court Judge Clark joined. Justice Tufte filed a concurring opinion.

Briana L. Rummel (argued), Assistant City Attorney, and Nicholas M. Surma (on brief), City Attorney for the City of Lincoln, Bismarck, ND, for plaintiff and appellee.

James W. Martens, Bismarck, ND, for defendant and appellant.

Tatum O'Brien, Fargo, ND, for amicus curiae - North Dakota Association of Criminal Defense Lawyers.

City of Lincoln v. Schuler
No. 20200314

Crothers, Justice.

[¶1] Gary Lee Schuler appeals from a criminal judgment after he entered a conditional guilty plea for driving under suspension, arguing the district court erred in denying his motion to suppress for violation of his Fourth Amendment rights. We affirm.

I

[¶2] On October 9, 2019, a vehicle driven by Schuler was stopped by a Lincoln Police Department officer for failing to use a turn signal when Schuler exited a traffic roundabout. After stopping the vehicle, the officer’s investigation revealed Schuler’s driving privileges were suspended. Schuler was charged with driving under suspension and issued a warning for neglect of turn signal.

[¶3] Schuler filed a motion to suppress challenging the legality of the stop, arguing a turn signal is not required prior to exiting a roundabout and the officer did not have reasonable suspicion to stop him. Schuler did not make any argument regarding the requirement in N.D.C.C. § 39-10-38(2) for “continuously [signaling] during not less than the last one hundred feet [30.48 meters] traveled by the vehicle before turning.”

[¶4] The district court denied Schuler’s motion. The court did not decide whether N.D.C.C. § 39-10-38 requires the use of a turn signal before exiting a roundabout. Rather, the court explained “[e]ven if mistaken regarding the need to signal when exiting a roundabout being a traffic violation, [the officer] was justified in his stop of the vehicle as his interpretation would be objectively reasonable, given no other guidance to the contrary and the plain language of the statute.” Schuler entered a conditional guilty plea, preserving his right to appeal the denial of his motion to suppress. Judgment was entered, and Schuler appealed.

II

[¶5] Schuler argues the district court erred in denying his motion to suppress for an alleged violation of his rights under the Fourth Amendment to the United States Constitution. Schuler asserts because N.D.C.C. § 39-10-38 does not require a driver to use a turn signal when exiting a roundabout, the officer did not have reasonable suspicion to conduct a traffic stop and the resulting evidence of Schuler's driving under suspension is fruit of the poisonous tree.

[¶6] On appeal, this Court "affirm[s] a district court decision regarding a motion to suppress if there is sufficient competent evidence fairly capable of supporting the district court's findings, and the decision is not contrary to the manifest weight of the evidence." *State v. Bauer*, 2015 ND 132, ¶ 4, 863 N.W.2d 534.

[¶7] This appeal concerns interpreting whether drivers must signal before exiting a roundabout under N.D.C.C. § 39-10-38. While interpreting the same statute, this Court said:

"Interpretation of a statute is a question of law fully reviewable on appeal. Our primary goal in statutory construction is to ascertain the intent of the legislature, and we first look to the plain language of the statute and give each word of the statute its ordinary meaning. When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. If, however, the statute is ambiguous or if adherence to the strict letter of the statute would lead to an absurd or ludicrous result, a court may resort to extrinsic aids, such as legislative history, to interpret the statute. A statute is ambiguous if it is susceptible to meanings that are different, but rational. We presume the legislature did not intend an absurd or ludicrous result or unjust consequences, and we construe statutes in a practical manner, giving consideration to the context of the statutes and the purpose for which they were enacted."

State v. Fasteen, 2007 ND 162, ¶ 8, 740 N.W.2d 60 (citations omitted).

[¶8] Section 39-10-38, N.D.C.C.,¹ reads in relevant part:

“1. No person may turn a vehicle or move right or left upon a roadway 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 or move right or left when required must be given continuously during not less than the last one hundred feet [30.48 meters] traveled by the vehicle before turning.”

[¶9] We have 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.” *Fasteen*, 2007 ND 162, ¶ 10. As to subsection 2, we 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.* This Court has not applied N.D.C.C. § 39-10-38 to roundabouts.

[¶10] Schuler contends because the statute does not expressly require using a turn signal when exiting a roundabout, the officer did not have reasonable suspicion to conduct a traffic stop. Implicit in Schuler’s argument is that the stop was improper because the failure to use his turn signal was not a violation of the law. However, we have explained reasonable suspicion and criminality

¹ Section 39-10-38, N.D.C.C., was amended by the 2021 Legislature. Effective August 1, 2021, the section will read:

“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.”

2021 N.D. Sess. Laws ch. 1502, § 12.

are different inquiries and “[t]he actual commission of a crime is not required to support a finding of reasonable suspicion.” *State v. Bolme*, 2020 ND 255, ¶ 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. “Where an officer makes a reasonable mistake, whether of fact or law, such mistake may provide the reasonable suspicion justifying a traffic stop only when objectively reasonable because the ‘Fourth Amendment tolerates only *reasonable* mistakes” *Id.* (quoting *Heien v. North Carolina*, 574 U.S. 54, 66 (2014) (emphasis in original)).

[¶11] Under *Bolme* and *Heien*, it is unnecessary to decide whether Schuler’s failure to use a signal when exiting the roundabout constituted a violation of N.D.C.C. § 39-10-38. Even if mistaken, the officer could have 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. Therefore, the district court did not err in denying Schuler’s motion to suppress.

III

[¶12] The criminal judgment is affirmed.

[¶13] Jon J. Jensen, C.J.
Daniel J. Crothers
Lisa Fair McEvers
Jerod E. Tufte
Cherie L. Clark, D.J.

[¶14] The Honorable Cherie L. Clark, D.J., sitting in place of VandeWalle, J., disqualified.

Tufte, Justice, concurring.

[¶15] I join the majority opinion affirming the criminal judgment. I concur because I believe we should not leave unanswered the question of whether N.D.C.C. § 39-10-38 requires use of a turn signal when exiting a roundabout.

[¶16] The district court and the majority both conclude that the officer could have reached an objectively reasonable conclusion that exiting a roundabout requires use of a turn signal under N.D.C.C. § 39-10-38. If that is the only rational reading of the statute we should say so. By not stating its interpretation of the statute, the majority suggests that one might also reach an objectively reasonable conclusion that no turn signal is required when exiting a roundabout. That is the very definition of statutory ambiguity. *State v. Rivera*, 2018 ND 15, ¶ 4, 905 N.W.2d 739 (“a statute’s language is ambiguous [when] it is susceptible to differing but rational meanings”).

[¶17] If the officer’s interpretation is reasonable but incorrect and we fail to say it is incorrect, we leave the law in an uncertain state in which drivers may be stopped and citations issued for something that is not a violation. *State v. Bolme*, 2020 ND 255, ¶ 11, 952 N.W.2d 75 (first concluding statute was not violated and only then determining that officer had objectively reasonable belief at the time of the stop that there was a violation). We facilitate the orderly development of the law by interpreting statutes that reasonably bear multiple meanings. This provides drivers notice of what constitutes a violation, allows the Department of Transportation to improve driver education, provides guidance to traffic enforcement officers, and permits the legislature to amend the statute if our interpretation is not what the legislature intended. As noted by the majority, the legislature has amended this statute effective August 2021, but I do not believe the amendment provides much additional clarity about turn signal requirements in relation to roundabouts. We should provide that clarity here. I would conclude the officer’s objectively reasonable belief that N.D.C.C. § 39-10-38 requires use of a turn signal when exiting a roundabout is a correct reading of the statute.

[¶18] Jerod E. Tufte

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 66th Street NE and entered a roundabout at the intersection of 66th 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 66th 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 10th day of October, 2022.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "David E. Reich". The signature is written in black ink and is positioned above a horizontal line.

David E. Reich, District Judge
South Central Judicial District