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FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

SEP 5 2007

case no;2007220

NORTH DAKOTA SUPREME COURT
CITY OF JAMESTOWN VS DANA BAKER
MOTION TO DISMISS

STATE OF NORTH DAKOTA

Appellants'

BRIEF SUPPORTING MOTION TO DISMISS CHARGE OF THEFT
BY DANA BAKER

PRO SE DEFENDANT DANA BAKER
824 2 AVE NE
JAMESTOWN, ND 58401

STATE OF NORTH DAKOTA

SUPREME COURT
CASE NO:2007220

CITY OF JAMESTOWN

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VS

MOTION TO DISMISS

DANA BAKER

Now comes Dana E Baker praying for dismissal of the charge of theft under Rule 27 of the North Dakota Rules of Appellate Procedure.

(1) Enclosed are the City of Jamestown ordinances 17-10; 17-11; 17-12; and 17-13.

(2) Grounds for dismissal are that the Ruark vehicle was by city ordinance junked and abandoned.

(3) Relief sought is for an order dismissing the charge of theft and the judgement for fines revoked.

Dated this 27 th day of August, 2007.

Dana E Baker

824 2 Ave NE

Jamestown, ND 58401

Dana E. Baker

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City of Jamestown Ordinance 17-10.

(1) Brief page 2. paragraph 1 and 2.

City of Jamestown Ordinance 17-13.

(1) Brief page 1. paragraph 2.

Sec. 17-9. Reporting of nuisances.⁴

Whenever any nuisance, source of filth or cause of sickness is found on private property any member of the local board of health shall notify the chief of police for abatement under section 22-24. (R. O. 1938, ch. 34, § 4.)

Article II. Storage, etc., of Junk, etc.

Sec. 17-10. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section :

Abandoned vehicle. Any vehicle which has remained on private property for a period of forty-eight continuous hours, or more, without the consent of the owner or occupant of the property, or for a period of forty-eight continuous hours or more after the consent of the owner or occupant has been revoked.

Blighted structure. Any dwelling, garage or outbuilding, or any factory, shop, store, warehouse or any other structure or part of a structure which, because of fire, wind or other natural disaster, or physical deterioration, is no longer habitable as a dwelling, nor useful for the purpose for which it may have been intended.

Building materials. Lumber, bricks, concrete or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws or any other materials used in constructing any structure.

Junk. Parts of machinery or motor vehicles, unused furniture, stoves, refrigerators or other appliances, remnants of wood, metal or any other castoff material of any kind, whether or not the same could be put to any reasonable use.

Junk automobiles. Any motor vehicle which is not licensed for use upon the highways of the state for a period in excess of sixty days, and shall also include, whether licensed or not, any motor vehicle which is inoperative for any reason for a period in excess of sixty days; provided, that there is ex-

4. As to nuisances generally, see § 22-23 of this Code.

cepted from this definition unlicensed, but operative, vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.

Person. All natural persons, firms, copartnerships, corporations and all associations of natural persons, incorporated or unincorporated, whether acting by themselves, or by a servant, agent or employee. All persons who violate any of the provisions of this article, whether as owner, occupant, lessee, agent, servant or employee shall, except as herein otherwise provided, be equally liable as principals.

Trash and rubbish. Any and all forms of debris not herein otherwise classified. (Ord. No. 528.)

Sec. 17-11. Declared public nuisance.

It is hereby determined that the storage or accumulation of trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, and the maintenance of blighted structures upon any private property within the city tends to result in blighted and deteriorated neighborhoods. the increase in criminal activity, the spread of vermin and disease, and is contrary to the public peace, health, safety and general welfare of the community, and constitutes a public nuisance. (Ord. No. 528.)

Sec. 17-12. Prohibited; exception.

It shall be unlawful for any person to store, or permit the storage or accumulation of trash, rubbish, junk, junk automobiles or abandoned vehicles on any private property in the city except within a completely enclosed building or upon the business premises of a duly licensed junk dealer. (Ord. No. 528.)

Sec. 17-13. Dismantling, etc., vehicles, etc.

It shall be unlawful for any person to dismantle, cut up, remove parts from or otherwise disassemble any automobile, whether or not the same be a junk automobile, abandoned vehicle or otherwise, or any appliance or machinery, except in a completely enclosed building, or upon the business premises of a duly licensed junk dealer. (Ord. No. 528.)

Statement of Issues Presented For Review

The issue in this case is whether the 1985 GMC S-15 Titled to Ian Ruark was abandoned and junk while parked on Dana Baker's property in excess of the 60 day provision in the City of Jamestown ordinances.

When the Supreme Court decides the vehicle was junk and abandoned then the charge of theft is unwarranted.

The criminal charge must show that there was criminal intent and fails to show criminal intent since the defendant believed that the Ruark vehicle was junk and abandoned.

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Statement of the Case

This caes involves a vehicle left on private property in excess of 60 days without the property owners permission and the subsequent removal of a rollbar with lights.

The defendant is charged with theft involving the disappearance of the parts and was convicted of theft in District Court. The defendant motioned for stay of Judgement pending appeal and served 5 days of incarceration at Stutsman County Correctional Center.

Defendant appealed his caes to the Supreme Court orally and in writing.

Motion to dismiss filed.

Statement of the facts

The facts in this case are as follows:

- (1) Mr. Ian Ruark Left his 1985 GMC S-15 pickup on Mr. Bakers property in excess of 60 days without his permission. It was not licensed and inoperative for a period in excess of 60 days.

(1a) Appeallant cites City of Jamestown Ordinances 17-10 thru 17-13 and testimony in the proceedings.

STATE OF NORTH DAKOTA SUPREME COURT

NO: 2007220

CITY OF JAMESTOWN)
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 VS) BRIEF
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DANA BAKER)

Now comes Dana E Baker praying for the dismissal of the charge of motor vehicle parts and subsequent judgement of fines and other costs ordered by the lower court.

Enclosed are the city ordinances covering abandoned and junked vehicles.

This case involves a 1985 GMC S-15 pickup truck that was left on Mr. Baker's property and was titled to Mr. Ian Ruark without Mr. Baker's permission. Mr. Ruark failed to remove the truck after Mr. Baker ordered it removed in early July of 2006. The abandoned and junked vehicle was not removed until December of 2006 when Mr. Ruark learned of Mr. Baker's plan to dispose of the vehicle at a licensed junk dealer in accordance with the city ordinance 17-13.

City ordinances make it clear that Mr. Baker became the legal owner of the abandoned and junk vehicle and is responsible for that vehicle and could be cited for the city's junk ordinance and fined for having the unlicensed vehicle on his property. City ordinances therefore allow a property owner to dismantal the abandoned and junk vehicle or dispose of it at a licensed junk dealer.

The Ruark Vehicle qualifies as abandoned when left on Mr. Baker's property in excess of 48 hours without his permission or 48 hours after permission was revoked. City ordinance 17-10.

The Ruark vehicle qualifies as a junked automobile because it was not licensed for use on the highways of the state for a period in excess of 60 days. It also was inoperative for a period in excess of 60 days. City ordinance 17-10.

The police investigating officer Mr. Griffin testified that the Ruark vehicle was parked in front of the yellow garage leased by K and B Sales and Repair operated by Karl and Brenda Dixon. I have included a picture taken by Brenda Dixon showing the location of the Ruark vehicle from June to December 2006 parked in front of the white garage near the alley on property not leased or controlled by K and B sales and Repair. Mr. Griffin failed to include the names of the original investigating police officer and the assisting police officer in this case depriving the defense of additional witnesses to testify in the case. Mr. Griffin also testified that he did not know what the city ordinances are concerning junk and abandoned vehicles nor did he reference them after Mr. Baker informed him of abandonment of the Ruark vehicle and Mr. Baker's subsequent arrest for theft by Mr. Griffin.

Mr. Ruark testified that he left his vehicle on Mr. Baker's property for a period in excess of 60 days and that it was parked in front of the white garage near the alley. Mr.

Ruark also testified that his vehicle's license plates expired in August 2006 proving that the vehicle was not licensed for a period in excess of 60 days before officer Hughes ordered it removed by wrecker on December 3, 2006.

K and B Sales and Repair owner Brenda Dixon testified that her business only leased and controled the yellow garage and cement apron for their business. She also testified that the Ruark vehicle was parked in front of the white garage of Mr. Baker's for a period in excess of 60 days.

Mr. Douglas Fisher also testified that the Ruark vehicle was parked in front of the white garage of Mr. Baker's for a period in excess of 60 days.

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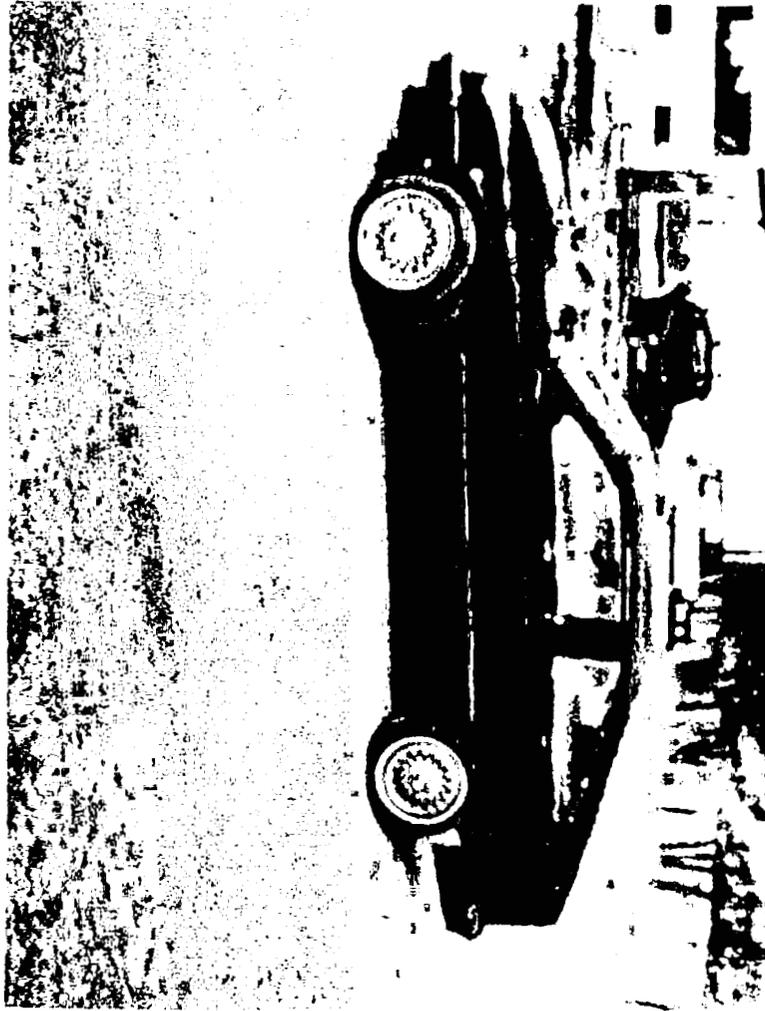
Conclusion

Since the Ruark vehicle was abandoned and junk according to the city ordinances cited and became the responsibility and property of Mr. Baker while it remained on his real property there was no criminal intent on Mr. Baker's part to commit theft by either dismantling or disposing of the abandoned and junk vehicle titled to Mr. Ruark.

Therefore Mr. Dana Baker seeks relief from the charge of theft and the subsequent fines levied by the District Court. and the return of my roll bar and lights by Mr. Ruark.

Addendum

This photo was taken in early July and shows the location
of the Ruark vehicle. (dark blue pickup)



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Proof of service Supreme Court 2007220

I, Kenneth Dalsted, prosecutor for the City
of Jamestown, recieved a copy of Mr. Baker's brief
this 5th day of September, 2007.

FILED
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SEP -6 2007

STATE OF NORTH DAKOTA

*Jo Brown
Dalsted + Ryan, P.E.*