

AUTOMOBILES—ADMINISTRATIVE LAW AND  
PROCEDURE—STATUTES: UNIVERSITY POLICE OFFICERS  
IN HOT PURSUIT OF EXPANDING JURISDICTION

*Kroschel v. Levi*, 2015 ND 185, 866 N.W.2d 109

ABSTRACT

In *Kroschel v. Levi*, the North Dakota Supreme Court *held* that a North Dakota State University Police Officer acted outside his territorial jurisdiction and without legal authority when patrolling outside of the campus boundaries. The North Dakota Department of Transportation relied on a Memorandum of Understanding between North Dakota State University and Fargo Police Department, granting university police officers the authority to patrol off campus. An administrative hearing officer held that the Memorandum of Understanding was legally sufficient to arrest Kroschel beyond the University's boundaries. The district court agreed with the administrative hearing officer's conclusion, but relied on a statute authorizing state and local law enforcement agencies to enter into agreements to assist other agencies and exchange police officers on a temporary basis. On appeal, the North Dakota Supreme Court disagreed and reversed the suspension of Kroschel's driving privileges. In finding an illegal arrest, the Court honored the legislatively imposed limitations on police authority. In doing so, the Court elaborated on the extent of a University Police Officer's jurisdiction.

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## I. FACTS

On February 9, 2014, North Dakota State University (“NDSU”) Police Officer Ryan Haskell was driving through the 700 block of 12th Avenue North in Fargo, North Dakota.<sup>1</sup> During this time, he observed a vehicle turn left from Broadway and drive west on 12th Avenue North.<sup>2</sup> The vehicle proceeded westbound down the middle of 12th Avenue North in a lane designated for left turns by eastbound motorists.<sup>3</sup> Officer Haskell followed the vehicle for a substantial distance before stopping it in the 1600 block of 10th Street North.<sup>4</sup> Following an investigation by Officer Haskell, the Appellant, Morgan Kroschel (“Kroschel”), was arrested for minor in possession and operating a motor vehicle while under the influence of alcohol.<sup>5</sup> Kroschel agreed to submit to a blood test which indicated a blood alcohol concentration of .190 percent.<sup>6</sup> At no time during the incident was Officer Haskell or Kroschel on NDSU property.<sup>7</sup> Furthermore, Officer Haskell did not receive authorization from the Fargo Police Department, permitting him to investigate, and arrest, Kroschel beyond NDSU property.<sup>8</sup> Kroschel’s brief contends that in early 2014, Officer Haskell routinely patrolled off campus, making an estimated ten DUI arrests off campus and only one or two DUI arrests on campus.<sup>9</sup>

At an administrative hearing for the suspension of her driver’s license, Kroschel argued that Officer Haskell did not have jurisdiction to arrest her because she was not on NDSU property.<sup>10</sup> The Department of Transportation held that Officer Haskell was granted city-wide jurisdiction based on a Memorandum of Understanding (“MOU”) between the Fargo Police Department and NDSU.<sup>11</sup> On its face, the MOU is an agreement between the City of Fargo and NDSU Police Department to grant NDSU

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1. Appellant’s Brief at ¶ 3, *Kroschel v. Levi*, 2015 ND 185, 866 N.W.2d 109 (No. 2014-0265), 2014 WL 7569091; *see also* Brief of Appellee at ¶ 5, *Kroschel v. Levi*, 2015 ND 185, 866 N.W.2d 109 (No. 2014-0265), 2014 WL 7569090.

2. Brief of Appellee, *supra* note 1, at ¶ 5.

3. *Id.*

4. *Id.*; *see also* Appellant’s Brief, *supra* note 1, at ¶ 3.

5. Oral Argument at 1:22, *Kroschel*, 866 N.W.2d (No. 2014-0265), <http://www.ndcourts.gov/court/docket/20140265.htm>; *see also* Brief of Appellee, *supra* note 1, at ¶¶ 7-8.

6. Appellant’s Brief, *supra* note 1, at ¶ 3; *see also* Brief of Appellee, *supra* note 1, at ¶ 8.

7. *Kroschel v. Levi*, 2015 ND 185, ¶ 2, 866 N.W.2d 109, 111; *see also* Brief of Appellee, *supra* note 1, at ¶ 6.

8. Appellant’s Brief, *supra* note 1, at ¶ 4.

9. *Id.*

10. *Kroschel*, ¶ 3, 866 N.W.2d at 111.

11. *Id.*

police officers city-wide jurisdiction.<sup>12</sup> The MOU was signed by the Fargo Mayor, Interim Fargo Police Chief, NDSU President of Business and Finance, and NDSU Director of University Police and Safety.<sup>13</sup>

The hearing officer concluded that the Fargo Police Chief had authority to swear in Officer Haskell as an officer with authority throughout the city pursuant to North Dakota Century Code (“N.D. Cent. Code”) § 40-20-05 and Fargo Municipal Ordinance 5-0104.<sup>14</sup> In addition, the hearing officer concluded that the “North Dakota Legislature has approved ‘the employment of law enforcement officers having concurrent jurisdiction with other law enforcement officers to enforce laws and regulations at its institutions.’”<sup>15</sup> The hearing officer essentially found NDSU police officers had city-wide jurisdiction and Officer Haskell had the authority to stop Kroschel.<sup>16</sup> The hearing officer suspended Kroschel’s driver’s license for 180 days.<sup>17</sup>

On appeal, the district court affirmed the hearing officer’s decision, but under different legal authority, concluded N.D. Cent. Code § 44-08-24 allows universities and local law enforcement agencies to enter into agreements with other state law enforcement agencies to assist and to exchange police officers on a temporary basis.<sup>18</sup> The hearing officer, however, did not consider N.D. Cent. Code § 44-08-24 in its decision. Although the Department of Transportation (“DOT”) argued the MOU derived its authority from N.D. Cent. Code § 44-08-24, the statute was not enacted until 2011; though, the MOU was executed in 2006.<sup>19</sup> Kroschel appealed the district court’s judgment affirming the DOT’s suspension of her driving privileges to the North Dakota Supreme Court.<sup>20</sup>

## II. LEGAL BACKGROUND

The authority of a police officer in North Dakota is governed by North Dakota statute.<sup>21</sup> A peace officer, often referred to as a police officer, is defined as “a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of

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12. *Id.*

13. *Id.*

14. *Id.* ¶ 4, 866 N.W.2d at 112.

15. *Id.* (citing N.D. CENT. CODE § 15-10-17(2) (2016)).

16. *Kroschel*, ¶ 3, 866 N.W.2d at 111-12.

17. *Id.* at 112.

18. *Id.* ¶ 5.

19. *Id.*

20. *Id.* at 111.

21. N.D. CENT CODE § 44-08-20 (2016).

violations of the law.”<sup>22</sup> Police officers employed by a law enforcement agency within North Dakota have the power to enforce state laws and rules within the jurisdiction of the law enforcement agency by which they are employed.<sup>23</sup> Police officers that are employed by a law enforcement agency have the power to respond to requests from other law enforcement agencies or officers for aid or assistance.<sup>24</sup> Furthermore, North Dakota law grants the State Board of Higher Education (“the Board”) authority to employ law enforcement officers and permits concurrent jurisdiction with other law enforcement officers at its institutions.<sup>25</sup> The North Dakota Supreme Court has recognized that police officers acting outside their jurisdiction are generally without official capacity and without official power to arrest.<sup>26</sup>

#### A. COOPERATION AGREEMENTS BETWEEN LAW ENFORCEMENT AGENCIES

A police department may enter into assistance agreements with other offices and agencies.<sup>27</sup> Upon approval of its respective governing body, a political subdivision of the state may enter into an agreement with any state agency, board, or institution to undertake “any power or function which any of the parties is permitted by law to undertake.”<sup>28</sup> A political subdivision “includes all counties, townships, park districts, school districts, cities, public nonprofit corporations, administrative or legal entities responsible for administration of joint powers agreements, and any other units of local government which are created either by statute or by the Constitution of North Dakota . . .”<sup>29</sup> “[T]he respective governing body or officer of the state agency, board, or institution must approve the agreement and the attorney general must determine that the agreement is legally sufficient” before an agreement is effective.<sup>30</sup>

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22. N.D. CENT. CODE § 12-63-01(3) (2016).

23. N.D. CENT. CODE § 44-08-20(1) (2016).

24. N.D. CENT. CODE § 44-08-20(3) (2016).

25. N.D. CENT. CODE § 15-10-17(2) (2016).

26. *State v. Littlewind*, 417 N.W.2d 361, 363 (N.D. 1987).

27. N.D. CENT. CODE § 44-08-24(1)(a) (2016).

28. N.D. CENT. CODE § 54-40.3-01(2) (2016).

29. N.D. CENT. CODE § 32-12.1-02(6)(a) (2016).

30. N.D. CENT. CODE § 54-40.3-01(2) (2016).

## B. THE STATE BOARD OF HIGHER EDUCATION

NDSU is a university under the control and administration of the Board.<sup>31</sup> The North Dakota Century Code summarizes the powers and duties of the Board.<sup>32</sup> North Dakota statute grants the Board authority to employ law enforcement officers and permits concurrent jurisdiction with other law enforcement officers at its institutions.<sup>33</sup> Thus, the North Dakota legislature has limited campus police officer's authority to university institutions.<sup>34</sup>

## C. A POLICE OFFICER'S CAPACITY TO ACT OUTSIDE OF HIS OR HER JURISDICTION

As a general rule, the North Dakota Supreme Court has recognized that police officers acting outside of their jurisdiction are without official capacity and without official power to arrest.<sup>35</sup> Police officers and watchmen of the city have jurisdiction within city limits and for a distance of one and one-half miles in all directions outside the city limits.<sup>36</sup> A police officer in "hot pursuit" may continue beyond their jurisdiction to make an arrest, with or without a warrant, "whenever obtaining the aid of peace officers having jurisdiction beyond that limit would cause a delay permitting escape."<sup>37</sup> Hot pursuit is defined as "the immediate pursuit of a person who is endeavoring to avoid arrest."<sup>38</sup>

## III. THE COURT'S ANALYSIS

In *Kroschel*, Justice Crothers delivered the opinion of the Court.<sup>39</sup> The North Dakota Supreme Court has recognized that a police officer is generally without official capacity and/or power to arrest when acting outside his jurisdiction.<sup>40</sup> The Court analyzed whether Officer Haskell had

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31. N.D. CENT. CODE § 15-10-01 (2016).

32. N.D. CENT. CODE § 15-10-17(1)-(9) (2016).

33. N.D. CENT. CODE § 15-10-17(2) (2016).

34. *Id.*

35. *State v. Littlewind*, 417 N.W.2d 361, 363 (N.D. 1987).

36. N.D. CENT. CODE § 40-20-05(1) (2016).

37. N.D. CENT. CODE § 40-20-05(2) (2016).

38. *Id.*

39. *Kroschel*, 2015 ND 185, ¶¶ 38-39, 866 N.W.2d 109, 121 (Justice Crothers was joined by the entirety of the Court: Justices McEvers, Sandstrom, and Hodny, and Chief Justice VandeWalle. The Honorable William F. Hodney, S.J., sitting in place of Kapsner, disqualified).

40. *Id.* ¶¶ 38-39, 866 N.W.2d at 121 ("Sections 40-20-05 and 15-10-17(2), N.D.C.C., do not give NDSU police officers authority to arrest persons outside the NDSU campus."); *see also Littlewind*, 417 N.W.2d at 363 (explaining that "[t]he general rule is that a police officer acting outside of his jurisdiction is without official capacity and without official power to arrest . . .").

authority to arrest Kroschel under the circumstances previously described.<sup>41</sup> The DOT did not argue on appeal that a Fargo Municipal ordinance provided authority to arrest Kroschel.<sup>42</sup> The Court concluded that Officer Haskell did not have the authority to arrest Kroschel and reversed the district court's judgment.<sup>43</sup>

A. THE AUTHORITY OF THE CHIEF OF POLICE TO EXPAND THE  
JURISDICTION OF UNIVERSITY POLICE OFFICERS  
THROUGHOUT THE CITY OF FARGO

The Court determined that the Chief of Police did not have the authority to expand Officer Haskell's jurisdiction throughout the city of Fargo.<sup>44</sup> A police chief's authority is governed by statute.<sup>45</sup> The powers and duties of a chief of police and police officers in municipal governments are specifically outlined by N.D. CENT. CODE § 40-202-05(1).<sup>46</sup> More specifically, the statute allows the chief of police the authority to administer oaths to police officers under the chief's supervision.<sup>47</sup> The DOT agreed that Officer Haskell was not under the supervision of the Fargo Police Chief.<sup>48</sup> The Court acknowledged that generally NDSU police officers are not under the supervision of the Fargo Police Chief and are not regularly employed as municipal police officers.<sup>49</sup> The Court determined that statutory law requires NDSU police officers to be supervised by the Fargo Police Chief in order to act under the powers given to the chief of police and police officers.<sup>50</sup> The Court further explained that statutory law did not authorize the Fargo Police Chief to administer an oath to Officer Haskell in order to expand his jurisdiction to include the city of Fargo.<sup>51</sup> Because Officer Haskell was not acting under the authority of the Fargo Police Chief, he did not have the authority to arrest Kroschel.<sup>52</sup>

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41. *Kroschel*, ¶ 7, 866 N.W.2d at 113.

42. *Id.* ¶ 8.

43. *Id.* ¶¶ 36-37, 866 N.W.2d at 121.

44. *Id.* ¶ 10, 866 N.W.2d at 114.

45. *Id.* ¶ 9, 866 N.W.2d at 113 (“Section 40-20-05, N.D.C.C. . .”).

46. *Id.* ¶ 8.

47. *Kroschel*, ¶ 8, 866 N.W.2d at 113.

48. *Id.* ¶ 10, 866 N.W.2d at 114.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

## B. CONCURRENT JURISDICTION BETWEEN UNIVERSITY POLICE OFFICERS AND LOCAL LAW ENFORCEMENT OFFICERS

University police officers are permitted to have concurrent jurisdiction with other law enforcement agencies at their institutions.<sup>53</sup> North Dakota law permits the Board to authorize the employment of law enforcement officers having concurrent jurisdiction in order to enforce laws and regulations at its institutions.<sup>54</sup> The Court used the plain language of the statute to conclude that the Board may permit concurrent jurisdiction with other law enforcement officers only at its institutions.<sup>55</sup> The Court explained that the Board is not authorized to permit university law enforcement officers to act outside the boundaries of the university.<sup>56</sup>

The Court further noted that the district court upheld the hearing officer's decision based on law that was not relied upon by the hearing officer.<sup>57</sup> The district court found that N.D. Cent. Code § 15-10-17 did not authorize Officer Haskell to arrest Kroschel, because it authorized the Board to cooperate with other law enforcement agencies at state universities.<sup>58</sup> However, the district court did not analyze whether N.D. Cent. Code § 15-10-17(2) authorized a university police department to have concurrent jurisdiction with local law enforcement, because N.D. Cent. Code § 44-08-24 specifically authorized cooperation agreements between law enforcement agencies.<sup>59</sup> In addition, the hearing officer did not consider N.D. Cent. Code § 44-08-24 in its decision.<sup>60</sup> The Court reviewed the district court's decision as to whether Officer Haskell's arrest was authorized by law as an agreement with other law enforcement agencies by reviewing statutes permitting agreements with other agencies.<sup>61</sup>

## C. AGREEMENTS WITH OTHER LAW ENFORCEMENT AGENCIES

In North Dakota, law enforcement organizations are authorized by statute to establish policies and enter into agreements with other agencies and offices. Specifically, law enforcement organizations are permitted to assist other state and local criminal justice agencies and exchange the criminal justice agency's peace officers with peace officers of another

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53. N.D. CENT. CODE § 15-10-17(2) (2016). *See also Kroschel*, ¶ 12, 866 N.W.2d at 114.

54. *Kroschel*, ¶ 11, 866 N.W.2d at 114.

55. *Id.* ¶ 12.

56. *Id.*

57. *Id.* ¶ 13.

58. *Id.*

59. *Id.*

60. *Kroschel*, ¶ 13, 866 N.W.2d at 114.

61. *Id.* ¶ 14, 866 N.W.2d at 115.



agency, on a temporary basis.<sup>62</sup> Evaluating statutory construction and legislative history, the Court determined that “temporary basis” applies to the terms “assist” and “exchange.”<sup>63</sup>

### 1. *Law Enforcement Assistance on a Temporary Basis*

N.D. Cent. Code § 44-08-24(1)(a) allows law enforcement agencies to enter into agreements to temporarily assist other state and local criminal justice agencies.<sup>64</sup> Based on a dictionary definition, the Court determined that “assist” means to “give help to, aide, or an instance or act of helping.”<sup>65</sup> In its analysis, the Court relied on a similar North Dakota statute that permits law enforcement assistance on a non-continuous basis.<sup>66</sup>

The Court recognized that similar to N.D. Cent. Code § 44-08-24, N.D. Cent. Code § 44-08-20 permits police officers responding to requests from other law enforcement agencies to afford aid and assistance outside of their normal jurisdiction.<sup>67</sup> The Court noted that N.D. Cent. Code § 44-08-20 gives police officers the power to respond to a request from another law enforcement organization to provide support in a “particular and singular violation or suspicion of violation of law.”<sup>68</sup> Further, additional power outside of an officer’s normal jurisdiction is only afforded if he or she is giving assistance by request and for a non-continuous, particular instance.<sup>69</sup> The Court acknowledged that under N.D. Cent. Code § 44-08-24(1), “assistance” does not extend beyond an officer assisting another officer.<sup>70</sup>

Because the cardinal rule of statutory construction is to interpret related provisions together to harmonize the meaning of each provision, the Court read N.D. Cent. Code § 44-08-20 to interpret the meaning of N.D. Cent. Code § 44-08-24(1).<sup>71</sup> Based on a plain reading of N.D. Cent. Code § 44-08-20 and caselaw, the Court concluded that “assist” implies “temporary, non-continuous assistance, or a singular instance of assistance.”<sup>72</sup> As such, N.D. Cent. Code § 44-08-24(1) gives law enforcement officers temporary, non-continuous authority to assist other law enforcement agencies.<sup>73</sup>

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62. N.D. CENT. CODE § 44-08-24 (2016).

63. *Kroschel*, ¶ 25, 866 N.W.2d at 118.

64. *Id.* ¶ 17, 866 N.W.2d at 115.

65. *Id.* (quoting WEBSTER’S NEW WORLD DICTIONARY 84 (2nd ed. 1980)).

66. *Id.* ¶ 18; *see also* N.D. CENT. CODE § 44-08-20 (2016).

67. *Kroschel*, ¶ 19, 866 N.W.2d at 115.

68. *Id.*

69. *Id.*

70. *Id.* at 116.

71. *Id.* ¶¶ 18-19, 866 N.W.2d at 115-16.

72. *Id.* ¶ 19, 866 N.W.2d at 116.

73. *Kroschel*, ¶ 19, 866 N.W.2d at 116.

In addition to statutory construction, the Court reviewed the legislative history of the statute.<sup>74</sup> In considering the adoption of N.D. Cent. Code § 44-08-24, the North Dakota House of Representatives analyzed the current provisions which allow single instances of assistance in another jurisdiction.<sup>75</sup> At a hearing before the House Political Subdivisions Committee, West Fargo Department Assistant Chief Mike Reitan (“Reitan”) testified that N.D. Cent. Code § 44-08-20 allows:

[O]nly a request for assistance to a particular and singular violation or suspicion of violation of law, and does not constitute a continuous request for assistance outside the purview of the jurisdiction of the law enforcement agency by which a peace officer is employed. Once the immediate emergency is done the assisting officer no longer has authority.<sup>76</sup>

The Court concluded that Reitan’s testimony was consistent with the Court’s prior statutory interpretation.<sup>77</sup> Because the legislative history, caselaw, and statutory interpretation all conclude that assistance is permitted on a temporary basis, the Court concluded that N.D. Cent. Code § 44-08-24(1)(a) permits law enforcement assistance in a particular and singular event, or on a non-continuous basis.<sup>78</sup>

## 2. Law Enforcement Exchange on a Temporary Basis

N.D. Cent. Code § 44-08-24(1)(b) permits the exchange of officers on a temporary basis.<sup>79</sup> The Court noted that on its face N.D. Cent. Code § 44-08-24(1)(b) only grants an agency temporary permission to exchange police officers.<sup>80</sup> The Court reviewed the statute’s legislative history to confirm that authority is limited to a temporary exchange of officers.<sup>81</sup>

When considering the adoption of N.D. Cent. Code § 44-08-24(1)(b), the North Dakota House of Representatives analyzed policy reasons for the exchange of law enforcement officers.<sup>82</sup> At the same hearing before the

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74. *Id.* ¶ 21, 866 N.W.2d at 116.

75. *Id.*

76. *Id.* at 116-17 (quoting *Relating to the Joint Exercise of Police Powers and Cooperative Agreements Among Peace Officer Agencies: Hearing on H.B. 1251 Before the H. Political Subdivs. Comm.*, 2011 Leg., 62nd Sess. (ND 2011) (testimony of Mike Reitan, West Fargo Police Dep’t Ass’t Chief)).

77. *Id.* ¶ 22, 866 N.W.2d at 117; *see also* *Mead v. N.D. Dep’t of Transp.*, 581 N.W.2d 145, 147-48 (N.D. Ct. App. 1998).

78. *Kroschel*, ¶ 18, 866 N.W.2d at 115; *see also* N.D. CENT. CODE § 44-08-20 (2016).

79. *Kroschel*, ¶ 20, 866 N.W.2d at 116.

80. *Id.*

81. *Id.* ¶ 21.

82. *Id.* ¶ 24, 866 N.W.2d at 117.

House Political Subdivisions Committee, Reitan described state resources as being “very thin.”<sup>83</sup> Reitan described the policy implications of adopting the new statute as allocating and utilizing resources to conduct operations of a “unique event” while continuing to provide for services in the community.<sup>84</sup> The Court interpreted the legislative history to imply that the statute was enacted to “address unique events and joint task forces,” beyond a single violation.<sup>85</sup>

Currently, N.D. Cent. Code § 44-08-24 permits only temporary assistance, or a temporary exchange, between law enforcement agencies.<sup>86</sup> NDSU and the Fargo Police department were not acting on a temporary basis.<sup>87</sup> Therefore, the Court concluded that N.D. Cent. Code § 44-08-24 did not give Officer Haskell the authority to arrest Kroschel.<sup>88</sup>

#### D. JOINT POWERS AGREEMENTS

Officer Haskell did not have authority to arrest Kroschel under the joint powers agreement.<sup>89</sup> In this case, the MOU was an agreement between NDSU, the Fargo Police Department, and the City of Fargo.<sup>90</sup> The Court affirmed that both NDSU and the Fargo Police Department are not political subdivisions.<sup>91</sup> While the City of Fargo is a political subdivision of the State of North Dakota, the Fargo Police Department is not.<sup>92</sup> Furthermore, NDSU is an institution of the State of North Dakota.<sup>93</sup>

NDSU Police Department is authorized as an institutional subdivision of NDSU under N.D. Cent. Code § 15-10-17(2), and is governed by the Board.<sup>94</sup> N.D. Cent. Code § 54-40.3-01(2) allows joint powers agreements between institutions and political subdivisions.<sup>95</sup> A political subdivision may enter into an agreement with a state institution with the approval of the

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83. *Id.* at 117-18 (citing *Relating to the Joint Exercise of Police Powers and Cooperative Agreements Among Peace Officer Agencies: Hearing on H.B. 1251 Before the H. Political Subdivs. Comm.*, 2011 Leg., 62nd Sess. (ND 2011) (testimony of Mike Reitan, West Fargo Police Dep’t Ass’t Chief)).

84. *Id.*

85. *Kroschel*, ¶ 25, 866 N.W.2d at 118.

86. N.D. CENT. CODE § 44-08-24 (2016).

87. *Kroschel*, ¶ 26, 866 N.W.2d at 118.

88. *Id.* ¶ 25.

89. *Id.* ¶ 26.

90. *Id.* ¶ 29, 866 N.W.2d at 119.

91. *Id.*

92. *Kroschel*, ¶ 30, 866 N.W.2d at 119; *see also* N.D. CENT. CODE § 32-12.1-02(6) (2016).

93. *Kroschel*, ¶ 30, 866 N.W.2d at 119; *see also* N.D. CENT. CODE § 15-10-01 (2016).

94. *Id.* ¶ 31, 866 N.W.2d at 119.

95. *Id.*

institution's governing officer.<sup>96</sup> Joint powers agreements involving institutions also require the Attorney General to review the agreement for legal sufficiency.<sup>97</sup> Although the agreement was signed by NDSU President of Business and Finance, NDSU Director of University Police and Safety, Interim Fargo Police Chief, and the Fargo Mayor, it was not executed by the Board.<sup>98</sup> N.D. Cent. Code § 54-40.3-04 requires authorization by the Board and the City of Fargo for the agreement to be valid.<sup>99</sup> The Court found that the MOU lacked approval by the Board and determination by the attorney general that it was legally sufficient; therefore, the MOU was deficient.<sup>100</sup>

Furthermore, N.D. Cent. Code Chapter 53-40.3 only permits joint powers agreements if the functions undertaken are authorized by law.<sup>101</sup> As previously noted, N.D. Cent. Code § 15-10-17 outlines the powers and duties of the Board,<sup>102</sup> which may grant concurrent jurisdiction with other law enforcement agencies only at state institutions.<sup>103</sup> The Court, however, rejected any authority for the Board to enter its law enforcement agencies into joint powers agreements outside of its institutions.<sup>104</sup> Because statutory law does not permit university police officers to act outside of the institution, the Board was not permitted to enter into a joint powers agreement.

The North Dakota Supreme Court agreed with the district court and held that the agreement did not constitute sufficient approval by governing bodies, and was therefore not permitted by law.<sup>105</sup> Accordingly, the joint powers agreement did not authorize Officer Haskell to arrest Kroschel.<sup>106</sup>

#### IV. IMPACT OF DECISION

The decision in *Kroschel* affirms the legislative limitations of the jurisdiction granted to university police officers.<sup>107</sup> This undermines the notion that universities are little cities in themselves. In addition to safety concerns and monetary implications of the *Kroschel* decision, there is

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96. *Id.* (quoting N.D. CENT. CODE § 54-40.3-01(2) (2016)).

97. *Id.* ¶ 32, 866 N.W.2d at 119-20 (citing N.D. CENT. CODE § 54-40.3-01(2) (2016)).

98. *Id.* at 120.

99. *Kroschel*, ¶ 32, 866 N.W.2d at 120.

100. *Id.*

101. *Id.*

102. *Id.* ¶ 33.

103. N.D. CENT. CODE § 15-10-17(2) (2016).

104. *Kroschel*, ¶ 33, 866 N.W.2d at 120.

105. *Id.* ¶ 32.

106. *Id.*

107. *Id.* ¶ 36, 866 N.W.2d at 121.

concern for the continuous refusal of university police officers to abide by the law.

#### A. POTENTIAL SAFETY CONCERNS

Limiting the jurisdiction of university police officers may create safety concerns from the public, the police department, and the university system. Prior to the opinion, university police officers regularly patrolled the areas in and around the NDSU campus. The limits imposed by *Kroschel* restrict officers and allow potential DUI, property crime, and drug offenders to go unpunished.

These concerns, however, have already been addressed by the courts. North Dakota courts have given university police officers means by which they can address off-campus crimes.<sup>108</sup> University police officers are not restricted from making a citizen's arrest or calling the local police department for assistance.<sup>109</sup> If pressing issue exist, university police should alert local law enforcement agencies.

It may also be argued that there is a shortage of law enforcement officers and that granting university police officers city-wide jurisdiction may improve this shortage. However, our current common law rule should remain intact to preserve local control of police officers. City and county leaders do not have any control over the selection, training, discipline, supervision, or performance of university police officers. Assuming the upcoming legislative session is faced with proposals to expand the jurisdiction of university police officers, limitations ought to be provided for control and supervision of university police officers similar to, if not more stringent than those of city-police officers.

#### B. THE REFUSAL OF UNIVERSITY POLICE OFFICERS TO ADHERE TO THE SUPREME COURT'S DECISION

University police officers continue to exceed their jurisdiction by patrolling off campus. Following the *Kroschel* decision, the Attorney General's office sent out a memorandum stating that university police officers could patrol and arrest near university campuses.<sup>110</sup> Certainly, the Attorney General's office is presenting university police officers with improper advice.

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108. *State v. Creamer*, ¶ 11, N.D. Case No. 18-2015-CR-02427 (N.D. Dist. Ct., Feb. 3, 2016).

109. *Id.*

110. Mem. from Mary Kae Kelsch, Assistant Att'y Gen., to U. of N.D. and N.D. State U. (Aug. 29, 2015) (on file with author).

University police officers appear to be following the Attorney General's guidance. Since the court's opinion in *Kroschel*, many cases have been dismissed because they were initiated by university police officers patrolling off campus. A search of public case records indicates that university police officers continue to regularly patrol and conduct traffic stops on city streets, outside of their jurisdiction.<sup>111</sup> This means that drunk drivers and other offenders are going unprosecuted because university police officers are exceeding their jurisdiction.

At NDSU alone, at least sixty-six citations have been issued off campus since the *Kroschel* decision.<sup>112</sup> Although the NDSU police and safety office only acknowledged fifty-six citations as "off-campus" stops,<sup>113</sup> a further search reveals at least ten more citations have been issued outside the institution's jurisdiction since *Kroschel*.<sup>114</sup> Of those sixty-six citations,

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111. E-mail from Sergeant Danny Weigel, Investigator/Soc. Media Manager, Univ. of N.D. Police Dep't, to author (Aug. 26, 2016, 13:41 CST) (on file with author); E-mail from Bobbi Ruziska, Assoc. Dir., Police Compliance and Commc'ns, N.D. State U., to author (Aug. 24, 2016, 16:07 CST) (on file with author); Register of Actions, City of Fargo v. Skaro, No. FA-2015-CR-04998 (Fargo Mun. Ct. Nov. 17, 2015); Register of Actions, City of Fargo v. Dinkel, No. FA-2015-CR-05153 (Fargo Mun. Ct. Nov. 30, 2015); Register of Actions, City of Fargo v. Dinkel, No. FA-2015-TR-15474 (Fargo Mun. Ct. Nov. 30, 2015); Register of Actions, City of Fargo v. Kretchman, No. FA-2015-CR-04458 (Fargo Mun. Ct. Oct. 16, 2015); Register of Actions, City of Fargo v. Hoff, No. FA-2015-TR-16028 (Fargo Mun. Ct. Dec. 11, 2015); Register of Actions, City of Fargo v. Hoff, No. FA-2016-CR-02049 (Fargo Mun. Ct. Dec. 11, 2015); Register of Actions, City of Fargo v. Hoff, No. FA-2016-TR-05441 (Fargo Mun. Ct. May 13, 2016); Register of Actions, City of Fargo v. Barnett, No. FA-2016-CR-01271 (Fargo Mun. Ct. Mar. 31, 2016); Register of Actions, City of Fargo v. Waxler, No. 09-2013-CR-04396 (N.D. Dist. Ct. Nov. 29, 2013); Register of Actions, City of Fargo v. Lindberg, No. 09-2014-CR-01099 (N.D. Dist. Ct. Feb. 2, 2014).

112. E-mail from Bobbi Ruziska, Assoc. Dir., Police Compliance and Commc'ns, N.D. State U., to author (Aug. 24, 2016, 16:07 CST) (on file with author); Register of Actions, City of Fargo v. Skaro, No. FA-2015-CR-04998 (Fargo Mun. Ct. Nov. 17, 2015); Register of Actions, City of Fargo v. Dinkel, No. FA-2015-CR-05153 (Fargo Mun. Ct. Nov. 30, 2015); Register of Actions, City of Fargo v. Dinkel, No. FA-2015-TR-15474 (Fargo Mun. Ct. Nov. 30, 2015); Register of Actions, City of Fargo v. Kretchman, No. FA-2015-CR-04458 (Fargo Mun. Ct. Oct. 16, 2015); Register of Actions, City of Fargo v. Hoff, No. FA-2015-TR-16028 (Fargo Mun. Ct. Dec. 11, 2015); Register of Actions, City of Fargo v. Hoff, No. FA-2016-CR-02049 (Fargo Mun. Ct. Dec. 11, 2015); Register of Actions, City of Fargo v. Hoff, No. FA-2016-TR-05441 (Fargo Mun. Ct. May 13, 2016); Register of Actions, City of Fargo v. Barnett, No. FA-2016-CR-01271 (Fargo Mun. Ct. Mar. 31, 2016); Register of Actions, City of Fargo v. Waxler, No. 09-2013-CR-04396 (N.D. Dist. Ct. Nov. 29, 2013); Register of Actions, City of Fargo v. Lindberg, No. 09-2014-CR-01099 (N.D. Dist. Ct. Feb. 2, 2014).

113. E-mail from Bobbi Ruziska, Assoc. Dir., Police Compliance and Commc'ns, N. D. State U., to author (Aug. 24, 2016, 16:07 CST) (on file with author).

114. Register of Actions, City of Fargo v. Skaro, No. FA-2015-CR-04998 (Fargo Mun. Ct. Nov. 17, 2015); Register of Actions, City of Fargo v. Dinkel, No. FA-2015-CR-05153 (Fargo Mun. Ct. Nov. 30, 2015); Register of Actions, City of Fargo v. Dinkel, No. FA-2015-TR-15474 (Fargo Mun. Ct. Nov. 30, 2015); Register of Actions, City of Fargo v. Kretchman, No. FA-2015-CR-04458 (Fargo Mun. Ct. Oct. 16, 2015); Register of Actions, City of Fargo v. Hoff, No. FA-2015-TR-16028 (Fargo Mun. Ct. Dec. 11, 2015); Register of Actions, City of Fargo v. Hoff, No. FA-2016-CR-02049 (Fargo Mun. Ct. Dec. 11, 2015); Register of Actions, City of Fargo v. Hoff, No. FA-2016-TR-05441 (Fargo Mun. Ct. May 13, 2016); Register of Actions, City of Fargo v.

at least eleven have been dismissed for lack of jurisdiction.<sup>115</sup> A search of records from the University of North Dakota Police Department revealed that between May 2015 and November 2015, at least thirteen citations were dismissed for lack of jurisdiction.<sup>116</sup> However, a request for additional information from the University of North Dakota Police Department was not returned.<sup>117</sup> In reality, the problem is that university police officers at two of the state's largest institutions are not following the law, even more than one year after the North Dakota Supreme Court's ruling.

It seems likely that the upcoming legislative session will see proposed legislation to allow university police officers to patrol off campus. The real issue should address why North Dakota even has university police officers in the first place. If their jurisdiction is limited to a university campus, and local law enforcement has concurrent jurisdiction on university property, why are North Dakota taxpayers paying for redundant and expensive university police officers to patrol areas that are already backed by existing local law enforcement?

### C. THE MONETARY INCENTIVE TO "IGNORE" THE SUPREME COURT'S DECISION

The decision in *Kroschel* takes away income from the Fargo city treasury. North Dakota law provides that "all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund."<sup>118</sup> However, statute also provides that all

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Barnett, No. FA-2016-CR-01271 (Fargo Mun. Ct. Mar. 31, 2016); Register of Actions, City of Fargo v. Waxler, No. 09-2013-CR-04396 (N.D. Dist. Ct. Nov. 29, 2013); Register of Actions, City of Fargo v. Lindberg, No. 09-2014-CR-01099 (N.D. Dist. Ct. Feb. 2, 2014).

115. Register of Actions, City of Fargo v. Robinson, No. FA-2015-CR-03753 (Fargo Mun. Ct. Sept. 8, 2015); Register of Actions, City of Fargo v. Shoemaker, No. FA-2015-CR-04224 (Fargo Mun. Ct. Sept. 30, 2015); Register of Actions, City of Fargo v. Hill, No. FA-2015-CR-03990 (Fargo Mun. Ct. Sept. 18, 2015); Register of Actions, City of Fargo v. Skaro, No. FA-2015-CR-04129 (Fargo Mun. Ct. Sept. 24, 2015); Register of Actions, City of Fargo v. Skaro, No. FA-2015-CR-04998 (Fargo Mun. Ct. Nov. 17, 2015); Register of Actions, City of Fargo v. Swenson, No. FA-2015-CR-05583 (Fargo Mun. Ct. Dec. 23, 2015); Register of Actions, City of Fargo v. Braunagel, No. FA-2016-CR-00311 (Fargo Mun. Ct. Jan. 25, 2016); Register of Actions, City of Fargo v. Mansouripour, No. FA-2016-TR-01566 (Fargo Mun. Ct. Feb. 8, 2016); Register of Actions, City of Fargo v. Solum, No. 09-2016-CR-00933 (N.D. Dist. Ct. Feb. 16, 2016); Register of Actions, City of Fargo v. Waxler, No. 09-2013-CR-04396 (N.D. Dist. Ct. Nov. 29, 2013); Register of Actions, City of Fargo v. Lindberg, No. 09-2014-CR-01099 (N.D. Dist. Ct. Feb. 2, 2014).

116. E-mail from Sergeant Danny Weigel, Investigator/Soc. Media Manager, U. of N.D. Police Dep't, to author (Aug. 26, 2016, 13:40 CST) (on file with author).

117. E-mail from author, to Sergeant Danny Weigel, Investigator/Soc. Media Manager, U. of N.D. Police Dep't, to author (Sept. 7, 2016, 16:36 CST) (on file with author).

118. N.D. CENT. CODE § 29-27-02.1 (2016).

finances, penalties, and forfeitures for a violation of a municipal ordinance are “paid into the city’s treasury.”<sup>119</sup> Under the MOU, arrests made by NDSU police officers were treated as municipal ordinance violations.<sup>120</sup> By citing all offenses as municipal ordinance violations, university police officers are diverting funds from the common school fund into the city’s treasury.

## V. CONCLUSION

In *Kroschel*, the North Dakota Supreme Court held that university police officers authority is limited to within the bounds of the institutions in which they are employed.<sup>121</sup> Although the Board may employ law enforcement officers and permit concurrent jurisdiction with other law enforcement officers, it can only do so at its institutions.<sup>122</sup> The North Dakota legislature does not authorize the Board to ingress university law enforcement agencies into agreements that permit university police officers to act outside the bounds of their institutions.<sup>123</sup> The determination in *Kroschel* directly impacts the policing operations at state universities by imposing jurisdictional limits on both university police officers and the Board. In response to this decision, universities must cease patrolling outside of their jurisdictional boundaries and conform to the limitations imposed by the North Dakota Supreme Court.

*Amber Cleveland\**

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119. N.D. CENT. CODE § 40-11-13 (2016).

120. Appellant’s Brief, *supra* note 1, at ¶ 22.

121. *Kroschel v. Levi*, 2015 ND 185, ¶ 33, 866 N.W.2d 109, 120.

122. *Id.*

123. *Id.*

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