

20030343 -

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CITY OF MINOT VS. KARY 20030344
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SUPREME COURT No. 20030344
ORIGINAL
20030344

MAR 29, 2004

WARD CO. NO. 02-K-00700
02-K-00701

STATE OF NORTH DAKOTA

Appellant's Brief

TRENTON KARY IS APPEALING BECAUSE THE SYSTEM FAILED. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THE ESSENTIAL ELEMENTS OF THE CHARGES.

THEY CLAIM THEY HAVE:

1. ODOR OF ALCOHOL
2. SPEEDING TICKET
3. VEHICLE ACCIDENT

THERE ARE NO BLOOD ALCOHOL TESTS THAT SHOW TRENTON KARY ABOVE AN ACCEPTABLE LEVEL OR THE LEGAL LEVEL BAC, WE HAVE NO FIELD SOBRIETY TEST, WE DON'T HAVE SD2'S.

THERE IS NO OBJECTIVE DETERMINATION OF MR. KARY'S TRUE BLOOD ALCOHOL VOLUME. ND CENT CODE SECTION 39-08-01. BASED UPON SUCH EVIDENCE IT WAS IN ERROR FOR THE COURT TO DETERMINE BEYOND REASONABLE DOUBT THAT MR. KARY'S SO CALLED ODOR OF ALCOHOL HAD ELEVATED TO A DEGREE THAT HE HAD BECOME 'UNDER THE INFLUENCE' OF ALCOHOL TO A DEGREE TO SUPPORT A CRIMINAL CONVICTION. IT HAS ALWAYS BEEN MY UNDERSTANDING THAT ALCOHOL HAS LITTLE OR NO ODOR. THAT IS PURE ALCOHOL ITSELF - THE ETHYL ALCOHOL OR ETHANOL - WILL HAVE NO ODOR. WHAT THE OFFICER GENERALLY SMELLS IS THE FLAVORING OF THE DRINK. BEER, NEAR BEER, WINE WILL LEAVE THE STRONGEST ODOR YET LEAST

INTOXICATING – POINT BEING, SINCE THE INTOXICATING ELEMENT – ALCOHOL – HAS NO ODOR., THE PRESENCE OF AN ODOR DOES NOT TELL HOW MUCH, IF ANY, ALCOHOL HAS BEEN CONSUMED.

THERE IS NO CORRELATION BETWEEN THE AMOUNT OF ALCOHOL CONSUMED AND THE ODOR – AND CERTAINLY NONE BETWEEN THE STRENGTH OF THE ODOR.

TRENT KARY CONTENDS THE OFFICERS TESTIMONY REGARDING SPEEDING IS NOT CREDIBLE. OFFICER'S TESTIMONY IN COURT WAS NOT CONSISTENT WITH TESTIMONY AT DMV HEARING. OFFICER DUMP'S TESTIMONY IN COURT REGARDING SPEEDING TICKET WAS NOT CONSISTENT WITH WHAT WAS SAID IN CITY COURT VS. DISTRICT COURT VS. DISTRICT COURT AUGUST 21, 2003. PAGE 55 OF TRANSCRIPT MR. DUMP NOW SAYS HE ROUNDS UP.

NOTE SPEEDING WAS LISTED AS PROBABLE CAUSE, YET SPEEDING TICKET WAS ISSUED 5 DAYS AFTER MARCH 16TH, PER PAGE 87 OF MANUSCRIPT. I FIND IT STRANGE OFFICER TESTIFIED HE HAD DETERMINED HE WOULD ARREST MR. KARY FOR DUI BECAUSE OF RADIO REPORT INDICATING SPEED EVEN THOUGH RESEARCH CONDUCTED BY THE NATIONAL HIGHWAY TRAFFIC ADMINISTRATION STATES THAT SPEEDING IS NOT A SYMPTOM OF DUI.

THE LAW STATES AN OFFICER CANNOT MAKE AN ARREST FOR DRIVING UNDER THE INFLUENCE UNLESS HE HAS PROBABLE CAUSE EXHIBIT 1 OFFICERS STATEMENT OF PROBABLE CAUSE – CLOCKED ON RADAR AT 70 MPH IN 40 – HE HAD A STRONG ODOR OF LIQUOR ON HIS BREATH WHILE IN VEHICLE. PAGE 55 OF TRANSCRIPT OFFICER DUMP NOW SAYS HE ROUNDS UP (INFORMATION TO OFFICER SALTSMAN IS INCORRECT)

PAGE 42 OF TRANSCRIPT Q, TO OFFICER DUMP DID YOU NOTICE ANYTHING AS FAR AS ODORS OR ANYTHING ON HIM? A. NOT AT THAT POINT. BASICALLY FROM THE IMPACT OF THE CRASH ALL'S I COULD SMELL WAS THE ODOR FROM THE VEHICLE. PAGE 72 OF TRANSCRIPT OFFICER SALTSMAN SAYS HE DID NOT DETECT ODOR OF ALCOHOL UNTIL HE WAS HOLDING HOSPITAL BOARD. (DIRECT CONTRADICTION TO WHAT WAS SAID IN PROBABLE CAUSE STATEMENT WHERE HE STATES ODOR OF ALCOHOL ON HIS BREATH WHILE IN VEHICLE.

PAGE 75 OF TRANSCRIPT INDICATED RADIO CONTACT WITH OFFICER DUMP WAS REASON OFFICER SALTSMAN PLACED TRENTON KARY UNDER ARREST FOR DUI – HEARSAY.

PAGE 77 OF TRANSCRIPT – DAMAGE TO VEHICLE WAS ONE OF THE CONSIDERATIONS IN BRINGING DUI CHARGES. MATTER OF LAW – PICTURE OF TRUCK WAS EXTREMELY PREJUDICIAL – DAMAGE TO VEHICLE IS NOT

INDICATION OF DUI, THE PICTURES ONLY SERVE TO CREATE EMOTIONS WITH JURY.

MR. FLAGSTAD STATES "REFUSAL TO SUBMIT TO CHEMICAL TESTS BY CASE LAW MAY BE ADMISSIBLE. THE SUPREME COURT HAS RULED THAT WHEN SOMEBODY REFUSES A TEST REQUESTED BY AN OFFICER, THE FACT IS ADMISSIBLE. WE ARE STATING TRENTON KARY WAS NOT CAPABLE OF REFUSING – THEREFORE IT SHOULD NOT HAVE BEEN ADMISSIBLE. THE STATES INFERENCE THAT TRENTON KARY REFUSED THE TEST WAS OVERLY PREJUDICIAL TO THE JURY AS IT RAISED A CONSCIOUSNESS OF GUILT. TRENTON KARY DID NOT REFUSE TEST – PAGE 90 OF TRANSCRIPT. PAGE 89 LINE 29 OF TRANSCRIPT INDICATES THE CORRECT PROCEDURE THAT SHOULD HAVE BEEN FOLLOWED IN THE EVENT THAT A PERSON IS DEAD, UNCONSCIOUS OR OTHERWISE IN A CONDITION RENDERING HIM INCAPABLE OF ANSWERING YOUR QUESTIONS.

A. FROM MR. SALTSMAN – DO THE BLOOD SAMPLE OR HAVE THE SAMPLE DRAWN BECAUSE THEY'RE NOT WITHHOLDING THEIR CONSENT.

PAGE 90 OF TRANSCRIPT LINE 13 Q. TO OFFICER SALTSMAN "AT THAT POINT ISN'T IT TRUE MR. KARY WAS EITHER ON THE VERGE OF UNCONSCIOUSNESS OR WAS IN A CONDITION THAT RENDERED HIM INCAPABLE OF REFUSING THOSE TESTS?

A. FROM OFFICER SALTSMAN – THAT WOULD HAVE BEEN THE OBSERVATION OF DR. JEFF SATHER IT WAS NOT MY OBSERVATION AT THE TIME. PAGE 83 OF TRANSCRIPT OFFICER SALTSMAN IS AWARE OF COLLAPSED LUNG, YET STATES HE IS NOT AWARE OF 3 BROKEN RIBS – EVEN THOUGH HE WAS OUTSIDE EMERGENCY ROOM WITH MOTHER WHEN DR. CAME DOWN AND INFORMED MOTHER OF EXTENT OF INJURIES.

APPEAL FOR SPEEDING WAS LABELED FRIVOLOUS AND DISMISSED – YET OFFICER DUMP NOW ADMITS TO ROUNDING UP FROM 68 IN A 30 TO 70 IN A 40.

MR KARY BELIEVES A DELAY IN TRIAL AND MR, SCHOPPERTS INTERIM SUSPENSION RESULTED IN IMPAIRMENT OF DEFENSE.

CONCLUSION

FOR THE REASONS SET FORTH ABOVE, THE APPELLANT RESPECTFULLY REQUESTS THAT THE UNDERLYING CONVICTION OF DRIVING UNDER THE INFLUENCE AND MINOR IN CONSUPTION BE REVERSED.

DATED THIS 28TH DAY OF MARCH

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