

**STATE OF MINNESOTA**

**DISTRICT COURT**

**COUNTY OF SCOTT**

**FIRST JUDICIAL DISTRICT**

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**State of Minnesota,**

Plaintiff,

**v.**

**Yanisha Harpargas,**

Defendant.

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**ORDER AND  
MEMORANDUM  
File No. 70-CR-20-2117**

The above matter came on for consideration by the Court on August 6, 2020 via Zoomgov.com.

Steve Kelm, Assistant Scott County Attorney, appeared on behalf of the State of Minnesota.

Brent Schafer appeared on behalf of Defendant who was also present.

Based upon the file, record, and proceedings, the Court makes the following:

**ORDER**

1. Defendant's motions to dismiss and suppress is granted.
2. Count I in the Complaint is dismissed.
3. The attached memorandum is incorporated by reference and constitutes the

Findings of the Court.

**August 11, 2020**

**BY THE COURT**

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**Colleen G. King  
Judge of District Court**

## Memorandum

Defendant challenged the stop of the vehicle arguing there was no reasonable, articulable suspicion for the stop. The State argues that there was not a stop of the vehicle and even if there was, the officer had reasonable, articulable suspicion.

On January 30, 2020, Belle Plaine Police Officer Ben Peterson was on routine patrol when he received a message from an assistant at the police department that a citizen had called in a suspicious vehicle that was parked in the neighborhood for 20-25 minutes. Officer Peterson drove to the address and pulled behind the only vehicle in the area. As Officer Peterson was pulling up and putting his squad in park, the brake lights of the vehicle came on and Officer Peterson activated his emergency lights as a natural reaction. Officer Peterson then got out of the vehicle to speak with the occupants. Officer Peterson acknowledged that the vehicle had not completed any traffic violations when he activated his emergency lights. Officer Peterson acknowledged that the lights were a signal to the driver to not leave the area and he wanted the vehicle to stay where it was.

The United States and Minnesota Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, sec. 10. To stop a motor vehicle, an officer must have reasonable, articulable suspicion. *United States v. Cortez*, 449 U.W. 411 (1981); *State v. McKinley*, 232 N.W.2d 906 (Minn. 1975). The stop cannot be the product of mere whim, caprice or idle curiosity. *State v. Combs*, 398 N.W.2d 563 (Minn. 1987). Reasonable, articulable suspicion exists “when an officer observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot.” *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). The suspicion must be based on the totality of the circumstances, including the officer’s knowledge and experiences and rational inferences drawn from the circumstances. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007).

The State argues that a stop or seizure did not occur because approaching an already stopped vehicle does not constitute a seizure. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). However, to determine if a stop occurred, the question is “whether a reasonable person would have concluded under the circumstances that he was free to leave.” *U.S. v. Mendenhall*, 446 U.S. 544, 554 (1980). Officer Peterson

acknowledged he turned his emergency lights on to signal to the driver he was not to leave and he was to stay where he was parked. A stop of the vehicle occurred.

The Court must then determine if there was reasonable, articulable suspicion for the stop. Here, all we have is a call to the police station that a vehicle was parked for 20-25 minutes in a neighborhood and it was suspicious. No additional information to support why it was suspicious was provided. The car was legally parked in a residential street. No traffic violation was observed or reported. There was no reasonable, articulable suspicion that there was criminal activity afoot. *See State v. Sanger*, 420 N.W.2d 241 (Minn. Ct. App. 1988)(stop illegal when vehicle parked at curb in residential area with windows fogged up, sunroof open and occupants moving inside).

Because the stop was not supported by reasonable, articulable suspicion, the subsequent search of the vehicle and Defendant's backpack must be suppressed. Without the evidence from the search, the State cannot proceed with its case and Count I in the Complaint must be dismissed.

C.G.K.