North Dakota Law Review

Volume 86 | Number 3 Article 1

1-1-2010

The Law of Unintended Consequences: The North Dakota Supreme Court Recognizes the Right to a Jury Trial for Noncriminal Traffic Offenses in Riemers v. Eslinger

Peter Welte

Follow this and additional works at: https://commons.und.edu/ndlr

Part of the Law Commons

Recommended Citation

Welte, Peter (2010) "The Law of Unintended Consequences: The North Dakota Supreme Court Recognizes the Right to a Jury Trial for Noncriminal Traffic Offenses in Riemers v. Eslinger," *North Dakota Law Review*: Vol. 86 : No. 3 , Article 1.
Available at: https://commons.und.edu/ndlr/vol86/iss3/1

This Article is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact zeineb.yousif@library.und.edu.

THE LAW OF UNINTENDED CONSEQUENCES: THE NORTH DAKOTA SUPREME COURT RECOGNIZES THE RIGHT TO A JURY TRIAL FOR NONCRIMINAL TRAFFIC OFFENSES IN *RIEMERS V. ESLINGER*

PETER WELTE*

ABSTRACT

The right to a jury trial is one of the most important of constitutional rights. Practically speaking, exercising that right consumes both the time and resources of citizens and the judicial system. It is well-established that an accused is not entitled to a jury trial when charged with a petty offense. Permitting a jury trial in petty offenses would bottleneck an already burdened court calendar, and the cost-benefit relationship of a jury trial in petty offenses is untenable. Accordingly, there are multiple offenses for which an accused is entitled to a hearing in front of a judicial officer, but not a hearing rising to the level of a jury trial. For example, a citizen accused of violating highway speed limits is entitled to an administrative hearing for that violation, but is not entitled to a jury trial. The right to a jury trial, therefore, involves a delicate balance between the nature of the right and the level of the offense. A recent North Dakota Supreme Court decision directly affects that delicate balance. This essay examines that decision.

I. INTRODUCTION 506
II. BACKGROUND 507
   A. FACTS 507
   B. PROCEDURAL POSTURE 508
III. ANALYSIS 510
   A. THE MAJORITY OPINION 510
      1. *Explanation of Municipal Court Jurisdiction and Procedure* 510
      2. *The Nature of the Right to a Jury Trial* 511
   B. THE DISSENT 516
IV. CONCLUSION: WHERE DOES NORTH DAKOTA GO FROM HERE? 518

"The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."
— Oliver Wendell Holmes, Jr.[1]

I. INTRODUCTION

I am a prosecutor and thus am a courtroom lawyer.[2] Courtroom lawyers are keenly aware of the law of unintended consequences.[3] We learn that the full impact of a court's decision is rarely known immediately after the decision is made. Although a court's decision may have an immediate consequence—an intended consequence—upon each litigant, the decision's full consequence—both intended and unintended—is only known after the court's decision is tested and tried over a period of time by other courts.

Surely all judges are well aware their decisions carry both intended and unintended consequences. In fact, members of the North Dakota Supreme Court have explicitly acknowledged the concept at least four times in the past twenty years.[4] In each of those four cases is an acknowledgement of the idea that unintended consequences are not desirable in the context of judicial economy and practicality because unintended consequences inject

---

*Grand Forks County State's Attorney, Grand Forks, North Dakota. Adjunct Instructor of Law, University of North Dakota School of Law. The author is a 1997 graduate, with distinction, of the University of North Dakota School of Law and has been the elected States Attorney for Grand Forks County, North Dakota, since 2002. He thanks the editors and staff of the North Dakota Law Review, specifically Ben Williams, the Outside Articles Editor, who has been as patient and helpful to the author as any editor could possibly be. This essay consists of the analysis of only the author, who is solely responsible for any errors or omissions.

1. OLIVER WENDELL HOLMES, JR., THE COMMON LAW 1 (1881).

2. Prosecutors, defense attorneys, civil litigators, magistrates, and judges are members of a group of lawyers who witness the functioning of a courtroom each workday. For purposes of this essay, these lawyers are called courtroom lawyers.

3. According to wordiq.com, "The Law of unintended consequences holds that almost all human actions have at least one unintended consequence." Unintended Consequence, WORDIQ.COM, http://www.wordiq.com/definition/Unintended_consequence (last visited Mar. 18, 2011). "In other words, each cause has more than one effect including unforeseen effects. The idea was originated by sociologist Robert K. Merton." *Id.*

4. Forum Commc'ns Co. v. Paulson, 2008 ND 140, ¶ 32, 752 N.W.2d 177, 187 (VandeWalle, C.J., concurring) ("I write to note that our opinion may have unintended consequences."); State v. Salveson, 2006 ND 169, ¶ 28, 719 N.W.2d 747, 757 (Maring, J., dissenting) ("[T]he fact that an unintended consequence occurred does not support a finding that the defendant had two substantially different criminal objectives."); Anderson v. N.D. Workers Comp. Bureau, 553 N.W.2d 496, 500 (N.D. 1996) (Neumann, J., concurring) ("Without adequate presentation to aid my ponderous thought processes, I fear the possibility of unintended consequences."); Lapp v. Reeder Pub. Sch. Dist. No. 3, 491 N.W.2d 65, 71 (N.D. 1992) (Levine, J., concurring) ("While our interpretation of these statutes may create law of unintended consequences, the legislature can overcome our mistaken view by amending the statutes to effect its intended consequences.").

uncertainty into a court's decision.[5] Uncertainty fosters misunderstanding; misunderstanding fosters litigation. Thus, unintended consequences can cause unnecessary litigation, which consumes a court's limited time and resources.

On May 11, 2010, the North Dakota Supreme Court issued a decision that illustrates the law of unintended consequences both for practicing attorneys and for taxpayers in the State of North Dakota. In *Riemers v. Eslinger*,[6] the court held the appellant, Roland Riemers, had a constitutional right to a jury trial for an alleged violation of a noncriminal municipal traffic ordinance punishable by a twenty dollar fine.[7] In short, the court held Riemers had a constitutional right to a jury trial for a petty offense. This essay discusses the peculiar manner in which the *Riemers* case came before the North Dakota Supreme Court, the majority decision in the case, and the dissent. Finally, there is a brief discussion of the possible consequences—intended or unintended—of the decision in *Riemers*.

II. BACKGROUND

A. FACTS

On July 22, 2009, Riemers was charged with following too closely to another vehicle, in violation of the Grand Forks City Code.[8] For the offense, Riemers was subject to a twenty dollar fine.[9] Because the offense was a noncriminal traffic offense, there was no possibility of incarceration.[10] He pled not guilty to the offense in municipal court and requested a transfer to district court under North Dakota Century Code section 40-18-15.1.[11] The municipal judge, Henry Eslinger, denied the request, and Riemers responded by requesting a supervisory writ from the North Dakota Supreme Court.[12] The court granted the petition with regard to whether Riemers had a constitutional right to a jury trial for a noncriminal municipal traffic citation punishable by a twenty dollar fine.[13]

---

5. *See* cases cited *supra* note 4.
6. 2010 ND 76, 781 N.W.2d 632.
7. *Riemers*, ¶ 12, 781 N.W.2d at 635-36.
8. *Id.* ¶ 2, 781 N.W.2d at 633.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*

B. PROCEDURAL POSTURE

Riemers took an uncommon path to the North Dakota Supreme Court. The case came before the court on a supervisory writ, petitioned for by Riemers.[14] The court has discretionary authority to issue a supervisory writ, and a party to a case does not have a right to such a writ.[15] Historically, the court has exercised its authority to issue supervisory writs rarely and cautiously and only to rectify errors and prevent injustice in extraordinary cases in which there is no adequate alternative remedy.[16] Supervisory writs are considered extraordinary relief.[17] The authority exists "so there might be some method by which the harmonious working of our judicial system could be insured, and to meet emergencies, and where other relief provided is inadequate or incomplete."[18]

Riemers represented himself.[19] A self-represented appellant seeking a supervisory writ suggests a level of sophistication not often seen in self-represented appellants; indeed, Riemers is not the typical self-represented appellant. He has litigated before the North Dakota Supreme Court twenty-five times in the past twelve years, and before the North Dakota Court of Appeals four times in that span.[20] Of those twenty-nine cases, twenty-eight times he was either pro se or self-represented.[21] Remarkably, as a non-lawyer, he has been before the North Dakota Supreme Court more often

14. *Id.* ¶ 1.

15. Roe v. Rothe-Seeger, 2000 ND 63, ¶ 5, 608 N.W.2d 289, 291.

16. *Id.*

17. *Id.*

18. State *ex rel.* Red River Brick Corp. v. Dist. Court, 138 N.W. 988, 989 (N.D. 1912).

19. Riemers v. Eslinger, 2010 ND 76, 781 N.W.2d 632 (syllabus).

20. *See generally, e.g.*, City of Grand Forks v. Riemers, No. 20100107, 2010 WL 5416843 (N.D. Dec. 21, 2010); Riemers v. Eslinger, 2010 ND 76, 781 N.W.2d 632; State *ex rel.* Dep't of Labor v. Riemers, 2010 ND 43, 779 N.W.2d 649; Riemers v. State, 2009 ND 115, 767 N.W.2d 832; State *ex rel.* Dep't of Labor v. Riemers, 2008 ND 191, 757 N.W.2d 50; City of Grand Forks v. Riemers, 2008 ND 153, 755 N.W.2d 99; Riemers v. State, 2008 ND 118, 756 N.W.2d 344; Riemers v. State, 2008 ND 101, 750 N.W.2d 407; Riemers v. Mahar, 2008 ND 95, 748 N.W.2d 714; Riemers v. State, 2007 ND APP 4, 739 N.W.2d 248; Riemers v. State, 2007 ND APP 3, 738 N.W.2d 906; Riemers v. State, 2007 ND APP 2, 732 N.W.2d 398; Riemers v. State, 2007 ND APP 1, 731 N.W.2d 620; Riemers v. City of Grand Forks, 2006 ND 224, 723 N.W.2d 518; Riemers v. State, 2006 ND 162, 718 N.W.2d 566; Riemers v. Grand Forks Herald, 2004 ND 192, 688 N.W.2d 167; Riemers v. Omdahl, 2004 ND 188, 687 N.W.2d 445; Riemers v. Peters-Riemers, 2004 ND 153, 684 N.W.2d 619; Riemers v. Anderson, 2004 ND 109, 680 N.W.2d 280; Riemers v. O'Halloran, 2004 ND 79, 678 N.W.2d 547; Peters-Riemers v. Riemers, 2004 ND 28, 674 N.W.2d 287; Lamb v. Riemers, 2003 ND 148, 669 N.W.2d 113; Peters-Riemers v. Riemers, 2003 ND 96, 663 N.W.2d 657; Flattum-Riemers v. Flattum-Riemers, 2003 ND 70, 660 N.W.2d 558; Peters-Riemers v. Riemers, 2002 ND 72, 644 N.W.2d 197; Peters-Riemers v. Riemers, 2002 ND 49, 641 N.W.2d 83; Flattum-Riemers v. Peters-Riemers, 2001 ND 121, 630 N.W.2d 71; Peters-Riemers v. Riemers, 2001 ND 62, 623 N.W.2d 83; Flattum-Riemers v. Flattum-Riemers, 1999 ND 146, 598 N.W.2d 499.

21. *See supra* note 20 and accompanying text. Riemers was represented by counsel in *Peters-Riemers v. Riemers*, 2003 ND 96, 663 N.W.2d 657.

than most practicing North Dakota attorneys during the same time frame. In fact, in petitioning for the supervisory writ, it appears Riemers was simply following the direction that had been given to him by the court two years earlier in a separate, but similar, case.[22]

In *City of Grand Forks v. Riemers*,[23] Riemers was charged with a noncriminal traffic offense and appeared in Grand Forks Municipal Court.[24] He filed a list of objections, including a demand for a jury trial.[25] The jury trial was denied, the matter was tried to the municipal court bench, and Riemers was found guilty.[26] Riemers then appealed the matter to district court, requesting a trial de novo and a jury trial.[27] The district court denied his request for a jury trial, and instead the district court bench tried the matter.[28] Riemers was again found guilty.[29] He then appealed the matter to the North Dakota Supreme Court, alleging he had the right to a jury trial in the underlying offense.[30]

The North Dakota Supreme Court dismissed Riemers' appeal, holding the court had no jurisdiction to hear the matter.[31] However, in dismissing the appeal, Justice Kapsner, who also authored the *Riemers v. Eslinger* opinion, wrote:

> Although we conclude that we lack jurisdiction over Riemers' attempted appeal, we note that an appropriate procedure was available for him to challenge the denial of a jury trial. If Riemers believed he had a right to a jury trial on the charged offense, he should have immediately sought a transfer of the matter from the municipal court to the district court . . . . *If Riemers had filed a timely request to transfer the matter to district court under N.D.C.C. § 40-18-15.1, and the municipal court had denied the transfer or the district court, after transfer, had denied Riemers' request for a jury trial, Riemers could then have sought a supervisory writ from this Court.* This would have been the appropriate procedure to seek this Court's review of whether a defendant has a right to a jury trial in a noncriminal traffic case.[32]

22. *See* City of Grand Forks v. Riemers, 2008 ND 153, ¶ 8, 755 N.W.2d 99, 101-02.
23. 2008 ND 153, 755 N.W.2d 99.
24. *Riemers*, ¶ 2.
25. *Id.*
26. *Id.*
27. *Id.* ¶ 3, 755 N.W.2d at 100.
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.* ¶ 1.
32. *Id.* ¶ 8, 755 N.W.2d at 101-02 (emphasis added).

Riemers followed the course of action suggested by the court in *City of Grand Forks v. Riemers* and found himself before the North Dakota Supreme Court again in *Riemers v. Eslinger*.

III. ANALYSIS

A. THE MAJORITY OPINION

The majority opinion in *Riemers* was authored by Justice Kapsner.[33] Chief Justice VandeWalle and Justice Crothers joined in the majority opinion.[34] The majority first explained municipal court jurisdiction and procedure, and then considered the nature of the right to a jury trial in North Dakota.[35]

1. *Explanation of Municipal Court Jurisdiction and Procedure*

Early in its opinion, the court explained both the jurisdiction of municipal courts and the procedure for trials in municipal court.[36] As far as jurisdiction is concerned, municipal judges have the authority to preside over B misdemeanors and infractions.[37] They also have authority over cases involving a violation of a city ordinance.[38] However, the procedure for contesting a citation for a violation of a municipal ordinance depends upon the nature of the citation.[39]

Procedurally, if the right to a jury trial does not otherwise exist, the municipal judge may try municipal ordinance citations without a jury.[40] However, there are both *noncriminal* municipal ordinances, and there are *criminal* municipal ordinances.[41] If the violation is of a criminal ordinance, then the right to a jury trial exists, and the defendant enforces that right by making a written request to transfer the case from municipal court to district court.[42]

If the defendant in the municipal court proceeding has the right to a jury trial and does not waive that right, then the jury trial is conducted by

33. Riemers v. Eslinger, 2010 ND 76, ¶ 1, 781 N.W.2d 632, 632.

34. *Id.* ¶ 28, 781 N.W.2d at 641.

35. *Id.* ¶¶ 4, 8, 781 N.W.2d at 633-34.

36. *Id.* ¶ 4, 781 N.W.2d at 633.

37. *See* N.D. CENT. CODE § 29-01-15(2) (2006) (conferring authority upon municipal judges to "[h]ear, try and determine misdemeanors and infractions when jurisdiction has been conferred by the Constitution of North Dakota and this and other laws").

38. *Riemers*, ¶ 4, 781 N.W.2d at 633.

39. *Id.*

40. *Id.* ¶ 5.

41. *Id.*

42. *Id.* (noting the 1973 legislature eliminated the ability of municipal courts to conduct jury trials).

the district court.[43] Additionally, should the defendant appeal the decision of the district court, the appeal of that decision is to the North Dakota Supreme Court.[44] Conversely, if the defendant is willing to waive the right to a jury trial, then the municipal judge may try the case without a jury—in other words, a "bench trial."[45] If there is a bench trial in municipal court, the defendant has the right to appeal the decision of the municipal judge.[46] The appeal is made directly to the district court "for trial anew," pursuant to North Dakota Century Code section 40-18-19.[47] However, a waiver of the right to a jury trial in municipal court also constitutes a waiver in district court.[48] Accordingly, if the defendant has waived his or her right to a jury trial, then the "trial anew" in the appeal is a bench trial to the district judge.[49]

By North Dakota statute, a defendant has the right to a jury trial in all criminal prosecutions.[50] However, virtually all traffic offenses are deemed "noncriminal."[51] Therefore, although all defendants charged with a non-criminal traffic offense have the right to a hearing on the offense, that hearing is limited to a hearing in front of the municipal judge, without the right to the presence of a jury.[52] The appeal of the decision would be to the district court, again without the right to the presence of a jury.[53] Such was the case with the original violation in *Riemers*.[54]

2. *The Nature of the Right to a Jury Trial*

The *Riemers* court acknowledged the import of the case before it, stating, "The brief and relatively simple history of this case masks the significant questions it raises regarding the right of trial by jury in our state, which we long ago described as 'the most important of constitutional rights.'"[55] Emphasizing the nature of the right to a jury trial, the court drew attention to the precept that, constitutionally, the right to a jury trial is to be secured to all and to "remain inviolate."[56] The court further emphasized

43. *Id.*
44. N.D. CENT. CODE § 29-28-03 (2009).
45. *Id.* § 40-18-15.
46. *Riemers*, ¶ 5, 781 N.W.2d at 633-34.
47. *Id.*
48. *Id.*
49. *Id.*
50. N.D. CENT. CODE § 29-01-06(5).
51. *Id.* § 39-06.1-02.
52. *Riemers*, ¶ 7, 781 N.W.2d at 634.
53. *Id.*
54. *Id.*
55. *Id.* ¶ 3, 781 N.W.2d at 633.
56. *Id.* ¶ 8, 781 N.W.2d at 634.

that none of the substantial elements of the right to a jury trial may be eliminated by legislation or judicial construction.[57]

The court took particular care in the manner in which it framed the issue in *Riemers*. It noted:

> "[T]he framers of the Constitution intended by the adoption of said provision to preserve and perpetuate the right of trial by jury as it existed by law at and prior to the adoption of the Constitution." . . .
>
> As a result, "the right of trial by jury which is secured by the Constitution is the right of trial by jury with which the people who adopted it were familiar . . . as defined by the statutes which existed prior to and at the time of the adoption of the Constitution." . . . . Therefore, in interpreting the application of art. I, § 13 to violations of municipal ordinances, we examine the right of trial by jury as of 1889, the year our state adopted its constitution.[58]

Central to the analysis of both the majority and the dissent in *Riemers* was section 937 from the Compiled Laws of the Territory of Dakota (C.L. § 937).[59] The statute was last modified in 1887, two years before the Territory of Dakota was separated into the States of North Dakota and South Dakota.[60] However, because the *Riemers* court was attempting to apply the right to a jury trial, "which existed prior to and at the time of the adoption of the Constitution," the statute became a central focus of the opinion rendered by the court.[61]

C.L. § 937 provided the right of trial by jury in specific situations:

> Cases before the city justice arising under the city ordinances shall be tried and determined by the justice without the intervention of a jury except in cases where under the provisions of the ordinances of the city imprisonment for a longer period than ten days is made a part of the penalty, or the maximum fine shall be twenty dollars or over, and the defendant shall demand a trial by jury before the commencement of such trial . . . .[62]

Because Riemers was facing a twenty dollar fine and the right to a jury trial existed in 1889 for alleged violations involving a punishment of ten or more

57. *Id.*
58. *Id.* ¶¶ 8-9, 781 N.W.2d at 634-35 (citations omitted).
59. *Id.* ¶¶ 10, 31, 781 N.W.2d at 635, 642.
60. *Id.* ¶ 10, 781 N.W.2d at 635.
61. *Id.* ¶ 9, 781 N.W.2d at 634.
62. C.L. § 937 (1887).

days in jail or a twenty dollar fine, the majority held Riemers was entitled to a jury trial under the Constitution of the State of North Dakota.[63]

The analysis of the majority focused upon the nature of the right to a jury trial.[64] Acknowledging the Territorial Legislature replaced city justices with police justices seven months before the adoption of the state constitution,[65] the majority noted the Territorial Legislature did not alter the right of trial by jury itself, but rather just the official to whom the case would be tried.[66] Additionally, the right to appeal the adverse decision at the time remained with the district court, similar to the right of appeal under present North Dakota law.[67] To the majority, this analysis was consistent with the desire of the framers that the nature of the right to a jury trial shall remain inviolate.[68]

The City of Grand Forks argued *Riemers* was analogous to *State v. Brown*,[69] a recent North Dakota case addressing the right to a jury trial for a defendant charged with violating a Cass County animal control ordinance.[70] In *Brown*, the defendant was cited for violating an ordinance authorizing no possible imprisonment and fined fifty dollars.[71] Brown argued the North Dakota Constitution afforded her the right to a trial by jury because the right to a jury trial applied to violations of ordinances authorizing a fine of twenty dollars or more.[72]

The majority in *Brown* held the defendant did not have the right to a jury trial because the violation of the ordinance was a *criminal* infraction, an offense not recognized at the time the state constitution was adopted.[73] The *Brown* court stated the legislature meant for infractions to be "an entirely new category of lesser criminal offenses with its own unique procedural requirements."[74] Accordingly, in *Brown*, the North Dakota Supreme Court held "a person charged with violating an infraction-level offense, including a county ordinance creating an infraction-level offense, which carries no possibility of imprisonment, is not entitled to a jury trial under N.D. Const. art. I, § 13."[75]

63. *Riemers*, ¶ 12, 781 N.W.2d at 635.
64. *Id.*
65. *Id.* ¶ 11.
66. *Id.*
67. *Id.*
68. *Id.*
69. 2009 ND 150, 771 N.W.2d 267.
70. *Brown*, ¶ 44, 771 N.W.2d at 279.
71. *Id.* ¶ 46, 771 N.W.2d at 280.
72. *Id.*
73. *Id.* ¶¶ 49-50, 771 N.W.2d at 281.
74. *Id.* ¶ 50.
75. *Id.* ¶ 52, 771 N.W.2d at 282.

The City of Grand Forks attempted to analogize *Riemers* to *Brown*. As in *Brown*, where infractions were developed after the adoption of the Constitution, the City argued that territorial law similarly did not comprehensively regulate traffic prior to the adoption of the state Constitution.[76] This would seem to be a reasonable argument, given the automobile had not yet taken the nation by storm in 1889, the year of North Dakota's statehood; however, the court was unpersuaded.[77]

In disposing of the City's argument that *Riemers* was analogous to *Brown*, the majority opined "the City misstates the nature of traffic regulations at the time the state constitution was adopted."[78] The Compiled Laws of 1887, in fact, gave cities the authority to regulate traffic upon the streets and to regulate the speed of horses and other animals and vehicles within city limits.[79] The court indicated the City of Grand Forks had adopted traffic ordinances as early as 1887 and had even authorized fines of five to twenty-five dollars for violations.[80] The court declined to apply the reasoning of *Brown* to *Riemers*, in part because as early as 1887, the City had the right to regulate traffic in the streets, and at that time, the fines imposed for violating traffic ordinances were high enough to trigger the right to a jury trial under territorial law.[81]

The majority also disposed of another argument posited by the City of Grand Forks that is crucial to delineating the nature of the right to a jury trial. It is well-established the right to trial by jury under the United States Constitution does not apply to "petty" offenses.[82] In determining whether an offense is petty or serious, courts focus on the maximum prison term authorized for committing the offense.[83] According to the United States Supreme Court, if a prison term of less than six months is attached to an offense, courts presume the offense to be petty.[84] The offense with which Riemers was charged was punishable by a twenty dollar fine and no incarceration.[85]

---

76. Riemers v. Eslinger, 2010 ND 76, ¶ 13, 781 N.W.2d 632, 636.

77. *Id.* ¶ 16, 781 N.W.2d at 637.

78. *Id.* ¶ 14.

79. *Id.*

80. *Id.* ¶ 15 (describing an 1887 Grand Forks city ordinance that prohibited persons from driving "any wagon, carriage, dray, cart, or other vehicle" at a speed greater than six miles an hour).

81. *Id.* ¶ 16.

82. *Id.* ¶ 17, 781 N.W.2d at 637-38.

83. *Id.*

84. *Id.*

85. *Id.* ¶ 18, 781 N.W.2d at 638.

The majority acknowledged Riemers was faced with a petty offense.[86] However, the court stated its decision would not be affected by this fact because "we may provide the citizens of our state, as a matter of state constitutional law, greater protection than the safeguards guaranteed in the Federal Constitution."[87] The court gave no rationale, nor was it required to, for affording this greater protection to the citizens of North Dakota.[88]

In concluding its opinion, the *Riemers* majority distinguished its analysis from the treatment given to the same issue by the South Dakota Supreme Court.[89] The majority noted both North Dakota and South Dakota were admitted into the United States on November 2, 1889, and that both states were governed at that time by the Compiled Laws of the Territory of Dakota.[90] The court noted the right to a jury trial in both states "should theoretically be the same."[91] In fact, when faced with the same issue as the *Riemers* court, the South Dakota Supreme Court initially held its Constitution preserved the right to a jury trial in cases like *Riemers*.[92] The *Riemers* court noted, however, that South Dakota's initial interpretation of this right was only temporary.[93]

In *State v. Wikle*,[94] the South Dakota Supreme Court overruled its earlier decision in *City of Brookings v. Roberts*,[95] holding there was no constitutional right in South Dakota to a jury trial for violations of municipal ordinances where the ordinance authorized imprisonment for ten or more days or a fine of twenty or more dollars.[96] The *Wikle* court focused upon the concurring opinions in *Roberts* as accurately describing the constitutional right to a jury trial in South Dakota.[97] Citing the concurrence's requirement of a possible jail sentence as one line of demarcation in determining the right to a jury trial, the *Wikle* court also noted it "could not give [a] literal endorsement to an 1887 law that referred to $20 as the demarcation line for jury trials."[98] The *Wikle* court stated, "The rule of law that incorporated existing statutory law into our state constitution upon its

86. *Id.* ("Therefore, the City is likely correct that Riemers does not have a right to a jury trial under the U.S. Constitution because following too closely is a petty offense.").
87. *Id.* (citing Oregon v. Hass, 420 U.S. 714, 719 (1975)).
88. *Id.*
89. *Id.* ¶ 23, 781 N.W.2d at 639-40.
90. *Id.*
91. *Id.*
92. *Id.* ¶¶ 23-24 (citing City of Brookings v. Roberts, 226 N.W.2d 380, 381 (S.D. 1975)).
93. *Id.* ¶ 24, 781 N.W.2d at 640.
94. 291 N.W.2d 792 (S.D. 1980).
95. 226 N.W.2d 380 (S.D. 1975).
96. *Wikle*, 291 N.W.2d at 794-95.
97. *Id.* at 793.
98. *Id.* at 794.

adoption should be followed in matters of legal principle, but it becomes absurd when followed literally in regard to monetary amounts."[99]

The *Riemers* majority, however, was "unpersuaded" by the reasoning of the South Dakota Supreme Court in *Wikle*.[100] Maintaining the South Dakota Supreme Court did not analyze the nature of the right under territorial law in 1889, the *Riemers* court was also troubled with which principle to apply to the twenty dollar limit.[101] If not the literal twenty dollar limit, asked the court, then what principle should apply if the value of the dollar varies?[102] The court asked how it should determine the right to a jury trial if the right were to fluctuate with inflation. The majority closed its opinion:

> We hold to our prior jurisprudence, that the right of trial by jury is determined by the laws as they existed at the time the Constitution of North Dakota was adopted, and decline to follow the South Dakota Supreme Court. The people of North Dakota may change this right if they choose.[103]

B. THE DISSENT

Justice Sandstrom wrote the dissenting opinion in *Riemers*, joined by Justice Maring.[104] The dissent began with the acknowledgment that the Constitution of North Dakota preserves the right to a jury trial in cases for which the right existed at statehood.[105] Citing C.L. § 937, the same territorial statute relied upon by the majority, but with a different analysis of what constitutes a petty offense, Justice Sandstrom opined:

> At statehood, the law of Dakota Territory, which became the law of North Dakota, provided for a jury trial for serious, "non-petty," violations of municipal ordinances. On the basis of this interpretation, which is consistent with the interpretation of the United States Supreme Court and other courts as discussed below, Riemers is not entitled to a jury trial.[106]

Calling the majority's interpretation "unreasonable and inconsistent,"[107] Justice Sandstrom took issue with the majority's analysis of and

99. *Id.*
100. Riemers v. Eslinger, 2010 ND 76, ¶ 26, 781 N.W.2d 632, 641.
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.* ¶ 29, 781 N.W.2d at 641 (Sandstrom, J., dissenting).
105. *Id.* ¶ 30.
106. *Id.*
107. *Id.* ¶ 29.

reliance upon C.L. § 937.[108] His inference was that there are two ways to analyze C.L. § 937.[109] It can be analyzed in a literal sense, or it can be analyzed using modern equivalents.[110]

On one hand, a literal reading of C.L. § 937 provides for a bench trial unless the "maximum fine shall be twenty dollars or over."[111] The majority relied upon a literal interpretation of this language in justifying its holding that the Constitution of North Dakota provided Riemers with the right to a jury trial for a noncriminal municipal traffic citation punishable by a twenty dollar fine.[112] But, Justice Sandstrom noted a consistent literal reading of the statute applies only to "cases before the city justice."[113] Accordingly, because the office of city justice had been legislatively abolished, Justice Sandstrom pointed out a literal interpretation of the entire statute—and not just one segment of the statute—would result in a logical conclusion that Riemers did not have a constitutional right to a jury trial because city justices no longer exist under North Dakota law.[114]

Justice Sandstrom illustrated a consistent "modern equivalent" analysis of C.L. § 937 would also result in determining Riemers did not have the constitutional right to a jury trial.[115] Assuming the modern equivalent of a city justice would be a municipal judge, Justice Sandstrom noted the modern equivalent of twenty dollars in 1887 would be approximately four hundred dollars.[116] Thus, consistently analyzing C.L. § 937 as a whole using modern equivalents would result in Riemers not having the right to a jury trial. Justice Sandstrom then followed his analysis to its logical conclusion in illustrating the inconsistent logic used by the majority in analyzing C.L. § 937: "Only by applying one rule (modern equivalent) to the first half of the sentence and the other rule (literal language) to the second half of the sentence does the majority reach its conclusion."[117]

Justice Sandstrom also illustrated how the majority's analysis in *Riemers* was inconsistent with the jurisprudence of the United States Supreme Court regarding the right to a jury trial.[118] In a line of cases extending over 120 years, the United States Supreme Court has held the

108. *Id.* ¶ 31, 781 N.W.2d at 642.
109. *Id.* ¶¶ 31-32.
110. *Id.*
111. *Id.* ¶ 31 (emphasis omitted).
112. *Id.* ¶ 27, 781 N.W.2d at 641.
113. *Id.* ¶ 32, 781 N.W.2d at 642.
114. *Id.* ¶¶ 32-33.
115. *Id.* ¶ 34.
116. *Id.* ¶ 31.
117. *Id.* ¶¶ 33-34.
118. *Id.* ¶¶ 35-36.

right to a jury trial in criminal prosecutions applies only to serious crimes, not petty offenses.[119] Furthermore, although the United States "Supreme Court has declined to establish a precise line of demarcation for petty offenses," it has indicated a crime is not petty when there is a possibility of incarceration for six months or more.[120] Given the fact that Riemers faced a penalty of twenty dollars with no possibility of any incarceration, it would have been well within the parameters of United States Supreme Court jurisprudence to hold Riemers' offense was petty and thus carried with it no right to a jury trial.

Justice Sandstrom further elaborated on the analysis of the South Dakota Supreme Court in both *Roberts* and *Wikle*.[121] Reiterating the court's statements in *Roberts* that it "could not give literal endorsement to an 1887 law that referred to $20 as the demarcation line for jury trials," Justice Sandstrom also noted the South Dakota Supreme Court has since extended its opinion in *Wikle*.[122] Specifically, in *State v. Auen*,[123] the South Dakota Supreme Court held in prosecutions of offenses with maximum authorized jail sentences of less than six months, a court may deny a jury trial request if the court assures the defendant that no jail sentence will be imposed.[124]

IV. CONCLUSION: WHERE DOES NORTH DAKOTA GO FROM HERE?

From a courtroom lawyer's perspective, and from a taxpayer's perspective, it is difficult to accept that the law of North Dakota now provides for a jury trial in cases involving no possibility of jail and a fine of twenty dollars. In February 2011, six jurors made history as the first North Dakota jurors to hear a parking ticket case.[125] Not all the jurors felt the time was well spent; "I think public servants and citizens have a lot better use of time than to be giving consideration over what I understood to be a $20 ticket," said jury foreman Mark Jones.[126] Ironically—or perhaps not—the defendant in the case was none other than Roland Riemers.[127] The court administrator estimated the cost of the jury alone to be approximately $780, not

119. *Id.* ¶ 36.
120. *Id.*
121. *Id.* ¶¶ 37-38, 781 N.W.2d at 642-43.
122. *Id.* ¶¶ 39-40, 781 N.W.2d at 643.
123. 342 N.W.2d 236 (S.D. 1984).
124. *Id.* at 238.
125. Archie Ingersoll, *Parking Ticket Case Heard by Grand Forks Jurors*, GRAND FORKS HERALD, Feb. 9, 2011, at B1.
126. *Id.*
127. *Id.*

counting the time invested by the judge, court clerk, and court reporter. Even without any possible appeal, it is difficult to rationalize—at least in a purely economic sense—the cost of collecting the twenty dollar fine in such a case. That cost would, inarguably, be dramatically reduced if the right to a jury trial did not attach to such an offense.

Should the North Dakota Supreme Court not overrule *Riemers* in a future case, the court indicated the people of North Dakota could change this newfound right if they should so choose.[128] The court was likely referring to a constitutional measure clarifying the right to a jury trial in the State of North Dakota. Another option would be legislative action, although there is none of any kind pending during the current legislative session. Regardless, the right to a jury trial for a petty offense is the law of the land in North Dakota. It remains to be seen what additional consequences—intended or unintended—accompany that right.

128. Riemers v. Eslinger, 2010 ND 76, ¶ 26, 781 N.W.2d 632, 641.