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20090009

BEFORE THE SUPREME COURT OF NORTH DAKOTA

North Dakota
v.
Joe R Blurton

)
) Appealant's Reply Brief
) East Central Distric Court
) 09-07-K-03531
) IN THE OFFICE OF THE
) CLERK OF SUPREME COURT

defendant) 20090009 Supreme Court No.

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N.D.R.App.P. § Rule 28(d) STATE OF NORTH DAKOTA

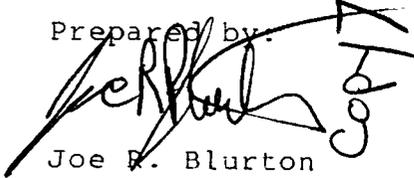
- (A) Supreme Court Case Number 20090009
- (B) East Central Distric Court 09-07-K-03531
- (C) North Dakota vs. Joe R. Blurton
- (D) Reply to Appealee's Brief
- (E) Prepared Pro Se
- (F) Joe R. Blurton
JRCC # 33767
2521 Circle Drive
Jamestown North Dakota

NDRAppP § Rule 31(b)(1)(C):

The appealant certifies this brief was prepared on a manual typewriter and no electronic version exist.

NDRAppP § Rule 31 (b)(B):

This unbound original was supplied to the Clerk of the Supreme Court.

Prepared by:

Joe R. Blurton

Signed this 8 day of May 2009.

Revised May 21, 2009


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1. NDRAppP§ Rule 28 (d) Reply Brief Issue One-Elements

2. From the September 06, 2007 First Appearance transcript
(1)

2. Blurton is told by the Court, as recorded on page 5 at 9-11.

3. "You have the right to have a lawyer advise you before

4. making any statements, answering any questions or at any time

5. WHEN EVENTS HAPPEN RELATING TO YOUR CASE."

6. On page 11 at 6-15 Blurton wishes to speak with an

7. attorney, he has questions. Mr. Mertz replies:

8. "Your Honor I'm not in any position to speak to it."

9. And then same page at 9-11:

10. "Because, you know, obviously one of the problems is

11. everyone in the Courtroom knows about these cases [ITV Cases]

12. except the defense attorney."

13. And then at 13-15 same page:

14. "You know you have a file, he has a file, she has a file.

15. I know nothing except the guy's name. So I can't speak to--"

16. NDRCrimP§Rule 10, Arraignment (a) " In general. Arraign-
(a)

17. ment must be conducted in open Court and consist of:

18. (1) ensuring the defendant has a copy of the indictment,

19. information, or complaint;

20. (2) reading the indictment, information, or complaint to the

21. defendant or stating to the defendant the substance of the

22. charge; and then

23. (3) asking the defendant to plead to the indictment, inform-

24. ation or complaint."

25. N.D. Sup. Ct. Admin.§Rule 52 states of Interactive
(b)

26. Television under Section 1: "This rule is intended to en-

27. hance the current level of judicial services available within

1. NDRAppP§Rule 28 (d) Reply Brief Issue One (con't)
2. the North Dakota court system through the use of interactive
3. television and not in any way to reduce the current levels
4. of judicial review."

5. The defendant was arrested on September 02, 2007 in
6. Ramsey County on a warrantless arrest. NDCC§29-06-25 was not
7. applied. The Legislative Intent of NDCC§29-06-25 is defined
8. citing State vs. Iverson, 187 N.W. 2d 1 (ND 1971) Cert.
9. denied, ^(d)404 US 956 92 S. Ct. 322 30 L 2d 273 (1971):

10. "The intent of this section is to interpose the judgement of
11. of an independant magistrate between the judgement of the
12. peace officer or a private person in arresting another per-
13. son without a warrant and the decision to hold him for
14. preliminary examination or to stand trial."

15. Blurton has repeatedly asked during his four days of
16. custody for legal assistance. States Evidence (5) and (6)
17. would verify that on Sept. 02, ⁽³⁾2007 Blurton told Investigator
18. Stanger he would gladly speak about the events of that morning
19. with an attorney present. While held without an explanation
20. inside a concrete cell Blurton has attempted to contact an
21. attorney. Jail Officers have told him to sign the ITV consent
22. and present his problems to the Court. Blurton finally refuses ⁽⁴⁾
23. to continue signing papers presented to him by Jail Officers.
24. His complaints about ⁽³⁰⁾⁽⁷⁾the inability to dial 1-800 phone numbers
25. or directory assistance leave him without contact as Blurton
26. is unknowing of Court Room Procedure, his extent of Criminal
27. charges as well as the City of Fargo or North Dakota for that

1.. NDRAppP§Rule 28(d) Reply Brief Issue One (con't)

2. matter.

3. Here the defendant has no real understanding of his sit-
4. uation except that he has been held by police without explan-
5. ation for four days and unable to obtain any form of legal
6. representation, indeed he is under a great deal of stress.

7. The Court has not "...examine[d] on oath the complainant
8. and any other witnesses..." as prescribed by NDRCrimP§Rule
(e)

9. 3(b). There has been no magistrial review as prescribed by

10. NDCC§29-06-25. The sole basis for Counts 1,2,3 & 4 is Officer
(c) (5)

11. Abel's Sept 03, 2007 Affidavit of Probable Cause.
(6)

12. Without legal representation these abuses of due process

13. go unnoticed. Clearly Mr. Mertz has been kept in the dark and
(1)

14. the Court is only acting in favor of the States Attorneys.

15. Indeed: intake prosecutors are also dependant upon the

16. statements of Officer Abel. Without legal counsel at a
(7)

17. critical juncture, without the Court's unbiased discretion,

18. Blurton has been maliciously accused not based upon facts.

19. The Court is asked to review NDCC§12.1-20-03(1) (a),(b)
(f)

20. and (c) and review the "elements of offense" as intended by

21. the State Legislature. A Submitted Request to use Citation of

22. Supplemental Authorities: State vs. Vantreece 2007 ND 126,
(g)

23. 736 N.W. 2d 428, 2007. Force, resistance and gross imposition

24. to be compared to the Medical Examination presented in the

25. SANE report completed at 4:08 am, within one hour of the
(8)

26. event.

27. Here an experienced medical exam, conducted by a sympathetic

1. NDRAppP§Rule 28(d) Reply Brief Issue One (con't)

2. situation by a female Rn. In review the "pt. denies" being
(9)

3. "grabbed" or "strangled" or "physical blows by hands or feet"
(9) (9) (9)

4. among other physical actions. There is "Ø trauma appreciated
(10)

5. on exam"; the result of an acute forensic medical examination

6. that has a proven Court Record. Detection of subtle trama

7. of sexual assult is not proven on the patients body, neck,
(10) (10)

8. anus; there is "Ø trauma reported". There is no mention of
(11)

9. intoxication and as well the Rn saw no reason to collect

10. urine for evidence of a drug-facilated rape.
(12)

11. The State argues from ¶19 to ¶20 they have "won", their

12. "proof" exist in deception and Blurton's Complaint only a

13. "buyers remorse".
(13)

14. From the time of arrest of 09/02/2007 until arraignment
(2) (1)

15. of 09/06/2007 Blurton had neither an explanation of charges,
(3)

16. legal representation or a judicial review as required by
(3) (1)

17. NDRCrimP§Rule 3(b) or by NDCC§29-06-25.
(e) (c)

18. There is no"...real notice of the true nature of the

19. charge against him, the first and most universally

20. recognized requirement of due process."

21. Smith v. O'Grady 312 US 329, 334 85 L Ed 859, 61 S. Ct.572.
(h)

22. Presently there are four Amended Informations and
(14)

23. Criminal Judgements, three being completed after incarceration

24. at NDSP! NDCC§12.1-20-03(1)(b) is clearly agreed upon by the
(f)

25. Court in the October 3, 2008 Transcript Page 6 at 4-8.
(15)

26. "A manifest injustice includes procedural errors by the sen-

27. tencing court." State v. Gunwall, 522 NW 2d 133 (ND1994)
(i)

1. NDRAppP§Rule 28(d) Reply Brief Issue One (con't)
2. Mr. Haugen's belated involvement of Sept. 19, 2007 (Court
3. Action #14) is evidence of his lack of effort to defend
4. Blurton. Mr. Haugen blindly accepts probable cause by
5. an assumption of judicial review at arraignment. Clearly
6. there is a lack of diligence by the State, the Court and both
7. defense attorneys. There is no effort to defend or pursue
8. Justice, only to "force"Blurton into a position where he
9. has no choice but to accept a plea bargain.

(16)

1. NDRAppP§Rule 28(d) Reply Brief Issue Two-Sentence

2. At ¶ 11 the State argues the defendant had knowledge of the

3. repercussions, the sentence requirements. The defendant

4. argues he was deceived, whether intentionally or due to a

5. lack of diligence, it's effect the same.

6. NDCC§12.1-32-06.1(3) requires the Court shall impose a man-

7. (j) dentory 5 years probation. There is no evidence the defendant

8. knew this or probations restriction on his ability to return

9. home. Indeed Blurton is stuck in North Dakota.

10. Item 23 of the State's Appendix is a page from Mr. Haugen's

11. (17) reply to a complaint before the State Disciplinary Board. The

12. argument of a "feeler offer" is stupid, there was no "feeler

13. offer."It was clearly an offer of 3 years and a chance for

14. Blurton to go home before his mother dies and a chance

15. to prevent the complainant's grief during pregnancy at trial.

16. (32) "Mr. Blurton was very interested in this offer, yet he

17. (17) wanted to discuss the more specific terms of the offer

18. (including the amendant of the charge, probation, length of

19. registration, ect...)" That is exactly where a year later we

20. are at. There is no discussion in the May 05, 2008 Change of

21. (31) Plea of the "amend on the Defendant's plea of guilty to

22. that amended charge" (page 4 at 16 to 17). AS discussed there

23. is no mention of mandatory probation, and never was the term

24. (17) registration mentioned. As written across the top of the page

25. (17) "This is a manifest injustice by Blacks Dictionary".

26. The appealant introduces the "Affidavit of Cherie

27. (18) Clark". Originally attached to the defendant's NDR Crim§Rule

(k)

1. NDRAppP§Rule 28(d) Reply Brief Issue Two (con't)

2. 35, Court Action No.109. States Attorney Clark chooses to

3. defend Mr. Haugen in the complaint before the State Discip-

4. lanary Board. Item VI:
(18)

5. "That despite all of the evidence against Mr. Blurton

6. including but not limited to: witnesses, DNA results,

7. victim impact statements, photographic line-up and

8. vehicle description; I was still willing to agree to a

9. plea of maximum of 5 year penalty."

10. A DISCUSSION OF EACH OF THE ABOVE TERMS:

11. Witnesses: The original brief by the Appealant covered
(18)

12. the issues of the witnesses. Clear exculpatory evidence

13. exist that is being withheld by the State, there was no res-

14. ponse to this in the States Appellee Brief but a denial.

15. Ms. Clark is in possession of witness statements. (see Blurtons

16. Argument, Brady vs. Maryland Page 29 at 1-24 and Appealants

17. Appendix items 4 and 5.(original brief.)

18. DNA Results per NDCC§31-13-14: Lab Results of Item 211 male
(18) (19) (1)

19. fraction have been submitted to NDIS database. The questioned
(19)

20. contamination, evident from Items 3C and 3D a bra and skirt,
(20)

21. has occurred since Deputy Smith Sealed the collected evidence
(19)

22. Sept. 02, 2007 at Devils Lake Police Dept. at 12:08 pm.

23. In Blurton's Brief Page17 at 24 through page 18 at 18 there

24. was discussion of this as well as unexplained rectal swabs

25. of the defendant along with Item 1A an unidentified male's
(19)

26. semen. The submitted Item 211 is questionable at the least,
(19)

27. NDCC§31-13-14 considers tampering a Class C felony. The State
(1)

1. NDR App P § Rule 28(d) Reply Brief Issue Two (con't)

2. still denies at ¶56 stating: "...there is no reliable evidence

3. that [Blurton] was prejudiced by any law enforcement miscon-

4. duct...". There has been no investigation by Cass County Sheriff

5. or Fargo Police, however there is probable cause of wrongdoing

6. in the handling of the DNA. Blurton request the right to pursue

7. this in an evidentiary trial, and has filed complaint with the

8. Department of Justice and Civil Rights Office. At some point

9. in time the "unidentified male Semen" might become evident in

10. a database search, falsely implicating Blurton.
(19)

11. Victim Impact Statement: Court Action #94, dated Aug.
(20)
(18)

12. 15th, 2008; disclosure of pre-sentence report and addendum.

13. Ms. Clark's affidavit is dated Aug. 6th, 2008. The authenticity

14. is questioned, as the "victim's impact statement" is dated Aug.

15. 04, 2008. Court Action #93 is John Knutson's completion of

16. his pre-sentence report. Blurton's Brief discusses, on Page

17. 25 at 2 to 18 and in Appendix pages 17, 18 and 19 these issues.

18. This is protected and personal information of both Blurton and

19. "A.R." the complainant.

20. Photographic Line-up: Blurton addressed the contamination
(18)

21. of witness by Investigator Stanger's line-up in his brief

22. page 17 at 14 to 23. Citing Simmons vs. US 390 US 377 383 88
(m)

23. S Ct. at 971 Ed 2d 1247, 1253 (1968) the Supreme Court said:

24. "...a pre-trial identification by photograph will be set

25. aside on that grounds only if the photographic identification

26. procedure was so impermissibly suggestive as to give rise to

27. a very substantial likelihood of irreparable misidentification"

1. NDRAppP§Rule 28(d) Reply Brief Issue Two (con't)

2. Here the Court is asked to compare the photographs
3. used by Stanger and in comparison to the defendant. The
4. descriptions⁽²¹⁾ by witnesses use "man in a red hat", "a man with
5. brown or gray hair,⁽²²⁾ no glasses, no facial" and again a young
6. man is said to accompany the complainant to the Hotel Office.
7. For the record Blurton is shaven Bald, had a full beard and
8. wears glasses. His clothing that night of a Sturgis T-shirt
9. and appearance would have been viewable on the lost Surveillance⁽²³⁾
10. tape. Presently Court should be asked to review the record⁽²⁴⁾
11. for any motions filed by Attorney to contest the pre-trial
12. identification or at least to find out what they were. Again
13. with an evidentiary trial "the ability of disclosure would
14. bring more evidence to light and factuality." (See State's
15. brief at ¶56.)

16. Vehicle Description: The State reveals it misunderstand-
17. ings⁽¹⁸⁾ of the issues of this case. Blurton was in the parking lot
18. at 3:00 am awaken by his car alarm. By his criminal record
19. Robert Wenzlof is highly suspected of wrong-doings. Mr. Mertz
20. makes this point clear in the Sentencing Transcript page 12:
(22)

21. "Why her boyfriend showed up a little later. Specula-
22. tion about her history. She was sleeping in her car, at a
23. Motel where the investigation shows that the manager admits
24. that prostitution occurs. And, that is what he was expecting."

25. This is clearly an issue of Consent. (See page 13 of
26. sentencing transcript.) And an issue of respect for the
27. complainant's pregnancy. Ms. Clark's charge of NDCC12.1-20-03
(15)

(f)

1. NDRAppP§Rule 28(d) Reply Brief Issue Two (con't)

2. (1)(b) is repeatedly stated on page 6 @ 9 of the Sentencing
(15)

3. transcript: the charges are not a "clerical error". ~~Caprice-~~

4. ously the State accuses Blurton of drugging a woman while she

5. is in her first trimester of pregnancy. (Pages 3-5 of senten-
(15)!

6. cing transcript). These clearly erroneous allegations then can

7. be cited at a later date as "sexually predatory conduct" as

8. cited in NDCC§25-03.3-01(9)(a) (1),(2) &(3). The "clerical
(n) (14)

9. errors" become Medical Evidence for Civil Commitment, using

10. "Charged or Convicted" as credibility for evidence.
(o)

11. The defendant would argue in Court the exact nature of

12. the complainant's intoxication, based upon photographs and
(33)

13. relevant evidence, the lack of sleep due to methamphetamine

14. useage. This is called "tweeking", photos of the car's interior
(33)

15. and the complainant do illustrate. In Court there would be a

16. review of criminal records (pages 00055-00095 of States Attor-

17. ney Exhibit) regarding witness Jason Prince, Bradley Pederson
(22) (22)

18. and Henry Head. Unavailable due to incomplete investigation is
(22)

19. Robert Wenzolf III extensive record and current convictions as
(7)

20. well as the Complainant's Minnesota similar incidents in Becker

21. County 03-T6-05-000922 or 03-T9-04-000726. Blurton insist:

22. "...reliable evidence that he was prejudiced by prosecution or

23. law enforcement misconduct in the prosecution or investig-

24. ation of the case." (See States Brief at ¶56)

25. A Plea of Maximum 5 Year Penalty: Based upon an offer
(18)

26. of 3 years confinement a max of 5 years including probation,

27. this was considered "negotiable by counsel!".(States App. 23)