

ORIGINAL

20070149

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	
Plaintiff/Appellee,	)	Supreme Court No. 20070149
	)	
vs.	)	Burleigh Co. No. 07-C-00170
	)	
Three Thousand Seven Hundred	)	
Nineteen (\$3,719.00) United	)	FILED
States Currency,	)	IN THE OFFICE OF THE
	)	CLERK OF SUPREME COURT
-----	)	
	)	SEP - 1 2007
John Sidor Jr.	)	
	)	STATE OF NORTH DAKOTA
Defendant/Appellant,	)	
	)	

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BRIEF OF DEFENDANT/APPELLANT JOHN SIDOR JR.

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Appeal from Civil Judgment entered  
March 19th 2007, in District Court, County of Burleigh,  
State of North Dakota, The Honorable Bruce Romanick.

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John Sidor Jr. (Pro-Se)  
James River Correctional  
2521 Circle Drive  
Jamestown, ND  
58401

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**Statement of the issues**

1. Whether the trial courts decision to grant the forfeiture motion was erroneous and abuse of discretion.
2. Whether the trial courts decision that Mr. Sidor intended to buy drugs was erroneous.
3. Whether the trial courts decision that Mr. Sidor intended to sell any drugs was erroneous.

**Statement of the case**

This is an appeal by John Sidor Jr. from a Civil Judgement entered on March 19, 2007, in District Court, County of Burleigh, South Central Judicial District. Appellant John Sidor Jr. (herinafter Mr. Sidor)

The trial court entered judgement in favor of the state's motion.

## Statement of facts

John Sidor Jr. have been a working citizen since the age of 16. Since that age I've never been without a job for a duration longer than 2 weeks. I attended Bismarck State College & studied business management. In June of 2004 I entered the manager in training program at Footlocker, with hard work & dedication I completed that program in 6 months. My hard work was rewarded with my own store to manage. I was given the responsibility of over \$10,000 in merchandise. I was a successful store manager until October 2006 when I relocated back to Bismarck. Upon return to Bismarck I immediately returned to work in Applebee's kitchen where I've had 5 years of employment in the past. A management job at Denny's was offered to me around summertime of 2007. I accepted that position. I kept my job at Applebee's as well. At that time I had a full time job along with 2 part time jobs. In July my brother became overwhelmed with work. He is the owner of River City Construction. My brother needed a experienced carpenter that would be reliable so I started working for my brother. I am a graduate of Ron Haider's carpentry class so I decided to give up my job at Denny's to help my brother out. He paid well (\$300-\$500 per job) & in between jobs we did for his business. We would work for R-Hart construction. I made a lot of money without much time to spend it, my average work week was 70 hours. In addition to my income my fiance also worked full time

as a waitress at Denny's. She has been working there for 2 years and did well with tips. My financial responsibilities were minimal. I made my trailer payment of \$250 which includes utilities, lot rent \$200, & cell phone \$45 on a monthly basis. I am an experienced mechanic so automotive maintenance comes cheap, my vehicles have been paid off, & my mother covered my auto insurance. The restaurants we worked at provided for meals. My wardrobe has been in excess since my retail career at Footlocker & Finish Wine. So my expenses consisted of gasoline for vehicles & a small amount for entertainment. I feel more comfortable when I handle my money. I don't depend on banks since I don't want someone else responsible for my hard earned money, therefore my soon to be wife (Jody Hewson) and I invested in a large stationary combination safe. It was in 2005 when I purchased this safe & started using it to save money. The safe I purchased is 2 feet deep, 2 feet wide, & 2 feet tall. It has a small drawer for storage on top & is also fire proof and very secure.

My fiance, Jody & I met early (Feb) 2006. It didn't take long for us to fall in love. I knew this was the person I would grow old with & raise a family. On my birthday (May 28th) of 2006 Jody gave me the best birthday present I'll ever receive, she became pregnant

with our baby girl. The middle of June the doctor confirmed her pregnancy. At that point we started planning our future with our family. We started minding our money closely. By the end of summer we had started becoming confident that we could afford a baby. We had saved \$2500 which is what we figured we would spend setting up the baby's room. We needed a crib, playpen, car seat, stroller, swing, bouncer, mobile, clothes, & decorations for a baby's room. We continued saving setting our goal at putting aside \$500 a month for medical bills & diapers when the baby was born. By the middle of Sept. we had \$1,000 placed beside the \$2,500 we had already saved. We were also ready to put another \$500 with the \$1,000. Jody has around \$200 (Exactly \$219) in tips saved & I had a check for \$300 for cash. The Date was 9/19/06 & I picked up I side job doing some roofing in Hazen. I was to receive \$150 for that job & didn't bother cashing my check since I would have another one soon. On that day of 9/19/06 I was taken from work to county jail to face charges. My major expense of the entire summer was new tires for my car which my mom paid  $\frac{1}{2}$  of for my birthday present. My car was vandalized which is why I had to purchase new tires. As a deterrent to vandalism I went to Wall-Mart & purchased a security camera for \$29.99. I installed the camera to face the driveway where I park my vehicles, although it still remains unknown who vandalized my car, it never

happened again & I believe the reason for that is due  
to the security camera.

Combined argument's issues 1,2 and 3

The case at hand is straight forward. The task force recieved information from an unnamed informant that John Sidor was possibly selling drugs from his residence. The informant was unreliable and had already recieved a false information to law enforcement. Since the informant was unreliable an agent from the Metro Area Safe Trails Task Force (MASTTF) mad contact with Mr. Sidor. The agent made attempts on four different occasions to purchase methamphetamine or marijuana and was not successful. Therefore the state couldn't enter any exhibits to prove sales or purchases of any controlled substance. The state's arguments are based on the paraphanelia seized in the search alone. On September 19, 2006 MASTTF officers executed 9 search warrant at 1119 University Drive #1318, Bismarck N.D.. The scope of the warrant included (#1.) controlled substances and (#2.) drug paraphernalia. Note: No mention of U.S. currency was on the search warrant.

During the search officers identified various types of marijuana, methamphetamine, digital scale, paraphernalia, and \$3719.00 (\$3500 was located in Mr. Sidor large safe.) All contraband was consistent with a drug user.

Officers arrested John Sidor and Jody Hewson for various charges located on Page 5 of appendix.

## Items in residence

When searching, officers may move items as necessary to conduct the search for items on the warrant. When searching for easily concealed items, an officer may search any area where the specified property could have been located. Evidence of a crime observed by an officer in plain view need not be ignored while executing a search warrant in regard to other items. In addition, evidence of a crime found in plain view may be seized, even though the items are not listed in a search warrant. The initial intrusion must be supported either by a warrant or by one of the exceptions to the warrant requirement to fall within the plain view doctrine.

In the instant case, law enforcement had a search warrant authorizing the search anywhere in the residence where controlled substances or drug paraphernalia may be found and that could be anywhere in the residence.

## Statements

### State exhibit 1: Residence viewed from front

Shows the camera viewing directly where vehicles are parked. Both motorcycle and car. State agrees camera would be a deterrent to theft or vandalism.

### State exhibit 2: Security camera

State claims camera commonly used by drug trafficker. In actuality, camera was being used for added security and protection from vandalism and theft. Camera can be purchased relatively cheap (\$29.99 at Walmart) at any electronics outlet.

### State exhibit 3: Closet where trap door was located.

Note: safe is not visible near trap door.

### State exhibit 4: Floor of closet

Location where all evidence was found.

### State exhibit 5: Contents of trap door

Rolling papers, zip lock bags, roaches, rolled up dollar bill, pen tube, pill container, and scale. All of which shows drug usage not sales.

### State exhibit 6: Contents of trap door

Mr. Sidor agrees the drugs belong to him. The reason for separate bags is different grades. Digital scale used to weigh drugs and regulate usage. All consistent with drug usage.

State exhibit 7: Unused zip lock bags

Smaller bags are used to store small quantities to be used outside of the home. The task force may not agree, common sense tells us that it is easier to conceal a smaller package rather than a bulky package. Bundle of 100 count are purchased for 99¢ at Walmart. You can't purchase a smaller quantity.

State exhibit 8: Food scale

Purchased in the kitchen department at Walmart. Located in kitchen of my place. Something I've owned for years and is common to anyone with a culinary career.

State exhibit 9: Container removed from trap door

Container contained 4.5 grams of methamphetamine in sandwich type bag. Small zip lock bag containing meth residue. Glass pipe commonly used in smoking meth contained meth residue. All items typical of meth usage.

State exhibit 10: Notebook

This notebook page has some figures Mr. Sidor had recorded for personal friends. Job included vehicle repair,

a fence he built, and small carpentry jobs.

State exhibit 11: Notebook

This page out of a notebook was a record kept of paintball all. Notice no dollar figures. 3 guns were seized.

State exhibit 12: Notebook

This notebook dates back to 2002. Mr. Sidor kept books for a fantasy football league where a group of friends would bet on teams we "drafted." There are alot of small denomination placed as frienly bets, something we did for fun and is done nation wide.

State exhibit 13-15: Small bills

Ms. Hewson's tips from her waitress job at Denny's. Mr Sidor stacked them and put them in a kleenex box so they weren't left out in the open.

State exhibit 14-17: Large bills located in safe.

Money Mr. Sidor and Ms. Hewson have saved in preparation to start a family. \$2500 bundle to be used for baby paraphanelia. \$1000 bundle was saved to help pay for medical expenses.

State exhibit 16: Small denomination bills

Ms. Hewson's tip money again. All earned working as a waitress at Denny's.

State exhibit 18: Motorcycle registration

State exhibit 19: Statement of facts

Defendant exhibits 20,21,22,23: W-2 forms

Mr. Sidor entered as evidence his W-2. Those show \$11000 Mr. Sidor earned at various jobs. Those wages do not include the money Mr. Sidor earned working for River City Constructions, cash jobs, or Ms. Hewson's wages. Mr. Sidor earned around \$1500 with River City Construction. Approximately \$700-1000 in cash jobs.

Conclusion

The order granting the state's motion should be reversed and the U.S currency should be returned to John Sidor and Jody Hewson.

Respectfully Submitted this 1<sup>st</sup> Day of September 2007



John Sidor

2521 Circle Drive Jamestown, ND 58401

N.D.C.C. § 19-03.1-36 (1) (h).

Reads as follows: All money, coin, currency, and everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter or an imitation controlled substance in violation of Chapter 19-03.2, and all real and personal property, assets, profits, income, proceeds, or an interest therein, acquired or derived from the unlawful purchase, attempted purchase, delivery, attempted delivery, manufacturing, or attempted manufacturing of any controlled substance or imitation controlled substance.

