

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.”

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