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Criminal Procedure - Due Process: Towards More Effective Law Enforcement - Utilization of Collective Knowledge to Sustain a Reasonable Suspicion Inquiry

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CRIMINAL PROCEDURE—DUE PROCESS: TOWARDS MORE EFFECTIVE LAW ENFORCEMENT—UTILIZATION OF COLLECTIVE KNOWLEDGE TO SUSTAIN A REASONABLE SUSPICION INQUIRY

State v. Miller, 510 N.W.2d 638 (N.D. 1994)

I. FACTS

On June 22, 1992, Officer James Chase [hereinafter Officer Chase] of the Bismarck Police Department received a radio message issued by police dispatch detailing a potential drunk driver in the drive-up lane of a Wendy's Restaurant.[1] The bulletin consisted of a description of the vehicle including color, the license plate number, and the vehicle's position in the drive-up lane.[2] Additionally, the bulletin included the statement of the informant, indicating that "[t]he driver could barely hold his head up," which created the basis for the informant's belief that the driver of the vehicle was intoxicated.[3] Acting upon the report, Officer Chase arrived at Wendy's within minutes.[4] Upon arrival, Officer Chase noticed a vehicle matching that described in the bulletin leaving Wendy's parking lot.[5] Officer Chase followed the vehicle but did not notice anything unusual or suspicious about the operation of the vehicle.[6] Subsequently, the vehicle turned back into Wendy's lot and parked.[7] Officer Chase was then able to confirm the license plate number of the vehicle as reported by the dispatcher.[8]

Officer Chase pulled in behind the vehicle and turned on his warning flashers.[9] Officer Chase then approached the vehicle and requested that the driver, Rodney Miller [hereinafter Miller], perform field sobriety tests.[10] As a result of his poor performance on the sobriety tests, Miller was arrested and charged under section 39-08-01(1)(a) and (b) of the North Dakota Century Code, which prohibits driving or being

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1. State v. Miller, 510 N.W.2d 638, 639 (N.D. 1994).
2. *Id.*
3. *Id.* Further, the informant identified himself to the dispatcher as "Jody with Wendy's." *Id.* However, the identity of the informant nor his employment with Wendy's was ever revealed to Officer Chase by the dispatcher. *Id.* Although both the informant and the police dispatcher identified the color of the pickup as red, it was in fact orange. *Id.*
4. *Id.*
5. *Id.*
6. *Miller*, 510 N.W.2d at 639.
7. *Id.* After leaving the parking lot, the pickup drove east on Capitol Avenue, then north on the frontage road in front of Wendy's at about five to seven miles per hour, then turned back into the parking lot. *Id.*
8. *Id.*
9. *Id.* When an officer makes a display of authority to bring about the stop of a moving vehicle, this constitutes a seizure. State v. Langseth, 492 N.W.2d 298, 300 (N.D. 1992).
10. *Miller*, 510 N.W.2d at 639.

in actual physical control of a motor vehicle while intoxicated.[11] Miller moved to suppress the evidence obtained as a result of the stop on the basis that Officer Chase did not have a reasonable and articulable suspicion to stop the vehicle.[12] The trial court denied the motion to suppress, stating that "the information available to Officer Chase at the time of the stop was sufficient to support a reasonable and articulable suspicion."[13] On appeal, the North Dakota Supreme Court found that Officer Chase did not have an articulable and reasonable suspicion to stop the vehicle because the knowledge of the dispatcher could not be imputed to Officer Chase.[14] According to the court, the combination of the anonymous tip and observation of innocent facts by Officer Chase was insufficient to

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11. *Id.* Section 39-08-01 of the North Dakota Century Code provides:

> 1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
> a. That person has a blood alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving.
> b. That person is under the influence of intoxicating liquor.
> c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
> d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.
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> The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

N.D. CENT. CODE § 39-08-01 (1987 & Supp. 1993). The court summarized the importance of the "actual physical control" offense in State v. Schuler, 243 N.W.2d 367 (N.D. 1976). In *Schuler*, the court reiterated that this offense was "intended to enable the drunken driver to be apprehended before he strikes." *Id.* at 370 (quoting Hughes v. State, 535 P.2d 1023, 1024 (Okla. Crim. App. 1975)). The court concluded by emphasizing that a drunken driver behind the wheel of a moving automobile posed a serious threat to the public safety and welfare. *Id.* (quoting *Hughes*, 535 P.2d at 1024).

12. *Miller*, 510 N.W.2d at 639.

13. *Id.* at 640. On review, the North Dakota Supreme Court stated that substantial deference should be given to the trial court's "superior opportunity to weigh the evidence and to judge the credibility of the witnesses." *Id. See also* State v. Guthmiller, 499 N.W.2d 590, 592 (N.D. 1993) (stating that a trial court's determination to suppress evidence will be affirmed if there is sufficient competent evidence for the decision). Additionally, conflicts in evidence should be resolved in favor of affirming a trial court's decision on a suppression motion. *Id.*

14. *Miller*, 510 N.W.2d at 645. By refusing to allow imputation of the knowledge of the dispatcher to Officer Chase, the court classified the tip as anonymous for purposes of a reasonable suspicion inquiry. *Id.* at 644.

establish the reasonable and articulable suspicion needed to stop the car.[15]

II. LEGAL BACKGROUND

The Fourth Amendment to the United States Constitution prohibits police from performing *unreasonable* searches and seizures.[16] Anytime an officer confronts an individual thereby restricting his or her ability to leave, the officer has "seized" that person within the meaning of the Fourth Amendment,[17] regardless of whether or not an actual arrest results.[18] Ideally, a police officer will attempt to obtain a judicially-

15. *Id.* at 645. Adhering to the totality-of-the-circumstances approach developed in *United States v. Cortez* and later defined in *Illinois v. Gates*, the North Dakota Supreme Court categorized tips from informants as either anonymous or face-to-face in order to determine the reliability of the tip. *Id.* at 640-42. *See* United States v. Cortez, 449 U.S. 411, 418 (1981) (stating that the totality of the circumstances—the whole picture—must be taken into account, and then, on that basis, determining whether the investigating officer had a particularized and objective basis for suspecting the accused of criminal activity); Illinois v. Gates, 462 U.S. 213, 238 (1983) (stating that under the totality of the circumstances test, the veracity, reliability and knowledge of persons supplying hearsay information are factored into the probable cause inquiry). *Accord* Geiger v. Backes, 444 N.W.2d 692, 693 (N.D. 1989) (indicating that driving a vehicle slowly, in the early morning hours, through an area where numerous thefts had occurred, justified stopping the vehicle). Factors considered in this approach are the "quantity, or content, and quality, or degree of reliability, of the information available to the officer." State v. Miller, 510 N.W.2d 638, 640 (N.D. 1994). An anonymous tip is considered less reliable than a face-to-face tip, thereby requiring a greater quantity of verifiable information to raise reasonable suspicion. *Id.* at 642. Also, corroboration of information easily obtainable by the public does not increase the reliability of an anonymous tip. *Id.* Notwithstanding, a tip with a relatively low degree of reliability can establish reasonable suspicion if the tip contains sufficient information to counteract the lack of reliability. Alabama v. White, 496 U.S. 325, 332 (1990) (stating that an anonymous tip must retain sufficient indicia of reliability to justify an investigative stop). The officer must corroborate the tip by observing some conduct or behavior on the part of the driver indicating an illegal activity or impaired condition. Wibben v. North Dakota State Highway Comm'r, 413 N.W.2d 329, 331 (N.D. 1987) (citing State v. Thompson, 369 N.W.2d 363, 367 (N.D. 1985)).

16. Terry v. Ohio, 392 U.S. 1, 9 (1968) (emphasis added). *Terry* involved a warrantless "stop and frisk" initiated by a patrol officer after observing the accused engaged in a pattern of suspicious conduct. *Id.* at 5-7. The ensuing frisk revealed Terry to be carrying a concealed weapon, for which he was charged. *Id.* at 7. Terry moved to suppress the evidence on the basis that the guns had been seized following an illegal search. *Id.* The Supreme Court stated that "a perfectly reasonable apprehension of danger may arise long before the officer is possessed of adequate information to justify taking a person into custody for the purpose of prosecuting him for a crime." *Id.* at 26-27.

17. *Id.* at 16.

18. *Id.* The Fourth Amendment applies to only those searches and seizures that are the product of government action. Burdeau v. McDowell, 256 U.S. 465, 475 (1921) (stating that constitutional guarantees from unreasonable searches and seizures only apply to government action and not private individuals).

authorized search warrant prior to the actual search and seizure.[19] Compliance with this procedure mandates that the requesting officer produce evidence sufficient to establish probable cause before the presiding judicial officer can issue a warrant.[20] Several situations can excuse the failure to comply with the warrant requirement.[21] One such "narrowly-drawn" exception was established by the United States Supreme Court in *Terry v. Ohio*.[22] In *Terry*, the United States Supreme Court created a limited exception to the general Fourth Amendment requirement that all seizures by government personnel be justified by probable cause to arrest for a crime.[23]

The *Terry* Court recognized that a police officer may, in limited circumstances, approach a person to investigate potential criminal activity even though there is no probable cause to make a formal arrest.[24] The Court distinguished an "investigative stop," such as the one in *Miller*, from an actual "arrest."[25] Specifically, the Court stated that an "investigative stop" amounted to only a "brief . . . intrusion upon the sanctity of the person,"[26] and that this brief, minimal intrusion constituted an entirely different type of intrusion upon individual

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19. *Terry*, 392 U.S. at 20. Whenever possible, the police must resort to the warrant procedure to obtain advance judicial approval prior to the search. *Id.* Affidavits in support of the search warrant should be tested in a "commonsense and realistic" fashion, and not in a "hypertechnical" manner. State v. Klosterman, 317 N.W.2d 796, 801 (N.D. 1982). *See also* Illinois v. Gates, 462 U.S. 213, 238 (1983) (stating that the "task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place").

20. *Gates*, 462 U.S. at 239.

21. *Terry*, 392 U.S. at 20. Recognized exceptions to the warrant requirement include: "investigatory detentions, warrantless arrests, searches incident to a valid arrest, seizure of items in plain view, exigent circumstances, consent searches, searches of containers, inventory searches, border searches, searches at sea, administrative searches, and searches in which the special needs of law enforcement make the probable cause requirement impracticable." *Twenty-Second Annual Review of Criminal Procedure: United States Supreme Court and Courts of Appeals 1991-1992. Part 1 of 4.*, 81 GEO. L. J. 853, 877 (1993) [hereinafter *Court Review*] (interpreting the Fourth Amendment protection against unreasonable search and seizures through examples of the exceptions to the probable cause and warrant requirements, including an analysis and development of the reasonable suspicion exception, as addressed by the Courts of Appeals and the Supreme Court from 1991-1992). *See also* Katz v. United States, 389 U.S. 347, 357 (1967) (lending support to the contention that the requirement of a judicially-approved search warrant can be excused in relatively few instances).

22. 392 U.S. 1, 30 (1968).

23. Terry v. Ohio, 392 U.S. 1, 30 (1968). *See also* United States v. Longmire, 761 F.2d 411, 417 (7th Cir. 1985) (asserting that "*Terry* creates an exception not to the warrant requirement, but to the probable cause requirement.").

24. *Terry*, 392 U.S. at 22.

25. *Id.* at 26.

26. *Id.* The Court stated that an arrest formed the initial stage of a criminal prosecution intended to "vindicate society's interest in having its laws obeyed." *Id.* at 26. Further, an arrest was inevitably followed by "future interference with the individual's freedom of movement," whether or not a conviction results. *Id.* An investigative stop does not necessarily lead to criminal prosecution. *Id.* Freedom from invasions of personal security does not equate with vindication of societal interests. *Id.* at 27.

freedom than an intrusion pursuant to an actual formal arrest.[27] Therefore, an investigative stop could be properly imposed because of the greater interests in crime prevention and detection on the basis of a police officer's suspicion.[28]

Since stopping an individual to investigate does not equate to a formal arrest, the evidence required to make an investigative stop within the Fourth Amendment is less than that needed to establish probable cause for an arrest.[29] To constitute a valid investigatory stop, the stop need only be reasonable in scope and conducted for a legitimate investigatory purpose.[30] Consequently, a police officer may stop a person and detain him for questioning provided that the officer has a reasonable and articulable suspicion that the person has committed or is about to commit a crime.[31] However, the officer must be able to articulate specific

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27. *Id.* at 26. *Terry* defined "a special category of Fourth Amendment 'seizures' so substantially less intrusive than arrests that the general rule requiring probable cause to make Fourth Amendment 'seizures' reasonable could be replaced by a balancing test." United States v. Hensley, 469 U.S. 221, 236 (1985) (Brennan, J., concurring) (quoting Dunaway v. New York, 442 U.S. 200, 210 (1979)).

28. *Terry*, 392 U.S. at 22.

29. *Id.* at 26. *See also id.* at 11 n.5 (quoting from People v. Rivera, 201 N.E.2d 32 (N.Y. 1964), *cert. denied*, 379 U.S. 978 (1965)); *Court Review*, *supra* note 21, at 862 n.47 (listing examples of cases in which reasonable suspicion investigations were upheld because of this lower requirement); Borman v. Tschida, 171 N.W.2d 757, 761 (N.D. 1969) (quoting with approval from State v. Carpenter, 150 N.W.2d 129, 133 (Neb. 1967)).

30. *Terry*, 392 U.S. at 20. Indeed, the Minnesota Supreme Court has found that the factual basis necessary to sustain a "routine traffic check" is minimal. Marben v. State, Dep't of Pub. Safety, 294 N.W.2d 697, 699 (Minn. 1980) (finding that a report of a drunk driver tailgating for 60 miles by a trucker passing a patrol officer on a highway constituted specific and articulable facts sufficient to support an investigatory stop). Further, upon review of reasonable suspicion investigative stops, this same court was of the opinion that an actual violation of the motor vehicle and traffic safety laws need not even occur to initiate a stop. *Id.*

31. *Terry*, 392 U.S. at 21. *See also* Neset v. North Dakota State Highway Comm'r, 388 N.W.2d 860, 862 (N.D. 1986) (stating that an investigating officer's observation of a vehicle weaving within its own lane justified a stop of the vehicle); State v. Placek, 386 N.W.2d 36, 37 (N.D. 1986) (providing that "[a]n officer must have an articulable and reasonable suspicion that a motorist is violating the law in order to make a legal investigative stop" (citations omitted)). To conduct a warrantless arrest or to obtain an arrest warrant, the police must establish probable cause. Beck v. Ohio, 379 U.S. 89, 91 (1964). Probable cause "exists when police have knowledge of information of facts and circumstances sufficient in themselves to warrant a belief by a person of reasonable caution that an offense has been or is being committed by the person to be arrested." *Court Review*, *supra* note 21, at 859 (citing Beck v. Ohio, 379 U.S. 89, 91 (1964)). Probable cause may be based on hearsay from a reliable source, information from an anonymous informant, personal observations of the officer, or the special training, experience, and expertise of the officer. *Id.* at 860-61.

facts which, taken together with any rational inferences from those facts, could reasonably warrant the interference.[32]

The limited holding of *Terry* was subsequently expanded by the United States Supreme Court in *Adams v. Williams*.[33] The *Adams* Court stated that the factual basis necessary to establish reasonable suspicion to make a stop may arise from information furnished by another person and need not rest solely on the officer's personal observations.[34] However, the Court stated that if an officer relies on information from an identifiable informant, the informant's tip must display sufficient "indicia of reliability" to justify the stop.[35] In *Adams*, the Court stressed that since the informant came forward personally and provided information which was immediately verifiable at the scene, the information was more reliable than that provided by an anonymous telephone tip.[36] Thus, the *Adams* Court concluded that this immediately verifiable

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32. *Terry*, 392 U.S. at 21. In *Terry*, the United States Supreme Court determined that there is no readily available test to determine the reasonableness of an investigatory stop other than to balance the need to search against the invasion which accompanies it. *Id.* (citing Camara v. Municipal Court, 387 U.S. 523, 534-35, 536-37 (1967)). An investigatory stop is reasonable when the facts and circumstances within the officer's knowledge, combined with those to which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution to believe that a crime was being committed. *Id.* at 22. While the veracity and reliability of information supplied by an informant varies, it is nonetheless included in this determination. Adams v. Williams, 407 U.S. 143, 147 (1972). Consequently, the personal knowledge of the investigating officer, as well as information provided by an informant, are necessary considerations in any reasonable suspicion inquiry. *Id.*

33. 407 U.S. 143 (1972). In *Adams*, the officer, acting on a tip from a known informant, approached a parked car and asked the driver [hereinafter respondent] to open the car door. Adams v. Williams, 407 U.S. 143, 145 (1972). When the respondent lowered the window, the officer reached into the car through the open window and seized a handgun located in the respondent's waistband, exactly where the informant had said it would be. *Id.* Respondent was arrested for unlawful possession of a handgun. *Id.* A search incident to the arrest revealed that the respondent was also in possession of heroin, also as the informant had reported. *Id.* The Second Circuit found that the evidence used in the trial had been obtained as a result of an unlawful search. *Id.* at 144. *See also* Orrin S. Shifrin, *Supreme Court Review: Fourth Amendment—Protection Against Unreasonable Search and Seizure: The Inadequacies of Using an Anonymous Tip to Provide Reasonable Suspicion for an Investigatory Stop: Alabama v. White, 110 S. Ct. 2412 (1990)*, 81 J. CRIM. L. & CRIMINOLOGY 760, 760 (1991) (analyzing the utilization of information provided by an anonymous tip to establish that reasonable suspicion is inadequate to protect the Fourth Amendment right against unreasonable searches and seizures).

34. Adams v. Williams, 407 U.S. 143, 147 (1972). In *Adams*, the Court stated:

> In reaching this conclusion, we reject respondent's argument that reasonable cause for a stop and frisk can only be based on the officer's personal observation, rather than on information supplied by another person. Informants' tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability. One simple rule will not cover every situation.

Id. See, e.g., Wibben v. North Dakota State Highway Comm'r, 413 N.W.2d 329, 331 (N.D. 1987) (stating that the factual basis needed for the stop need not be based on the officer's personal observations alone, but could be formed from information furnished by other persons).

35. *Adams*, 407 U.S. at 147.

36. *Id.* at 146.

information, coupled with the known identity of the informant, was sufficient to establish reasonable suspicion.[37]

Generally, the quality of the information supplied by an identified informant is enough so that the quantity of the information contained in the tip alone is sufficient to raise a reasonable suspicion.[38] Regardless of the identity of the informant, however, anonymous informants can supply sufficiently reliable information to establish reasonable suspicion to make an investigatory stop.[39] Although generally considered less reliable than tips from identified informants, the reliability of a tip from an unidentified informant can also be established by verification of the information by the investigating officer.[40] If an investigating officer is able to verify the information contained in the tip from the unidentified informant, the reliability of the tip increases. Thus, proper verification of information contained in the tip by the investigating officer will provide sufficient indicia of reliability to establish reasonable suspicion.[41]

Information from an informant need not always be given directly to the investigating officer to be considered sufficiently reliable. Generally, police dispatchers receive this information and, in turn, relay this information to patrol officers to investigate these reports of criminal activity. While the information contained in the dispatch message may be readily verifiable, the investigating officer himself need not be aware of the specific facts which prompted the bulletin.[42] The strength of the bulletin itself is often sufficient to establish reasonable suspicion.[43]

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37. *Id.* at 146-47.

38. *See* Alabama v. White, 496 U.S. 325, 330 (1990) (stating that "if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable.").

39. Wibben v. North Dakota State Highway Comm'r, 413 N.W.2d 329, 332 (N.D. 1987).

40. *See id.* (finding that upon the corroboration of other details contained in the anonymous tip, the investigating officer then had sufficient information for a reasonable suspicion); State v. Thoradson, 440 N.W.2d 510, 512 (N.D. 1989) (finding that the information provided by an anonymous informant was sufficient to establish reasonable suspicion when verified by the investigating officer).

41. *Adams*, 407 U.S. at 147. The *Adams* Court stated that the tip provided sufficient indicia of reliability because the informant was known to the police officer, had provided him information in the past, the information was immediately verifiable at the scene, and the informant himself would have been subject to arrest for making a false complaint under state law had the information proven incorrect. *Id.* at 146-47.

42. *See* Whiteley v. Warden, Wyoming State Penitentiary, 401 U.S. 560, 568 (1971) (stating that arresting officers are entitled to rely upon requesting officers information).

43. *See* State v. Nelson, 488 N.W.2d 600, 602 (N.D. 1992) (stating that other persons or officers may supply information to establish reasonable suspicion).

Accordingly, in *Whiteley v. Warden, Wyoming State Penitentiary*,[44] the United States Supreme Court stated that the collective knowledge of *all* law enforcement personnel, including that known by or transmitted to the stopping officer, must be taken into consideration.[45] The *Whiteley* Court confirmed that an officer may rely on a police radio bulletin to effectuate an arrest absent personal knowledge of information sufficient to establish probable cause.[46] However, the arrest's legality and the admissibility of any evidence discovered incident to that arrest depends on whether the officer who *issued* the bulletin possessed probable cause to make the initial arrest.[47]

The *Whiteley* collective knowledge proposition was subsequently expanded by the United States Supreme Court in *United States v. Hensley*.[48] In *Hensley*, the Court extended this premise from a primarily "probable cause" setting into the context of a "reasonable and articulable suspicion" analysis, undertaken as the result of an investigatory stop.[49] The *Hensley* Court found no distinction between a report that probable cause had been established and a bulletin which was issued

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44. 401 U.S. 560 (1971). In *Whiteley*, a patrol officer initiated a warrantless arrest of two suspected robbers in reliance on a radio transmission from another county. *Id.* at 563. The bulletin described the two persons, the type of car they were driving, and the amount of money they had taken in the robbery. *Id.* At the time of the arrest, the patrol officer himself had no warrant nor any basis for a warrant to be issued. *Id.*

45. Whiteley v. Warden, Wyoming State Penitentiary, 401 U.S. 560, 568 (1971) (emphasis added). *See* State v. Nelson, 488 N.W.2d 600, 602 (N.D. 1992) (citing State v. Rodriguez, 454 N.W.2d 726, 729 (N.D. 1990)). *See also* State v. Mische, 448 N.W.2d 412, 414 (N.D. 1989) (stating that under the collective knowledge rule, the arresting officer was entitled to rely on information transmitted to him by the police dispatcher).

46. *Whiteley*, 401 U.S. at 568. In support of this proposition, the Court stated that "[w]e do not, of course, question that the Laramie police were entitled to act on the strength of the radio bulletin." *Id.* Continuing, the Court stated that "police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause." *Id.*

47. *Id.* at 568-69. United States v. Longmire, 761 F.2d 411, 416 (7th Cir. 1985) (citing United States v. Hensley, 469 U.S. 221, 232 (1985) (emphasis added)).

48. 469 U.S. 221, 232 (1985). In *Hensley*, a police officer, on the basis of an informant's tip stating that Hensley [hereinafter respondent] had driven the getaway car in an armed robbery, issued a wanted flyer for Hensley. United States v. Hensley, 469 U.S. 221, 223 (1985). The flyer stated that the respondent was wanted for investigation of the robbery, gave a description of the respondent, the date of the robbery, and the location of the robbery. *Id.* Subsequently, officers, acting on the basis of the flyer, stopped an automobile that the respondent was seen driving. *Id.* at 224. The officers arrested the passenger, a convicted felon, for being in possession of a handgun after spotting a revolver protruding from underneath the passenger's seat. *Id.* at 224-25. After a search of the car revealed other handguns, Respondent was also arrested and charged for being a convicted felon in possession of a firearm. *Id.* at 225. Respondent moved to suppress the evidence on the grounds that he was stopped without reasonable suspicion, violating the Fourth Amendment. *Id.* In a similar case, an investigative stop was challenged on the premise of lack of reasonable suspicion to justify the stop. United States v. Longmire, 761 F.2d 411, 416 (7th Cir. 1985). Relying on *Hensley*, the *Longmire* Court found that "*Whiteley*'s reasoning logically extends to the situation in which an officer effects a *Terry* stop on the basis of a flyer indicating that another police department has a reasonable suspicion that an individual was involved in a crime." *Id.* at 416.

49. United States v. Hensley, 469 U.S. 221 (1985).

based on reasonable suspicion.[50] Hence, an investigating officer was entitled to rely on a bulletin to establish reasonable suspicion.[51]

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50. *Id.* at 232. Prior to the *Hensley* decision, the rationale developed in *Whiteley* was applied to *Terry* stops in United States v. Robinson, 536 F.2d 1298 (9th Cir. 1976). In *Robinson*, the court concluded that the officer relying on the bulletin was not required to possess personal knowledge of the evidence creating a reasonable and articulable suspicion so long as the issuing officer could establish a reasonable suspicion sufficient to justify the stop. *Id.* at 1300. The court reasoned that officers acting on a radio bulletin could not be expected to cross-examine their fellow officers regarding the evidentiary basis for the bulletin. *Id.* at 1299. The court further stated that effective law enforcement was an impossibility unless police officers were entitled to act upon directives and information communicated amongst them. *Id.* at 1300 n.1. *See also* State v. Rodriguez, 454 N.W.2d 726, 729 (N.D. 1990). Thus, even before the United States Supreme Court's ruling in *Hensley*, the "legality of a stop pursuant to a bulletin or flyer turned on whether the issuing officer had the requisite factual basis for the action." *Longmire*, 761 F.2d at 416. This reliance on knowledge of other officers from *Robinson* was directly incorporated by the Court in *Hensley*. *Hensley*, 469 U.S. at 231. For a summation of the remaining circuits which have applied the collective knowledge reasoning developed in *Whiteley* and *Hensley*, see *Court Review*, *supra* note 21, at 879 n.112.

51. *Hensley*, 469 U.S. at 232. For courts that have applied the *Hensley* holding to radio dispatches, see: United States v. Cutchin, 956 F.2d 1216, 1217-18 (D.C. Cir. 1992) (holding that 911 calls were admissible to show whether the dispatcher had a factual basis for alerting officers to the defendant's car); United States v. Roach, 958 F.2d 679, 683 (6th Cir. 1992) (stating that an officer's stop at an individual who was carrying a sawed-off shotgun was valid); United States v. Thompson, 906 F.2d 1292, 1296 n.7 (8th Cir. 1990), *cert. denied*, 498 U.S. 838 (1990) (stating that an officer was entitled to rely on information in a bulletin if the informant had reasonable suspicion to believe a crime would be or had been committed); United States v. Longmire, 761 F.2d 411, 415-16 (7th Cir. 1985) (stating that officers may rely on a bulletin without personal knowledge so long as the reliance is based on reasonable suspicion); United States v. Mobley, 699 F.2d 172, 176 (4th Cir. 1983), *cert. denied*, 461 U.S. 909 (1983) (holding that officers could search a car for other suspects when the bulletin stated there were four suspects when only two were visible and two were hiding); United States v. Robinson, 536 F.2d 1298, 1300 (9th Cir. 1976) (holding that reliance on a bulletin will not validate a stop if the dispatcher did not have founded suspicion); Village of Gurnee v. Gross, 528 N.E.2d 411, 413 (Ill. App. Ct. 1988) (determining that an officer's observation of a defendant's car which matched a complaint coupled with defendant's refusal to pull over was sufficient to allow an investigatory stop); State v. Bailey, 452 N.W.2d 181, 183 (Iowa 1990) (stating that an officer may rely on information from another officer to make a stop only when the communication is based on reasonable suspicion); Commonwealth v. Fraser, 573 N.E.2d 979, 982 (Mass. 1991) (holding that a radio bulletin was not enough to permit a pat down, but when other factors such as the area defendant was in and the defendant's actions, there was enough information to allow a pat down); Olson v. Commissioner of Public Safety, 371 N.W.2d 552, 555-56 (Minn. 1985) (holding that an anonymous tip warning of a possible drunk driver lacks any indicia of reliability and may not be used to justify a stop); State v. Holmes, 501 N.E.2d 629, 634-35 (Ohio Ct. App. 1985) (determining that evidence was admissible when obtained in a search after officers relied on a radio transmission from a fellow officer who had personal knowledge of probable cause); State v. Black, 721 P.2d 842, 846 (Or. Ct. App. 1986) (stating that an anonymous tip lacks any indicia of reliability when it is not clear how the caller received her information and the officer's observations did not corroborate the tip); State v. Moore, 775 S.W.2d 372, 377-78 (Tenn. Crim. App. 1989) (holding that all surrounding circumstances must be reviewed to determine probable cause, and when considered here, probable cause to search the vehicle existed after learning of a burglary); State v. Bruce, 779 P.2d 646, 650-51 (Utah 1989) (finding that information from police officers which was issued by an all-channel police broadcast contained enough "articulable facts" to support a "reasonable suspicion" that the defendant had robbed a store); State v. McCord, 576 P.2d 892, 896 (Wash. Ct. App. 1978) (holding that there must be some factual basis for the communication between officers in order for the second to rely on the information and the search to be legal); State v. Aden, 241 N.W.2d 669, 671 (1976) (reiterating that "[i]t is not only the personal knowledge of the officer who makes the search and seizure which may be used to test probable cause, but added thereto may be the collective knowledge of the law enforcement agency for which the officer acts."). For cases allowing utilization of the "collective knowledge of all the officers" rationale where there is no directive or request, *See* United States v. Cruz, 834 F.2d 47, 51 (2d Cir. 1987) (stating that probable cause may be based on the collective knowledge of all the

The *Hensley* Court recognized that law enforcement interests promoted by allowing one agency to rely on another agency's bulletins considerably outweighed the minimal intrusion on personal security.[52] When a bulletin is issued on the basis of reasonable and articulable facts indicating possible criminal activity, the Court stated that "reliance on that flyer or bulletin justifies a stop to check identification, to pose questions to the person, or to detain the person briefly while attempting to obtain further information."[53]

The *Hensley* Court continued, stating that in situations where the investigating officer makes an investigatory stop in reliance on the bulletin, the correct inquiry is whether the officer *issuing* the bulletin can establish reasonable suspicion, not whether the arresting officer alone can.[54] In these cases, the investigating officer is entitled to rely upon the information in possession of the police dispatcher, as well as his or her own, to establish reasonable suspicion.[55]

officers involved because they were all in communication with each other) and Pyles v. State, 755 S.W.2d 98, 109 (Tex. Crim. App. 1988) (stating that "it is the combination of the knowledge of the arresting officer and other cooperating officers, the observation of the arresting officer, and the factors that indicate the commission of a crime and an attempt to escape therefrom which constitute a reasonable conclusion that there is probable cause to make an arrest without a warrant.").

52. *Hensley*, 469 U.S. at 232.

53. *Id.* (citations omitted). Indeed, the Court in *Adams v. Williams* stated that "[a] brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at that time." Adams v. Williams, 407 U.S. 143, 146 (1972).

54. *Hensley*, 469 U.S. at 231 (emphasis added). The *Hensley* Court stated that "[a]ssuming the police make a *Terry* stop in objective reliance on a flyer or bulletin, we [the Court] hold that the evidence uncovered in the course of the stop is admissible if the police who *issued* the flyer or bulletin possessed a reasonable suspicion justifying a stop." *Id.* at 233. *See also Longmire*, 761 F.2d at 416.

55. *Hensley*, 469 U.S. at 232.

Some state courts have incorporated the federal court's collective knowledge methodology into their own reasonable suspicion inquiries.[56] For example, Colorado state courts utilize the "collective knowledge" proposition to form the basis for their "fellow officer" test.[57] Under this test, an arresting officer who does not have in his possession information sufficient to establish probable cause may still effectuate an arrest if the officer can demonstrate that he was acting upon the direction of, or as a result of communications from, a fellow officer, and that the police department, taken *as a whole*, was in possession of information sufficient to constitute probable cause.[58]

Unlike the United States Supreme Court, which has explicitly stated that the information retained by the dispatching officer be considered in establishing reasonable suspicion,[59] the North Dakota Supreme Court has not consistently applied the collective knowledge test in its review of reasonable suspicion stops.[60]

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56. *See* People v. Nanes, 483 P.2d 958, 962 (Colo. 1971). For other state courts which have employed the collective knowledge reasoning see: State v. Eling, 355 N.W.2d 286, 290 (Minn. 1984) (stating that under the "collective knowledge" approach, the test is whether the pooled knowledge of the entire police department is sufficient to establish probable cause); State v. Franklin, 841 S.W.2d 639, 642 n.1 (Mo. 1992) (stating that the investigating officer was entitled to rely on the information transmitted over the all-points bulletin as long as the originator of the radio bulletin had reasonable suspicion to believe a crime would be or had been committed) (citing United States v. Thompson, 906 F.2d 1292, 1296 n.7 (8th Cir. 1990), *cert. denied*, 498 U.S. 838 (1990)); Village of Gurnee v. Gross, 528 N.E.2d 411, 413 (Ill. App. Ct. 1988) (holding that a police officer may rely on information received through police communication channels, including radio messages, to justify an investigatory stop; the collective knowledge of the law enforcement agency requesting or directing such action must be viewed to determine whether sufficient facts existed warranting a stop); State v. Black, 721 P.2d 842, 846 (Or. Ct. App. 1986) (stating that the appropriate inquiry is whether the information possessed collectively by the trooper and the dispatcher gave rise to a reasonable suspicion that the defendant had committed a crime); State v. Wille, 518 N.W.2d 325, 329 (Wis. 1994) (finding that "[a]n officer's belief may be partially predicated on hearsay information, and the officer may rely on the collective knowledge of the officer's entire department) (citing State v. Cheers, 306 N.W.2d 676, 684-86 (Wisc. 1981)); People v. Conway, 222 Cal. App. 3d 806, 810 (Cal. Ct. App. 1990) (holding that "[a]n officer may reasonably rely on information received through official channels); In re M.E.B., 638 A.2d 1123, 1131 (D.C. 1993) (finding that "*Hensley* holds that the validity of a *Terry* stop in the field, which is based on a broadcast, lookout, flyer, or bulletin, and which is effected by an officer who knows nothing about the underlying facts that prompted the communication, depends upon the adequacy of the information available to the entity responsible for the communication").

57. People v. Nanes, 483 P.2d 958, 962 (Colo. 1971). In *Nanes*, a police officer was informed by a motorist who had heard a radio broadcast that a robbery had just taken place. *Id.* at 960. The officer confirmed the report with police dispatch and stopped the vehicle allegedly used in the robbery and arrested the occupants without first obtaining a warrant. *Id.* The defendants moved to suppress the evidence obtained as a result of the stop. *Id.* The Colorado Supreme Court stated that the officer had a lawful right to stop the vehicle and make a threshold investigation on the basis of the information given by the citizen informant. *Id.* at 961.

58. *Id.* at 962.

59. *See* United States v. Hensley, 469 U.S. 221, 231 (1984) (citing to United States v. Robinson, 536 F.2d 1298, 1300 (9th Cir. 1976), for the proposition that the officer who issues the bulletin must have a reasonable suspicion to justify a stop).

60. *See* State v. Miller, 510 N.W.2d 638, 643 (N.D. 1994) (refusing to impute information held by dispatcher to investigating officer for purposes of reasonable suspicion analysis); State v. Neis, 469 N.W.2d 568, 569 (N.D. 1991) (stating that information contained in the anonymous tip combined with

Attempts by the North Dakota Supreme Court to delineate the extent of usable sources of information has varied thereby causing uncertainty in reasonable suspicion analysis. In cases involving investigatory stops initiated as the result of an informant's tip, the court has generally analyzed the stop in one of two ways, depending on whether the identity of the informant is known or remains anonymous.[61] According to the court, when the informant is unknown to the police, the informant's reliability and trustworthiness are diminished.[62] As a result, the court requires corroboration of the information from the tip, as well as officer verification of "something more" to indicate criminal activity.[63] Therefore, the court has stated that an anonymous tip, together with the officer's own observations of suspicious conduct, is sufficient to establish reasonable suspicion.[64]

However, problems arise when the identity of the informant, although known by the dispatcher, is not transmitted or made known to the investigating officer. In previous reasonable suspicion inquiries where the identity of the informant was not known by the investigating officer, the North Dakota Supreme Court has employed a multitude of different methods to establish the reliability of the information contained in the tip.[65]

For example, the court has previously relied on the collective knowledge premise held by officers other than the investigating officer to

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officers observations amounted to reasonable suspicion); State v. Bryl, 477 N.W.2d 814, 817 (N.D. 1991) (stating that although the investigating officer did not know the identity of the informant, the informant was "identified" and the tip displayed indicia of reliability); State v. Hornaday, 477 N.W.2d 245, 246 (N.D. 1991) (determining that information received from another officer via police radio in combination with the arresting officer's observations amounted to reasonable suspicion).

61. *Miller*, 510 N.W.2d at 640-41.

62. Wibben v. North Dakota State Highway Comm'r, 413 N.W.2d 329, 332-33 (N.D. 1987) (concluding that information supplied by unidentified informant coupled with officer corroboration was sufficient to establish reasonable suspicion).

63. State v. Guthmiller, 499 N.W.2d 590, 592 (N.D. 1993) (stating that motorist's hesitation at stop sign combined with anonymous tip was sufficient to establish reasonable suspicion).

64. State v. Lange, 255 N.W.2d 59, 63 (N.D. 1977) (indicating that the investigating officer was justified in making stop based on anonymous tip transmitted by fellow officer combined with his or her own observations).

65. *See* Bryl v. Backes, 477 N.W.2d 809, 812 (N.D. 1991) (accepting the investigating officer's assumption as to the identity of the informant as sufficient to classify the informant as known); State v. Neis, 469 N.W.2d 568, 569 (N.D. 1991) (using a police dispatcher's retention of the informant's identity to establish the reliability of the information provided by the informant); *accord* State v. Bryl, 477 N.W.2d 814, 817 (N.D. 1991) (allowing the quick response time by the investigating officer to establish the reliability of the informant); State v. Hornaday, 477 N.W.2d 245, 246 (N.D. 1991) (allowing an investigating officer to rely on information supplied by another officer to establish reasonable suspicion); State v. Lange, 255 N.W.2d 59, 63 (N.D. 1977) (allowing investigating officer to rely on information provided by fellow officer combined with independent observations to establish reasonable suspicion).

satisfy reasonable suspicion.[66] In *State v. Mische*,[67] the court explicitly recognized the existence of the collective knowledge rule, which allows an arresting officer to rely on information transmitted to that officer by a dispatcher to establish reasonable suspicion to uphold an investigatory stop.[68]

Further, in its review of two subsequent reasonable suspicion stops, the court specifically allowed the identity of the informant, retained by the dispatcher but not relayed to the investigating officer, to be used to establish the reliability of the information contained in the tip.[69] More recently, in *State v. Nelson*,[70] the court employed the collective knowledge premise advanced by the United States Supreme Court in reversing a motion to suppress evidence obtained as the result of a reasonable suspicion stop.[71]

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66. State v. Nelson, 488 N.W.2d 600, 603-04 (N.D. 1992) (utilizing collective knowledge premise advanced by United States Supreme Court in a reasonable suspicion analysis); *accord* State v. Rodriquez, 454 N.W.2d 726, 729 (N.D. 1990) (endorsing reasoning of the United States Supreme Court advanced in *Hensley* to uphold reasonable suspicion stop). State v. Mische, 448 N.W.2d 412, 414 (N.D. 1989) (recognizing explicitly the existence of a "collective knowledge" rule which allows an arresting officer to rely on information transmitted to him by a dispatcher).

67. 448 N.W.2d 412 (N.D. 1989).

68. State v. Mische, 448 N.W.2d 412, 414 (N.D. 1989).

69. State v. Neis, 469 N.W.2d 568 (N.D. 1991). In *Neis*, the court ruled that a tip from an informant who identified herself to the dispatcher, and had described the vehicle and the apparent criminal activity displayed adequate indicia of reliability to justify the stop. *Id.* at 569. This finding was made despite the fact that the dispatcher's report did not list the name of the informant, nor was the informant's identity relayed to the investigating officer; yet the court still found the information sufficiently reliable to uphold the stop upon officer corroboration. *Id.* In Bryl v. Backes, 477 N.W.2d 809 (N.D. 1991), the court found that the information given to the police dispatcher by the informant was sufficiently reliable. *Id.* at 813. The *Backes* court allowed the investigating officer to assume the identity of the informant even though he was never actually informed of her identity. *Id.* at 812. The informant in *Backes* provided less vehicle-specific information than the informant in *Miller*, yet the court found this information sufficient. *Compare* State v. Miller, 510 N.W.2d 638, 639 (N.D. 1994) (describing the vehicle as a red pickup and relaying the license number) *with Backes*, 477 N.W.2d at 812 (describing the vehicle as a pickup in the parking lot). The finding of the court was attributed to the quick reaction time to the bulletin by the investigating officer. *Id.* The court noted that:

> [I]n this case, the inquiry into whether or not there was any basis for identifying possible criminal activity, in a sense, parallels the inquiry into whether or not Officer Fix's suspicions were *sufficiently particularized*. Giving the short lapse of time between the tip and Officer Fix's arrival at the store, and the fact that there were only two vehicles in the parking lot, one of which Officer Fix recognized as belonging to the store attendant, the reasonable suspicions aroused were particularized to the one vehicle.

Id. at 812 n.3 (emphasis added).

70. 488 N.W.2d 600 (N.D. 1992).

71. State v. Nelson, 488 N.W.2d 600, 603-04 (N.D. 1992). In *Nelson*, the stop at issue came as the result of information being relayed by one officer to another. *Id.* at 601. Justice Meschke, writing for the majority, cited *Whiteley* and *Hensley* extensively in upholding the stop by allowing the investigating officer to rely on the information transmitted to him by the other officer. *Id.* at 603-04.

III. ANALYSIS

In decisions prior to *Miller*, the North Dakota Supreme Court has stated that an investigating officer need not have an absolute suspicion that a law has been violated prior to initiating a stop.[72] Requiring an absolute suspicion would defeat the purpose of the "reasonable and articulable suspicion" standard.[73]

However, in *Miller*, the court explained that, in the absence of suspicious behavior indicating possible criminal activity, the basis for the stop must rest on the reliability of the information contained in the tip itself.[74] To determine the reliability of the tip in *Miller*, the court differentiated between tips by face-to-face informants and those by anonymous informants.[75] In the instant case, the informant could only be considered known if knowledge of the informant's identity could be imputed to the investigating officer.[76] The court was unable to find support allowing the imputation of this information, and, as a result, the reliability of the tip was diminished.[77] Therefore, in the absence of some indication of criminal activity, the information possessed by Officer Chase was insufficient to establish reasonable suspicion, according to the court.[78]

In *Miller*, the court stated that when evaluating the factual basis for a stop, the totality of the circumstances must be taken into account when the sufficiency of cause surrounding the stop is appraised.[79] This

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72. *See, e.g.*, State v. Rodriguez, 454 N.W.2d 726, 729 n.2 (N.D. 1990) (finding that to require an investigating officer to confirm an outstanding warrant would be to require "law enforcement officers to have an 'absolute' suspicion that a person had violated the law, as opposed to a 'reasonable and articulable' suspicion"); Olson v. Commissioner of Pub. Safety, 371 N.W.2d 552, 556 (Minn. 1985) (finding that not much is required to initiate a traffic stop for a suspected traffic offense then in progress; "[a]ll that is required is that the stop not be the product of mere whim, caprice, or idle curiosity" (citations omitted)). In another recent case, the North Dakota Supreme Court stated:

> [law enforcement officers are not] required to point to a single factor which, standing alone, signals a *potential* violation of the law. Rather, officers are to assess the situation as it unfolds and, based on inferences and deductions drawn from their experience and training, make the determination whether *all* of the circumstances viewed together create a reasonable suspicion of potential criminal activity.

Geiger v. Backes, 444 N.W.2d 692, 693 (N.D. 1989) (emphasis added).

73. *Cf. Rodriguez*, 454 N.W.2d at 729 n.1 & n.2 (distinguishing between reasonable suspicion and probable cause stops).

74. State v. Miller, 510 N.W.2d 638, 640 (N.D. 1994).

75. *Id.* at 640-41.

76. *Id.* at 642.

77. *Id.* at 644-45.

78. *Id.* at 645.

79. *Miller*, 510 N.W.2d at 640. *See* Geiger v. Backes, 444 N.W.2d 692, 693 (N.D. 1989) (stating that when making a determination of whether there was a reasonable suspicion of criminal activity, courts must consider all circumstances viewed together). *See also* State v. Neis, 469 N.W.2d 568, 571 (N.D. 1991) (stating that under the totality of the circumstances, the trial court could find that the investigating officer had a reasonable and articulable suspicion to stop the vehicle). *Accord* United States v. Cortez, 449 U.S. 411, 417 (1981). In discarding the rigid *Aguilar-Spinelli* reasonable

objective standard purports to weigh the Fourth Amendment rights of the accused against the state's interest in investigating the tip in light of all circumstances surrounding the stop.[80] As part of this evaluation, the "quantity, or content, and quality, or degree of reliability, of the information available to the officer" is taken into consideration.[81] Then, based upon the entire picture, the investigating officer must have a particularized and objective basis for suspecting the individual of criminal activity.[82]

An objective reading of the flyer or bulletin dictates whether other police officers can justifiably rely on them in making an investigative

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suspicion analysis, the United States Supreme Court stated:

> Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like "articulable reasons" and "founded suspicion" are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances—the whole picture—must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.
>
> The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all of the circumstances. The analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person.
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> The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain commonsense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.
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> The second element contained in the idea that an assessment of the whole picture must yield a particularized suspicion is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing.

Id. at 417-18 (citations omitted). *See also* Illinois v. Gates, 462 U.S. 213, 233 (1983) (abandoning the "two-pronged test" developed in *Aguilar* and *Spinelli* in favor of the "totality of the circumstances" method of analysis).

80. State v. Bryl, 477 N.W.2d 814, 816-17 (N.D. 1991) (citing Wibben v. North Dakota State Highway Comm'r, 413 N.W.2d 329, 332 (N.D. 1987)).

81. *Miller*, 510 N.W.2d at 640. When an informant is shown to be correct about certain aspects of the tip, he is probably correct about other allegations, including the claim of criminal activity. *Gates*, 462 U.S. at 244 (citing Spinelli v. United States, 393 U.S. 410, 427 (1969)).

82. *Miller*, 510 N.W.2d at 640. *Accord* Delaware v. Prouse, 440 U.S. 648, 661, 663 (1979) (holding that articulable and reasonable suspicion of an offense must exist for an officer to stop a motorist); Adams v. Williams, 407 U.S. 143, 146 (1972) (stating that an informant known to the arresting officer makes the information more reliable). Case law in this area regarding the propriety of an investigative stop largely defers to the judgment of the law enforcement officer. Timothy L. Moll, Note, *Drunk Drivers Beware! Nebraska Adopts Administrative License Revocation*, 72 NEB. L. REV. 296, 312 (1993). Indeed, one court was of the opinion that "the legality of a stop must be judged by the objective facts known to the seizing officers rather than by the justifications articulated by them." *Court Review, supra* note 21, at 887, n.109 (quoting United States v. Hawkins, 811 F.2d 210, 213 (3rd Cir. 1987), *cert. denied*, 484 U.S. 833 (1987) (determining that an officer's observations of the suspect entering and leaving a house suspected to be a distribution center several times late at night established reasonable suspicion)).

stop.[83] The governmental interest which allegedly justifies the officer's intrusion is the key focal point in making this determination.[84] Further, this objective assessment takes into account all observations and circumstances available to the investigating officer, including information contained in police reports.[85] Finally, from this assessment, the trained officer is entitled to draw inferences and deductions which may elude the normal citizen,[86] which are then taken into account and used to establish the basis for reasonable suspicion.[87]

Applying this objective analysis, the court opined that since the identity of the informant was unknown to Officer Chase, the information was insufficient by itself to establish reasonable suspicion.[88] The court distinguished *Miller* from *Whiteley* and *Hensley* by emphasizing that Officer Chase was not relying on the knowledge of a directing officer, but rather on the knowledge of a fellow officer.[89] According to the court, while knowledge of a *directing officer*[90] could be imputed to an investigating officer via a directive, knowledge of another officer could not.[91] The court explained that had a directing officer issued the bulletin, Officer Chase would have been entitled to assume that the officer issuing the directive had, or could establish, a reasonable and articulable suspicion.[92] The court stated that in the absence of such a directive,

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83. *Miller*, 510 N.W.2d at 646 (Meschke, J., dissenting) (quoting from United States v. Hensley, 469 U.S. 221, 232-33 (1985)).

84. Terry v. Ohio, 392 U.S. 1, 21 (1968).

85. United States v. Cortez, 449 U.S. 411, 418 (1981).

86. *Id.* It is worth noting that Officer Chase had received advanced training in DUI detection and apprehension prior to this stop. Hearing on Motion to Suppress at 5, State v. Miller, 510 N.W.2d 638 (N.D. 1994) (No. 930206). *See also Court Review*, *supra* note 21, at 860, 879-80 (stating that courts generally give considerable deference to the observations and conclusions of a trained officer).

87. Wibben v. North Dakota State Highway Comm'r, 413 N.W.2d 329, 332 (N.D. 1987). *See also* State v. Neis, 469 N.W.2d 568, 469 (N.D. 1991) (stating that "[t]he question is whether or not a reasonable person in the officer's position would be justified by some objective manifestation to suspect . . . criminal activity" (quoting State v. Indvik, 382 N.W.2d 623, 627 (N.D. 1986)). The United States Supreme Court has cautioned that "[a] court making [the] assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing." United States v. Sharpe, 470 U.S. 675, 686 (1985).

88. *Miller*, 510 N.W.2d at 645.

89. *Id.* at 643.

90. *Id.* (emphasis added). As explained by the *Miller* court, a directing officer is any officer that issues a directive, command, or order to stop a vehicle or one who assumes responsibility for establishing reasonable suspicion. *Id.* This classification of officer is distinguished from the officer who simply relays information to the investigating officer, thereby leaving it to the investigating officer to establish reasonable suspicion. *Id.*

91. *Id.*

92. *Id.* One commentator has recently suggested that probable cause has an "independent existence." Moll, *supra* note 82, at 315. The author states that the validity of an arrest is premised on the *existence* of probable cause, not on the investigating officer's knowledge that probable cause existed. *Id.* (citing State v. Sassen, 484 N.W.2d 469 (1992)) (emphasis added). An approach such as this insinuates that the court has the ability to "find" probable cause in situations when the officer did not have sufficient knowledge himself. *Id.* This postulate was extended to a reasonable suspicion analysis in United States v. Hawkins, 811 F.2d 210, 212-14 (3rd Cir. 1987), *cert. denied*, 484 U.S. 833

however, any information known by an officer other than a directing officer could not be imputed to the investigating officer.[93] The court reasoned that such circumstances would allow the investigating officer to initiate the stop in hope that he could later justify his actions through the knowledge of other officers, regardless of whether the officer personally had a reasonable and articulable suspicion.[94]

The court found the collective knowledge proposition set forth in *Whiteley* and *Hensley* to be distinguishable and therefore inapplicable to the present case.[95] According to the *Miller* court, a police officer could rely on the untransmitted knowledge or information held by another officer only in those situations where the officers were participating in an ongoing investigation.[96] However, in situations involving multiple officers who are not participating in an ongoing investigation, the *Miller* court refused to allow another officer's knowledge that was not communicated to the investigating officer, to be imputed to the investigating officer.[97] Since neither the stop in *Hensley* or *Whiteley* came as the result of an ongoing investigation, the court reasoned that the collective knowledge theory developed in those cases did not apply in the present case.[98]

However, on previous occasion, the court has stated that "law enforcement officers must be allowed to rely upon information received from other officers."[99] Further, the court has also found that justification for an investigatory stop can be made by the department, as a whole, by issuing the flyer or bulletin, regardless of whether the investigating

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(1987). *See also, Court Review*, *supra* note 21, at 879 n.112 (providing citations to United States Supreme Court and United States Courts of Appeal cases which have addressed collective knowledge and the Fourth Amendment reasonable suspicion standard).

93. *Miller*, 510 N.W.2d at 643.

94. *Id.* The court reiterated this belief by summarizing from one noted authority: "*Whiteley* must in turn be distinguished from the case in which there has been no directive or request but the arresting or searching officer attempts to justify his action on the ground that other officers were at that time in possession of the necessary underlying facts." *Id.* (quoting 1 WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 3.3(e), at 208 (1984) [hereinafter LAFAVE] (quoting State v. Mickelson, 526 P.2d 583, 584 (Or. 1974)).

95. *Miller*, 510 N.W.2d at 644.

96. *See id.* at 643 (noting that the knowledge of officers has been imputed in the absence of a directive when officers were working together) (citing United States v. O'Connell, 841 F.2d 1048 (8th Cir. 1988)).

97. *Id.*

98. *Id.* at 643. *See* United States v. Hensley, 469 U.S. 221, 223 (1985) (stating that arresting officer received information via "wanted flyer"); Whiteley v. Warden, Wyoming State Penitentiary, 401 U.S. 560, 563 (1971) (stating that arresting officer received information via police radio).

99. State v. Rodriguez, 454 N.W.2d 726, 729 n.2 (N.D. 1990).

officer could justify the stop acting individually.[100] In *Miller*, however, the court refused to allow Officer Chase to rely on the officer issuing the bulletin to establish reasonable suspicion to justify the stop.[101]

The *Miller* dissent stated that the collective knowledge of the law enforcement entity, as a whole, should be taken into account when determining the reasonableness of a stop under the Fourth Amendment.[102] Therefore, the admissibility of evidence against Miller depends on whether the dispatcher had knowledge of specific and articulable facts sufficient to support a reasonable suspicion that Miller was indeed violating section 39-08-01 of the North Dakota Century Code.[103] Accordingly, if the dispatcher himself had the requisite basis to establish reasonable suspicion justifying an investigative stop, he could then delegate that authority to Officer Chase.[104]

Police officers called upon to investigate a possible drunk driver are allowed to rely on the collective information of the dispatcher in addition to their own observations and deductions in making an investigatory stop.[105] While the tip must provide some indicia of reliability by which the honesty of the informant can be measured,[106] the information necessary to establish reasonable suspicion can be less reliable than that necessary to establish probable cause.[107]

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100. State v. Nelson, 488 N.W.2d 600, 603 (N.D. 1992). In *Nelson*, the court stated that "*Hensley* teaches us that the reason for a stop can be based on information communicated by a fellow officer," with no distinction being made as to who the officer relaying the information is. *Id.* at 604. *See also* United States v. Longmire, 761 F.2d 411, 416 (7th Cir. 1985) (determining that the validity of the reasonable suspicion depends upon the knowledge of the issuing officer).

101. *Miller*, 510 N.W.2d at 643. *See* CHARLES WHITEBREAD & CHRISTOPHER S LOBOGIN, CRIMINAL PROCEDURE § 9.03(2) (2d ed. 1986) (stating that sources of information other than the direct knowledge of the investigating officer can form the basis for articulable and reasonable suspicion; police are entitled to rely on notices and flyers from other jurisdictions in making investigatory stops).

102. *Miller*, 510 N.W.2d at 646 (Meschke, J., dissenting).

103. Olson v. Commissioner of Pub. Safety, 371 N.W.2d 552, 555 (Minn. 1985) (a citizen informant reported a "possible drunk driver", described the vehicle, license plate number, and vehicle location, but the investigating officer observed no erratic driving; thus, the Minnesota Supreme Court found that the tip lacked the requisite indicia of reliability required by a Fourth Amendment investigative stop). *See* N.D. CENT. CODE § 39-08-01 (1987 & Supp. 1993). *Accord* United States v. Hensley, 469 U.S. 221, 233 (1985); United States v. Longmire, 761 F.2d 411, 416 (7th Cir. 1985).

104. *Hensley*, 469 U.S. at 233. *See* United States v. Robinson, 536 F.2d 1298, 1300 (9th Cir. 1976) (stating that "[i]f the dispatcher himself had had founded suspicion, or if he had relied on information from a reliable informant who supplied him with adequate facts to establish founded suspicion," then the dispatcher could delegate the stopping function to the investigating officer).

105. State v. Lykken, 406 N.W.2d 664, 666 (N.D. 1987).

106. State v. Thompson, 369 N.W.2d 363, 367 (N.D. 1985) (citing Illinois v. Gates, 462 U.S. 213 (1983)). The *Miller* court did acknowledge that telephone tips from *named* callers were more reliable than their anonymous counterparts, thereby reducing the amount of information required to raise reasonable suspicion. *Miller*, 510 N.W.2d at 642 (emphasis added). *See also id.* at 648 (Meschke, J., dissenting) (stating in dissent that "[i]n my view, the majority opinion discounts the report of an *identified* [citizen] informant too much") (emphasis added).

107. Alabama v. White, 496 U.S. 325, 330 (1990).

At least one other state's supreme court has maintained that when an informant is apparently a reliable citizen, the court is entitled to presume the reliability of the informant and the information provided.[108] The informant's reliability is further fortified when he or she reveals his or her identity to the police.[109] If the caller is truthful in identifying himself or herself to the police, then the information given by that informant has provided the police a means to locate the caller and hold him or her accountable should the information be false.[110]

In accord with this assertion, the United States Supreme Court mandated that rigorous scrutiny of the basis of the informant's knowledge is unnecessary when the informant has provided his or her identity because he or she has subjected himself or herself to criminal liability if the report was fabricated.[111] In *Miller*, the police dispatcher knew the identity of the informant and his place of employment thereby establishing a traceable path should the information prove inaccurate or unfounded.[112]

Despite the omission of the word "imputation," cases similar to the present case have consistently allowed the investigating officer to rely on the collective knowledge of police dispatch to establish a reasonable and articulable suspicion sufficient to justify the stop.[113] Prior to *Miller*, the North Dakota Supreme Court stated that simply because the officer acting on the informant's tip does not know the identity of the informant, it does not make the information of little or no value.[114] Nonethe-

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108. Marben v. State, Dep't of Pub. Safety, 294 N.W.2d 697, 699 (Minn. 1980) (using the presumed reliability of a citizen informant to uphold an investigatory stop based on an articulable and reasonable suspicion).

109. Minnetonka v. Shepherd, 420 N.W.2d 887, 890 (Minn. 1988).

110. *Id.* Continuing, the *Shepard* court stated that "at least for the purpose of making a limited investigatory stop, the officer was justified in assuming that the caller was being truthful in so describing himself." *Id.* (footnote omitted).

111. Illinois v. Gates, 462 U.S. 213, 233-34 (1983).

112. State v. Miller, 510 N.W.2d 638, 639 (N.D. 1994).

113. *See* Bryl v. Backes, 477 N.W.2d 809, 812 (N.D. 1991). In *Backes*, a bulletin issued described the vehicle and behavior of the driver, but did not include the vehicle's color or license plate number. *Id.* at 810. The identity of informant was unknown to investigating officer, however, the court upheld the stop due to the officer's assumption of identity of informant and the short lapse of time between bulletin and the officer's arrival. *Id.* at 812. *See* State v. Neis, 469 N.W.2d 568, 569-70 (N.D. 1991) (determining stop valid because informant identified herself to dispatcher, the vehicle and the behavior of the driver although the identity of informant unknown to investigating officer); Wibben v. North Dakota State Highway Comm'r, 413 N.W.2d 329, 330 (N.D. 1987) (determining stop valid because the investigating officer was able to verify information contained in tip although informant was unidentified). *Cf.* United States v. Robinson, 536 F.2d 1298, 1299-1301 (9th Cir. 1976) (determining that the dispatcher did not have a reasonable suspicion, and because the arresting officer did not have additional suspicions, the stop was illegal).

114. *Neis*, 469 N.W. 2d at 570. In *Neis*, the court stated that the information provided by the informant: the color of the pickup, license number, location, and description of the driver's erratic driving, and her name, was more than conclusory. *Id.* Further, "[t]he fact that the officer making the stop did not know who she was does not make the tip worthless." *Id. See also* State v. Guthmiller, 499 N.W.2d 590, 592 (N.D. 1993) (citing to *Neis* for the proposition that a tip is not worthless even if the

less, the *Miller* court refused to allow the dispatcher's knowledge of the informant's identity to be considered in satisfying the reasonable suspicion inquiry.[115]

A court reviewing a reasonable suspicion stop must not look to whether particular conduct is "guilty" or "innocent," but instead to the degree of suspicion that attaches to the conduct at issue.[116] Justice Meschke, in his dissent, stated that the focus of the court in this instance was misplaced.[117] According to Justice Meschke, the majority in *Miller* placed undue importance on the categorization of the informant as either identified or anonymous in determining the reliability of the information.[118] Justice Meschke, referring to the court's reasoning in *State v. Bryl*,[119] found that "although sketchy, the composite of the information that the officer had gave him reasonable cause" to suspect the vehicle contained an impaired driver and to initiate the stop.[120]

Further, Justice Meschke, quoting with approval from *State v. Nelson*,[121] stated that "[p]olice may briefly stop an auto to investigate a reasonable suspicion that a driver may be violating a law, without waiting for an actual violation or an actual injury to someone."[122] According to Justice Meschke, the information relied upon by the investigating officer need not come from personal observation alone, but may come from another officer.[123]

Justice Meschke argued that the majority opinion "discounts the report of an identified informant too much, and attenuates brief commu-

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tipper's identity is not known to the arresting officer).

115. *Miller*, 510 N.W. 2d at 645.

116. Olson v. Commissioner of Pub. Safety, 371 N.W.2d 552, 555 (Minn. 1985) (quoting from Illinois v. Gates, 462 U.S. 213, 243-44 n.13 (1983)). In his testimony, Officer Chase stated that he believed that Miller pulled back into the parking lot as a result of seeing the police car pull in behind him, causing seemingly innocent activity to become suspicious in the opinion of the investigating officer. Hearing on Motion to Suppress at 12, State v. Miller, 510 N.W.2d 638 (N.D. 1994) (No. 930206). The United States Supreme Court has resolved that innocent behavior will often provide the basis for a showing of probable cause. *Gates*, 462 U.S. at 243 n.13. This premise is equally applicable in a reasonable suspicion analysis. United States v. Sokolow, 490 U.S. 1, 10 (1989). Further, several innocent activities separately may amount to reasonable suspicion when viewed collectively. *Id.* Therefore, Officer Chase's verification of the information contained in the tip, and, more importantly, his independent assessment of the situation, including Miller's behavior, are central elements to the reasonable suspicion inquiry. *Backes*, 477 N.W.2d at 816.

117. *Miller*, 510 N.W.2d 648 (Meschke, J., dissenting).

118. *Id.* (Meschke, J., dissenting). Justice Meschke, in his dissent, opined that the informant was not anonymous, but instead identified. *Id.* at 647. Further, Justice Meschke stated that the information included in the tip was more than conclusory and provided sufficient indicia of reliability to justify the stop. *Id.* at 648.

119. 477 N.W.2d 814 (N.D. 1991).

120. State v. Bryl, 477 N.W.2d 814 (N.D. 1991); *Miller*, 510 N.W.2d at 645 (Meschke, J., dissenting).

121. 488 N.W.2d 600 (N.D. 1992).

122. *Miller*, 510 N.W.2d at 645-46 (Meschke, J., dissenting) (quoting State v. Nelson, 488 N.W.2d 608, 602-04 (N.D. 1992) (citation omitted)).

123. *Id.* at 646 (Meschke, J., dissenting) (citing *Nelson*, 488 N.W.2d at 602-04 (citation omitted)).

nications between law enforcement officers," more so than previous decisions by the court.[124] Furthermore, Justice Meschke stated that the collective knowledge of the law enforcement entity, as a whole, must be taken into account when determining the reasonableness of a stop under the Fourth Amendment.[125] For this reason, Justice Meschke declined to agree with the majority's view that the informant's tip was anonymous or unreliable.[126] In conclusion, Justice Meschke stated that Officer Chase, acting on the dispatch bulletin and his own verification of that information, satisfied this reasonable suspicion standard.[127]

IV. IMPACT

The North Dakota Supreme Court's decision in *Miller* may affect the ability of police officers to initiate an investigative stop on the basis of a radio dispatch. In addition, this decision may also hamper law enforcement efforts to effectively prevent drunk driving. No longer will the investigating officer be allowed to rely on his or her fellow officer to establish reasonable suspicion. Rather, the arresting officer must now sustain a reasonable suspicion inquiry based solely on the information in his or her possession, rather than the collective knowledge of all officers involved.

As a result, to withstand a reasonable suspicion inquiry in the future, radio dispatchers will now have to make sure that the name of the informant, or some indication thereof, is communicated to the investigating officer in order to establish the reliability of the informant and the information contained in the tip. Otherwise, if the identity of the infor-

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124. *Id.* at 648 (Meschke, J., dissenting). *See* State v. Rodriguez, 454 N.W.2d 726, 729 n.2 (N.D. 1990) (stating that "law enforcement officers must be allowed to rely upon information received from other officers").

125. *Miller*, 510 N.W.2d at 648. (citing Rodriguez, 454 N.W.2d. at 729). *See also* United States v. Hensley, 469 U.S. 221, 231 (1985) (finding that the admissibility of evidence turns on whether the officer who issued the flyer possessed reasonable suspicion to justify the stop); United States v. Robinson, 536 F.2d 1298, 1300 (9th Cir. 1976) (stating that although the officer who issues the bulletin must have a reasonable suspicion sufficient to justify a stop, the officer acting in reliance on the bulletin need not have personal knowledge sufficient to satisfy the inquiry); *Nelson*, 488 N.W.2d at 602 (stating that "the *collective information* of law enforcement personnel, known by or transmitted to the stopping officer, must be considered to assess whether a stop is reasonable under the Fourth Amendment") (citation omitted) (emphasis added); Bryl v. Backes, 477 N.W.2d 809, 812 (N.D. 1991) (allowing the investigating officer to assume the identity of the informant retained by the dispatcher); State v. Neis, 469 N.W.2d 568, 569-70 (N.D. 1991) (utilizing knowledge retained by the dispatcher in a reasonable suspicion analysis); Wibben v. North Dakota State Highway Comm'r, 413 N.W.2d 329, 332 (N.D. 1987) (stating that independent verification of information contained in an anonymous tip was sufficient to satisfy reasonable suspicion inquiry). *See, e.g.*, United States v. De Leon-Reyna, 898 F.2d 486, 488 (5th Cir. 1990) (stating that "the determination of 'reasonable suspicion' involves the consideration of the totality of the circumstances, including the collective knowledge of all the officers in assessing the facts") (citation omitted).

126. *Miller*, 510 N.W.2d at 647 (Meschke, J., dissenting).

127. *Id.* at 648 (Meschke, J., dissenting).

mant is not communicated, the tip will be classified as anonymous and the reliability of the tip will automatically diminish regardless of whether the identity of the informant is known to the law enforcement agency. Further, discrediting information provided by a known informant may discourage active participation and intervention by the public in apprehending intoxicated drivers, something that is crucial to effective enforcement of DUI laws in North Dakota.[128]

The concept of reasonable suspicion, in the opinion of the United States Supreme Court, is not "readily, or even, usefully, reduced to a neat set of legal rules."[129] Not every potential stop is the same and "one simple rule will not cover every situation."[130] However, the Court realized that when a bulletin is issued on the *basis* of reasonable and articulable facts, the investigating officer is justified in making the stop.[131] This statement indicates that the stop can be based on the notifying officer's knowledge with no requirement imposed on the investigating officer to maintain a separate basis for the stop, so long as the dispatcher himself could sustain the burden.[132] What effect and weight is given to this "collective knowledge" proposition by the North Dakota Supreme Court is uncertain since the *Miller* court severely restricted its application.[133]

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128. *Cf.* United States v McBride, 801 F.2d 1045, 1047 (8th Cir. 1986), *cert. denied*, McBride v. United States, 479 U.S. 1100 (1987) (discussing the reliability of anonymous citizen tips). In *McBride*, the court "recognized that the choice for police is between making limited investigatory stops and ignoring citizen tips." *Id.*

129. United States v. Sokolow, 490 U.S. 1, 7 (1989) (quoting Illinois v. Gates, 462 U.S. 213, 232 (1983)).

130. Olson v. Commissioner of Pub. Safety, 371 N.W.2d 552, 554 (Minn. 1985) (quoting Adams v. Williams, 407 U.S. 143, 147 (1972)). One author summarized the problem as follows: "The task is to promulgate a set of rules which will be flexible enough to cope with the enormous variation in police-citizen encounters but which, at the same time, can be easily applied by police." Terence C. Gill, Note, *Regulating the Police in Investigatory Stops: A Practical Alternative to Bright Line Rules*, 59 S. CAL. L. REV. 183, 184-85 (1985) (providing an overview of issues to consider in determining how to regulate investigating officers undertaking reasonable suspicion stops and the subsequent evidentiary suppression problems relative to the stop). For an informative discussion of alternate approaches to such a scheme see Albert Alschuler, *Bright Line Fever and the Fourth Amendment*, 45 U. PITT. L. REV. 227 (1984).

131. United States v. Hensley, 469 U.S. 221, 231 (1985) (emphasis added). Interestingly, when the issuing officer is only relaying information from an informant, the only verification that can be done is by the officer in the field. However, the United States Supreme Court stated that if the officer issuing the bulletin had knowledge of information sufficient to form a reasonable suspicion, then the stop was valid, without the relaying officer ever actually verifying the information himself. *Id.*

132. *E.g.*, *id.* at 231 (stating that the admissibility of evidence turns on whether the officer issuing the bulletin had reasonable suspicion sufficient to justify a stop); United States v. Robinson, 536 F.2d 1298, 1300 (9th Cir. 1976) (stating that the investigating officer need not have a reasonable suspicion so long as the officer issuing the bulletin could satisfy the inquiry); United States v. Longmire, 761 F.2d 411, 416 (7th Cir. 1985) (stating that the relevant inquiry is whether the officer issuing the bulletin could establish reasonable suspicion).

133. State v. Miller, 510 N.W.2d 638, 648 (N.D. 1994) (Meschke, J., dissenting).

As previously stated, Colorado courts have reduced the collective knowledge proposition into a bright line test used to enumerate the sources available to establish probable cause.[134] While a bright line standard such as the one set forth by the Colorado Supreme Court in the "fellow officer" test may seem unduly mechanical, it might help supply the much needed consistency in instances when reasonable suspicion is based, at least in part, on the knowledge of an officer other than the one making the stop.[135] By enacting such a standard, the officer in the field is not called on to perform a balancing test for every potential stop.[136]

In *Miller*, the North Dakota Supreme Court expressed a concern for police initiating an investigatory stop with the hopes of later being able to establish reasonable suspicion.[137] However, under circumstances such as these, the Fourth Amendment rights of the individual are already protected because should the officers involved fail to establish reasonable suspicion prior to making the stop, the evidence seized as a result of the stop would be suppressed.[138]

An intoxicated person behind the wheel of a moving automobile presents a serious threat to the safety and well-being of the general public.[139] Given the strong concern for public safety which prompted the enactment of section 39-08-01 of the North Dakota Century Code, it is imperative that police efforts to properly enforce the law not be hampered.[140] Section 39-08-01 was intended to enable law enforcement

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134. *See supra* notes 56-57 and accompanying text for discussion of the Colorado test.

135. One commentator has proffered two areas of concern for such a bright-line test. Alschuler, *supra* note 131, at 227. First, by establishing a specific rule for every police-citizen confrontation, inevitably so many rules will result that the police will not be able to effectively employ them in practice. *Id.* at 231. Second, while a rigid rule such as this is easy to apply, the resulting injustice in those situations which do not conform to the rule outweighs the gain in efficiency. *See id.*

136. Gill, *supra* note 130, at 186-87. The criteria used to determine the validity of an investigatory stop is two-fold. Terry v. Ohio, 392 U.S. 1, 20 (1968). First, the type and level of information upon which the officer justifies the detention must be evaluated. Adams v. Williams, 407 U.S. 143, 146 (1972). Second, the extent and intrusiveness of the limited search is considered. *Id.* Generally, when an officer stops a citizen, "the propriety of the officer's actions is measured by the degree to which they impair the personal security and dignity of the suspect." Gill, *supra* note 130, at 185-86 (footnotes omitted). Factors to consider include the "duration of the stop, the reason for the stop . . ., the extent of movement of the suspect, and the amount of force displayed and threatened by the police." *Id.* at 186. These factors are offset by such considerations as the "time of day, the nature of the suspected crime, and the physical appearance and reactions of the suspect." *Id.* These factors are balanced to determine the reasonableness of the officer's actions. *Id.*

137. *See Miller*, 510 N.W.2d at 649-40 (noting that reasonable suspicion must be established at the time of the arrest).

138. *Terry*, 392 U.S. at 12.

139. Wibben v. North Dakota State Highway Comm'r, 413 N.W.2d 329, 333 (N.D. 1987) (quoting Hughes v. State, 535 P.2d 1023, 1024 (Okla. Crim. App. 1975)). The state has a significant interest in determining the condition of the driver without unnecessary delay, thereby preventing escape or further injury. *Id.*

140. *See* State v. Lange, 255 N.W.2d 59, 63 (N.D. 1977) (stating that when an officer has been alerted to a possible drunk driver, that officer should not have to wait until there has been an accident or obvious traffic violation prior to initiating an investigatory stop). In addition, the *Wibben* court

officers to apprehend the drunk driver before he or she strikes.[141] Consistent application of the collective knowledge methodology will help achieve this end.

James R. Salisbury[142]

determined that "[p]olice must be permitted to act *before* their reasonable belief is verified by escape or fruition of the harm it was their duty to prevent." Wibben, 413 N.W.2d at 332 (quoting LAFAVE, *supra* note 67, § 3.8 (citing United States v. Holland, 510 F.2d 453 (9th Cir. 1975))).

141. *Wibben*, 413 N.W.2d at 333 (quoting *Hughes*, 535 P.2d at 1024). *See* N.D. CENT. CODE § 39-08-01 (1987& Supp. 1993).

142 Special thanks to my wife, Jennifer, for her endless support and patience, and to my parents.