

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

SUPREME COURT CASE NO. 20190229

State of North Dakota,  
Plaintiff and Appellee,

vs.

APPEAL FROM COURT  
VERDICT

Henry Lee Marcum,  
Defendant and Appellant.

APPELLEE'S BRIEF

Appeal from the Criminal Judgment in Logan County District Court, Southeast Judicial  
District, North Dakota, July 5, 2019, the Honorable Daniel Narum presiding.

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## ISSUES

- A. Was search of defendant upon arrest valid exception to search warrant exception as search incident to arrest?
- B. Is the evidence presented at trial sufficient to sustain convictions on both counts in the complaint?

## STATEMENT OF FACTS

1. Appellee believes the fact statement set out in Appellant's brief is basically correct but has omitted the fact that no evidence was introduced in regard to the arrest warrant, contended by Appellant to be invalid, being subsequently quashed or otherwise declared invalid.

## ARGUMENT

2. This was a trial to the Court and the Court was presented all the evidence in regard to the contested ARREST WARRANT twice, once at a motion to suppress hearing and once at trial. The Court particularly addressed this matter in its findings and set out the reasons this warrant was valid as far as the arresting officer was concerned and aware of. Tr. p. 175. It is clear the Court considered this matter very carefully and rightfully came to a conclusion contrary to Appellant's position.

3. Appellant provided no evidence, at trial or the suppression hearing, that the arrest warrant had been invalidated at any time but simply provided testimony that this was a second warrant issued on the same complaint. North Dakota Rules of Criminal Procedure clearly provide that a Magistrate may issue more than one warrant or summons on the same complaint. N.D.R. Crim. P. 4(a)(4). There is no evidence in this case

indicating why a 2<sup>nd</sup> arrest warrant was issued but certainly to correct an erroneous warrant issued previously may be one reason. It is hard to imagine that Defense Counsel might not bring up a defective arrest warrant at the disposition of charges in the Complaint and the amended warrant might prevent that.

4. In this instance Defendant/Appellant was charged with two counts with both enhanced by prior conviction or convictions. He was convicted on Count 1 with no enhancement. He was convicted on Count 2 with enhancement. The Court addresses both counts and the enhancements in its opinion. Tr. pp. 172-176. The Court clearly sets forth the reasons for his decision and the facts he relied upon to reach that decision, including the behavior of Defendant both past and present. The standard of review on appeal is very clearly set out in Appellant's brief. See para. 17.

#### CONCLUSION

5. Law Enforcement received and executed a valid arrest warrant. They took several steps, not required of them, to make sure the warrant was valid and each step confirmed that it was. Since the arrest warrant was valid, the search incident to arrest was valid also with the necessity for such search confirmed by Defendant's admission that he usually carried a knife in his boot. Tr. p. 157, ll 1-12.

6. An in-depth perusal of the Court's reasoning for its findings in this case provides more than adequate bases for its ultimate conclusions. These findings and conclusions cannot be overturned on appeal based upon the standard of review set out in Appellant's Brief.

Dated this December 5, 2019.

/s/ Isaac Zimmerman

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Dated this 12th day of December, 2019.

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1. This Appellee's Brief complies with the page limit of 38 set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure as it only has 5 pages.

Dated this 18<sup>th</sup> day of December, 2019.

/s/ Isaac Zimmerman

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