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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

20050216

State of North Dakota,)	
Plaintiff/Appellee,)	Supreme Court No. 20050216
)	
vs.)	District Court No. 02-K-01113
)	
Randal Steen,)	
Defendant/Appellant.)	

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

DEC 13 2005

STATE OF NORTH DAKOTA

PETITION FOR REHEARING OF APPELLANT STEEN

APPEAL OF ORDER DENYING MOTION FOR NEW TRIAL

APPEAL FROM THE DISTRICT COURT
BURLEIGH COUNTY, NORTH DAKOTA
SOUTH CENTRAL JUDICIAL DISTRICT
THE HONORABLE DONALD L. JORGENSEN, PRESIDING

Randal Steen, pro se
Defendant/Appellant
N.D. State Penitentiary
P.O. Box 5521
Bismarck, North Dakota

58506-5521

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ESTOPPEL DOES NOT BAR AN ISSUE UNDER RULE 33.

The standard of review for a motion for new trial is abuse of discretion. State v. Yodsnukis, 281 N.W.2d 255, 259 (N.D. 1979; State v. McClary, 2004 ND 98, ¶27, 679 N.W.2d 455, 465.

This Court held that the District Court did not abuse his discretion in denying Steen's motion for new trial.

The District Court denied Steen's motion for new trial because: "... the defendant's knowing decision to withhold evidence at the time of trial and thereafter seek a new trial within which to present the same, does not fall within the parameters of Rule 33 of the North Dakota Rules of Criminal Procedure." App.P.16.

This decision of the District Court is an abuse of discretion.

It is an abuse of discretion to deny a motion for new trial on the ground that the issue, as a matter of law, could never fall within the parameters of Rule 33; the court is supposed to, instead, determine if it would be in the interest of justice to grant a new trial based on the issue. State v. Yodsnukis, id., page 260 (Rule 33 is all encompassing. Under the interest of justice standard, no issue is, as a matter of law, excluded, estopped or barred from being an issue within the parameters of Rule 33. Id., page 258 note 5.).

State v. Yodsnukis, id., states or makes clear that if a trial court denies a new trial motion on the ground that the issue is not encompassed within the terms of Rule 33, that this is an abuse of discretion. The issue is supposed to be whether it is in the interest of justice to grant the motion, not that Rule 33 does not allow the issue or that the defendant is barred or estopped from raising it.

The District Court held that Steen's knowing decision to withhold

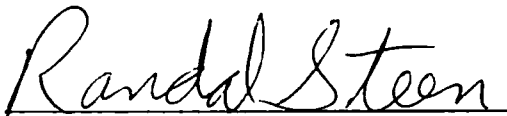
his issue makes his issue, as a matter of law, to not fall within the parameters of Rule 33. This is contrary to Rule 33, that the issue be determined only by the criteria of if it is in the interest of justice.

As a second point of law: A court is without jurisdiction to enter judgment against a person who is innocent. For example, a person can not walk in to court and voluntarily, of his own will, plead guilty, when the facts show that he did not commit the crime. See, for example, Lynch v. Overholser, 369 U.S. 705, 719 & 732, 82 S.Ct. 1063, 1072 & 1078 (1962) (A court may refuse to accept a guilty plea. Majority and dissenting opinions.); North Carolina v. Alford, 400 U.S. 25, 37-38 & note 10 & 11, 91 S.Ct. 160, 167-168 & note 10 & 11 (1970). That is, estoppel or a type of estoppel does not apply where innocence is involved, because a court is without jurisdiction to punish an innocent person, this even though the person requests it.

Estoppel or a type of estoppel, or the conduct of the defendant does not, as a matter of law, bar or estop an issue from being considered under Rule 33, NDRCimP.

Wherefore, Steen prays this Court to reconsider their decision.

Dated this 8th day of December, 2005.


Randal Steen
P.O. Box 5521
Bismarck, N.D. 58506-5521

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	
Plaintiff/Appellee,)	Supreme Court No. 20050216
)	
vs.)	District Court No. 02-K-01113
)	
Randal Steen,)	
Defendant/Appellant.)	

AFFIDAVIT OF SERVICE BY MAIL

I, Randal Steen, (Appellant), in the above action do hereby certify that I deposited in the United States mail, in the city of Bismarck, N.D., a true and correct copy of PETITION FOR REHEARING OF APPELLANT STEEN in the above entitled matter to the following individual:

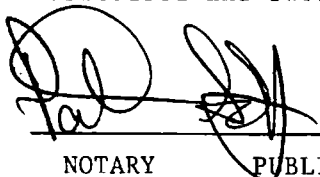
Cynthia M. Feland, Assistant State's Attorney
C/o Burleigh County State's Attorney
Burleigh County Courthouse
514 East Thayer Avenue
Bismarck, North Dakota 58501

To the best of affiant's knowledge, information and belief, such address as given above was the actual post office address of the party to be so served.



Randal Steen, pro se
Defendant/Appellant
N.D. State Penitentiary
P.O. Box 5521
Bismarck, North Dakota
58506-5521

Subscribed and sworn to before me on December 12th, 2005.

 12-2005

NOTARY PUBLIC

D-31-08

COMMISSION EXPIRES
PATRICK SCHATZ
Notary Public
State Of North Dakota
My Commission Expires Oct. 31, 2008

IN THE SUPREME COURT

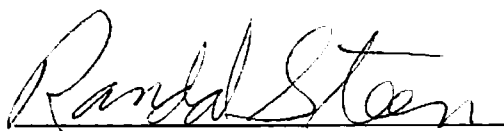
STATE OF NORTH DAKOTA

State of North Dakota,)
Plaintiff/Appellee,) Supreme Court No. 20050216
vs.) District Court No. 02-K-01113
Randal Steen,)
Defendant/Appellant.)

CERTIFICATE OF SERVICE BY MAIL

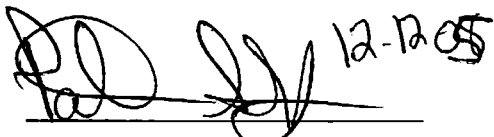
I, Randal Steen, (Appellant), in the above action do hereby certify that I deposited in the United States mail, in the city of Bismarck, N.D., seven (7) true and correct bound copies, plus one (1) unbound original copy of the foregoing PETITION FOR REHEARING OF APPELLANT STEEN in the above entitled matter to the following individual:

Penny Miller, Clerk of the Supreme Court
C/o N.D. Supreme Court
Judicial Wing 1st Floor
600 East Boulevard Avenue Dept. 180
Bismarck, North Dakota 58505-0530



Randal Steen, pro se
Defendant/Appellant
N.D. State Penitentiary
P.O. Box 5521
Bismarck, North Dakota
58506-5521

Subscribed and sworn to before me on December 12TH, 2005.


NOTARY PUBLIC

10-31-08
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PATRICK SCHATZ
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State of North Dakota,
Plaintiff/Appellee,

vs.

Randal Steen,
Defendant/Appellant.

)
) Supreme Court No. 20050216
)

) District Court No. 02-K-01113
)
)

CERTIFICATE OF NONCOMPLIANCE

FOR NOT PROVIDING AN ELECTRONIC COPY

I, Randal Steen, (Appellant), in the above action do hereby certify that there is no electronic copy of the PETITION FOR REHEARING OF APPELLANT STEEN in the above entitled matter because Appellant personally typed, on a typewriter, the Petition for Rehearing. This certificate is mailed to the following:

Penny Miller,
Clerk of the Supreme Court
North Dakota Supreme Court
Judicial Wing 1st Floor
600 East Boulevard Ave. Dept. 180
Bismarck, North Dakota 58505-0530

Randal Steen

Randal Steen, pro se
N.D. State Penitentiary
P.O. Box 5521
Bismarck, North Dakota
58506-5521

Dated this 12th day of December 2005.

[Signature] 12-12-05
NOTARY PUBLIC

PATRICK SCHATZ
Notary Public
State Of North Dakota
My Commission Expires Oct. 31, 2008

10-31-08

COMMISSION

EXPIRES