

20110275

In the Interest of I.D. [a child]

State of North Dakota, Petitioner and Appellee

Vs.

I.D., C.L., Respondents

And M.D., Respondent and Appellant

Supreme Court number: 20110275

Barnes County Juvenile Court number: 2011-JV-00010

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STATE OF NORTH DAKOTA

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US Constitution

“Article 5; No person shall be...deprived of life, liberty, or property, without due process of law

Article 14; No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

ND Constitution

“Section 1; All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness;

Section 12; In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial...[and not] be deprived of life, liberty or property without due process of law.

Section 13; The right of trial by jury shall be secured to all, and remain inviolate.”

Has this perspective packed up and left our midst?

To be filed by; Clerk of Supreme Court 600 E. Boulevard Ave. Bismarck, ND 58505-0530

Statement of issues

- (I) I.D. / M.D. appeal a judgment of conviction on three Criminal Mischief counts.
- a) On the morning of 5/25/2011, investigator McDonald of Valley City Police Department, went to “grandmother” of I.D.’s apartment at that time, who was acting in the capacity of a daycare provider. On contact with “grandmother” and I.D. , McDonald claims he ask her “are you I.D.’s guardian?” This meaning in McDonald’s mind “legal guardian”. This verbiage is contested by both I.D. and grandmother. Grandmother promptly gave McDonald I.D.’s father M.D.’s phone number and said to him that I.D. “lives with him”. This fact has never been contested by McDonald. McDonald said he thought “grandmother” and father of I.D. shared legal guardianship and therefor he did not have to give father notice of questioning, juvenile referral or charges being filed against I.D. (he said). He did follow through with this logic and did not call father or otherwise give him notice. He did however take the time to file a Juvenile Referral that should be noted is dated 5/24/2011, the day before the questioning.
- b) “Grandmother” and I.D. did go to the Valley City Police Department, at his urging, with him. They were led behind a locked door and the verbiage they chose to use for that incident, found on their “Valley City Police Department ARREST REPORT” form dated 5/27/2011 page 1 “disposition Arrest”..., “Arrestee : I.D.” ..., “Arrested for (code) 290-“...” Arrested on 5/25 10am” ,... “ Juvenile Disposition I- Released to Parents.” There words not mine.

- c) While in the Police Department, I.D. denied being the perpetrator of any and all the misdemeanor charges repeatedly, and then McDonald would repeatedly say *"we know you did it all you have to say is you did it"*. The questioning was done against police procedure, using accusatory and leading tactics. I.D. was denied the presence of his father, in that McDonald chose not to call him and he was denied legal counsel, in that McDonald chose not to administer the Miranda Law before questioning a juvenile in a custodial setting that at the time was referred to by them as *"Arrested"*. What went on in the questioning room may never be known because McDonald chose to keep the interrogation video/audio recorder installed in that room off.
- d) Grandmother and I.D. allege that after McDonald said something like *"won't you at least say you are sorry?"*, I.D. thought ok, if I say I'm sorry this will all be over. When ask outside of the questioning room by a party *"why did you do it"*, I.D. did not know because McDonald did not pre coach I.D. how to answer this question.
- e) It is our position that all questioning *"results"* are fruits of an illegal and unethical execution of the interrogation and therefore should be suppressed. The questioning of this suspect are birthed from apparent non existing video that allegedly showed a *"young Caucasian male"* in the area on that day, but not at the time of incident (refer to info on charges to follow), we see this to be racial profiling.

Statement of the case

(II) Criminal mischief count 1;

- a) Called in 3:13pm 5/13/2011; In there "*Valley City Police Call For Service*" form number 60754, it reads "*no damage at this time*".
- b) In their "*Valley City Police Department*" notes of officer Hagen, Swenson, McDonald, it reads concerning there now missing video "*because of the distance from the camera to the [bathroom] door, we could not make a positive identification*" but saw that the suspect was a "*young Caucasian male*".
- c) They gave us a bill for the "*damage*" done "*this day*". The Invoice was from Great Plains Plumbing, dated 5/12/2011, the day before the incident day and it says "*Work Done on 5/6/2011*", one week before the incident occurred.

(III) Criminal Mischief count 2;

- a) "Called in" at 8:33 am on 5/24/2011; Rick Idland from Leever's said, according to Valley City Police Report notes [Idland] "*read about the City Hall vandalism in the paper*". About a week prior (5/17/2011) "*he had his restroom vandalized*".
- b) In court Leever's spokesmen said "*there was no specific time*" before the [alleged] damage that "*he could say for sure it was not already there*", and it was "*quite some time*" after the alleged damage was done before anyone noticed it (not to mention the week they waited before filing a report). McDonald said he was told "*it was hours after the fact before they checked out there bathroom that day*". There was many people in and out of there bathroom in that time no doubt.

- c) Leever's spokesman said in court *"it takes a long time from when you order work (from Babcock Construction, the company that did "the" repair) tell they can show up to do it [the work]"*. The *"Service/Repair Order"* form from them was date stamped and printed on 5/27/2011, the day of the *"arrest"* but it was filled out on 5/15/2011, 2 days before Leever's said (they thought) the vandalism was done. Even if the work was done the same day (5/15/2011), they said it was ordered *" a long time"* before that. However you slice it, whatever was wrong with their bathroom had been wrong way before the day of the alleged vandalism.

(IV) Criminal Mischief count 3;

- a) Called in 12:23pm 5/23/2011 *"Camera saw young male"*. Supplemental Valley City Police Department Report *"Glasier"* informed *"McDonald"* that a *"young Caucasian male"* had come into City Hall on 5/23/2011 at approximately 2 pm (1 and ½ hours after the fact) and *"ask to use the restroom"*.
- b) *"McDonald"* allegedly viewed the surveillance and noted a male enter city hall at 2:44pm on 5/23/2011 and leave at 2:51 pm, (This is 2 hours and 28 minutes after the alleged incident) a male youth was there, asking *"Glasier"* if he could use the bathroom.

This now brings us full circle, A young male was there that day, he might have done it, let's bring them all in, wait, there's one now...swarm!

Statement of the facts and The argument

(V) Considerations;

- a) We agree that I.D. said he was "sorry", we do not agree that he admitted to doing the act(s).
- b) With the repeated leading nature of the questioning; with the apparent refusal to except the answers that did not fit McDonald's pre formed conclusions; with the lack of notice to the parent(s) or their presence; without access to legal counsel and without I.D. or parent being informed of the required Miranda Law, while I.D. was in a custodial setting, in a secure facility, they called at that time being "Arrested".
- c) There was no video or audio taken in a questioning room set up for such use; there was no written or any other form of confession taken/ recorded.
- d) The video(s) of "bathroom" area are missing and from there documentation if they did exists apparently would show nothing that constitutes proof of who may or may not have done what. The "Respondent" or anyone in court has never been able to see their alleged video.

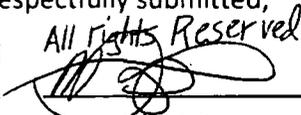
(VI) Conclusion;

Pursuant to the Fifth and Fourteenth amendments to the united States Constitution; Pursuant to the North Dakota Constitution, Declaration of Rights and the rules of evidence; Pursuant to "*in the mouth of two or three witnesses let every word be established*"-God ;
All counts should be dropped.

Respectfully submitted,

Nov 21, 2011

All Rights Reserved


Respondent Representative/family Elder

Michael Davis

"This notary certificate is prepared on a separate page and is attached to the document entitled Statement of the Facts & Arguments, containing 6 pages and is attached to the document by means of _____ (staple, glue, tape)."

State of North Dakota
County of Barnes

On this 21st day of November 2011, before me a notary public within and for said county and state, personally appeared

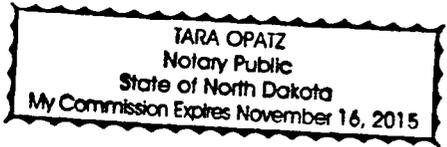
Michael Davis

Known to be the person(s) who are described in and who executed the above and foregoing instrument and acknowledged to me that they executed the same.

Tara Opatz

Notary Public

Barnes County, North Dakota



My commission expires: _____

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.....)	

AFFIDAVIT OF SERVICE

Gloria Lee Johnston served Brief for said case by hand to the office of Lee Michael Grossman on November 21, 2011.

The Appendix for said Brief was served threwh email at L. Groosman request in PDF form on November 22, 2011 to L. Groosman at lgrossman@co.barnes.nd.us and North Dakota Supreme Court Clerk at supclerkofcourt@ndcourts.gov 10:45 pm.

The Brief was mailed November 29, 2011 Certified Mail # 7010 2780 0001 4724 0665 to 600 E. Boulevard Ave. Bismarck ND 58505 for Supreme Court of North Dakota Clerk filing. The Supreme Court Clerk has verified receipt of Appendix allready.

These are/were correct and true copys. This affidavit of service was faxed to. (701) 328-4480

Gloria Lee Johnston
 Gloria L. Johnston date: 11-30-11

Subscribed and sworn to before me this Nov. 30 2011

Renee F Christ

Notary Public

date: 11-30-11

STATE OF NORTH DAKOTA
County of Barnes

The forgoing instrument was acknowledged before me this November 30, 2011 by Glorialee Johnston.

