

ORIGINAL (e-filed)

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

20060219

State of North Dakota,

Plaintiff/Appellee,

vs.

Shawn Patrick Halvorson,

Defendant/Appellant.

Supreme Court No. 20060219

District Court No. 09-05-K-01544

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JAN 17 2007

STATE OF NORTH DAKOTA

APPELLEE'S BRIEF

APPEAL FROM THE CRIMINAL JUDGMENT AND COMMITMENT ENTERED ON JULY
17, 2006 IN EAST-CENTRAL DISTRICT COURT, CASS COUNTY
STATE OF NORTH DAKOTA,
THE HONORABLE WADE L. WEBB, PRESIDING

Gary L. Delorme, NDID#05845
Assistant State's Attorney
Cass County Courthouse
211 Ninth Street South
P.O. Box 2806
Fargo, North Dakota 58108
(701) 241-5850
Attorney for Respondent-Appellee

Kimberlee Jo Hegvik, NDID #06194
Assistant State's Attorney
Cass County Courthouse
211 Ninth Street South
PO Box 2806
Fargo, North Dakota 58108
(701) 241-5850
Attorney for Respondent-Appellee

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[¶3] STATEMENT OF THE ISSUE

[¶4] Whether the District Court properly exercised its discretion in denying the Defendant's Rule 29 motion because, considering the evidence in a light most favorable to the prosecution, there was substantial evidence from which a reasonable jury could find guilt beyond a reasonable doubt.

[¶5] STATEMENT OF THE CASE

[¶6] The State has reviewed the Appellant's Statement of the Case at paragraph four of Appellant's brief ("Ap. Br.") and has no objections. The State respectfully urges this Court to affirm the conviction and judgment of the East Central Judicial District Court.

[¶7] STATEMENT OF FACTS

[¶8] On March 7, 2005, at approximately 10:00 in the evening Barbara Greshik, stepped into the kitchen of her apartment at 556 23rd Street East, in West Fargo, to prepare something for her son to eat. (Tr. p. 21). Her son was sitting on the love seat in the living room. (Tr. p. 21-22). Ms. Greshik and her son heard a loud pop, which Ms. Greshik initially thought was something blowing up in another apartment. (Tr. p. 21). Shortly thereafter she noticed a hole in the living room wall, and upon further investigation she noticed that an object entered the apartment and traveled through two bedrooms, a closet and into the living room. (Tr. pp. 21-22). The object ultimately came to a rest in a pillow that was located approximately three inches from her son in the living room. (Tr. p. 22). Ms. Greshik never saw what, or who, propelled the object into her apartment, but she did call 911 immediately after the incident. (Tr. p. 22). Another witness from the building across the way also heard the boom and noticed a small white vehicle drive away from the scene of the crime. (Tr. p. 38).

[¶9] On scene investigation concluded that the object was a slug fired from a shotgun. (Tr. pp. 89-90). A string-line analysis completed by Detective Gregory Warren indicated that the slug was fired from the street adjacent to the apartment. (Tr. pp. 87-88). Detective Warren's investigation led to the defendant Shawn Patrick Halvorson after his name was given to law enforcement by Ben Sorenson and Paul Condon. (Tr. pp. 92, 97-98).

[¶10] The Detective testified that he called Mr. Halvorson and arranged a meeting with him

in the parking lot of a Wal-Mart. (Tr. pp. 90-91). When Mr. Halvorson did not appear at the arranged time, the Detective went to Mr. Halvorson's residence where he was able to initiate contact. (Tr. p. 91). Mr. Halvorson agreed to an interview in the Detective's vehicle, and denied having been in the suspect vehicle and denied firing a shotgun in West Fargo. (Tr. pp. 91-94). The Detective found Mr. Halvorson's nonchalance toward the accusation unusual. (Tr. p. 93). Mr. Halvorson said he would be willing to take a polygraph test, but never followed-up to schedule the test and would not have further contact with the Detective after that initial meeting. (Tr. pp. 94-95).

[¶11] Mr. Halvorson was subsequently charged with 'C' felony Reckless Endangerment in violation of North Dakota Century Code (hereinafter NDCC) §12.1-17-03 alleging that Mr. Halvorson created a substantial risk of serious bodily injury or death to another under circumstance manifesting his extreme indifference to the value of human life. (Tr. pp. 4-5). The State also alleged that during the commission of the crime Mr. Halvorson possessed a firearm. (Tr. p. 5). Neither party disputed that the incident created a risk of serious bodily injury; nor did they dispute that the act manifested an extreme indifference to the value of human life. (Tr. pp. 10-17). The only real dispute was whether Mr. Halvorson was indeed in the vehicle that evening and if so did he fire the shotgun. (Tr. pp. 217-218, 219).

[¶12] At trial on April 25, 2006, the State called six witnesses in its case-in-chief, including three eye witnesses. Casey Johnson (Tr. pp. 24-36); Ben Sorenson (Tr. pp. 42-55); and Paul Condon (Tr. pp. 67-81). Casey Johnson said he did not want to testify against his friend, and was doing so only because of the State's subpoena. (Tr. p. 26). He also said that he picked Mr. Halvorson up at approximately 5:30 or 6:00 p.m. in his white Cavalier vehicle and just drove around "looking at the country for a while". (Tr. pp. 27-28). He and Mr. Halvorson then proceeded back into town where they picked up Ben Sorenson, Paul Condon and some girl. (Tr. p. 27). They drove back into the

country at which time Mr. Halvorson began shooting a shotgun. (Tr. pp. 28-30) The shotgun had been left in Casey Johnson's trunk from a hunting trip the week before. (Tr. pp. 28-30). Mr. Johnson described that at some point in time they drove into West Fargo and stopped near some apartment complexes to use the rest room. (Tr. pp. 30-31). Upon returning to the car he recalled Mr. Halvorson pointing the shotgun out of the passenger window and pulling the trigger. (Tr. pp. 31-32). He recalled that Mr. Halvorson appeared to be reacting to some teasing from the other occupants of the vehicle. (Tr. p. 32).

[¶13] The next eyewitness called to testify by the State was Ben Sorenson, Jr. (Tr. pp. 42-55). Mr. Sorenson said that he was Mr. Halvorson's National Guard "Battle Buddy" and he too did not wish to testify against his friend. (Tr. pp. 45-46). He indicated that of the other occupants in the car this was either the first or second time meeting Casey Johnson and that Paul Condon was currently living with him. (Tr. pp. 48-49). Mr. Sorenson discussed some sort of shoot-out that occurred earlier in the evening in the country between their car and another vehicle. (Tr. p. 50). After the shoot-out they headed back into town and ended up in West Fargo near some apartment complexes. (Tr. pp. 51-52). He recalled some sort of teasing going on and somebody saying to Mr. Halvorson that he could not hit the "broad side of a barn", apparently in reference to the earlier shoot-out. (Tr. pp. 47-48, 50). He then testified that while stopped in the complex area that he had no doubt that Mr. Halvorson fired the shotgun. (Tr. pp. 51-52).

[¶14] The last eyewitness called was Paul Condon. (Tr. pp. 67-81). Mr. Condon appeared in court wearing an orange prisoner outfit and chains having been incarcerated on unrelated drug charges. (Tr. p. 67). He testified that on the evening in question he was picked up by Casey Johnson, whom he did not know, and Mr. Halvorson, his former roommate. (Tr. pp. 70-71). They drove out into the country and were "shooting and stuff". (Tr. p. 70). After a period of time they

then “rolled back into town”. (Tr. p. 70). He indicated that at some point and time, in town. Mr. Halvorson asked the occupants in the car if they dared him to shoot the shotgun. (Tr. p. 72). Mr. Condon described that Mr. Halvorson then pulled the trigger of the shotgun. (Tr. p. 72). He testified that he remembered the incident quit well due to the fact that he found out a few days after the incident that some kid almost got killed because of the shooting. (Tr. p. 72).

[¶15] In total the State called six witnesses to the stand, including the three eyewitnesses, and entered eight exhibits into evidence before resting its case-in-chief. (Tr. p. 101). This was immediately followed by a Rule 29 motion by the defense out of the presence of the jury. (Tr. pp. 100-101). The court denied the motion in viewing the evidence in the light most favorable to the State. (Tr. pp. 101-102). In its ruling the court specifically found that based upon the evidence and testimony presented by the State a reasonable jury could find that the essential elements of the crime, including the minimum mandatory enhancement for possession of a firearm, were proven beyond a reasonable doubt. (Tr. pp. 101-102).

[¶16] The defendant called four witnesses to the stand to include Norma Lee From, Mr. Halvorson’s mother (Tr. pp. 112-125); James From, Mr. Halvorson’s brother (Tr. pp. 150-171); Brittany Paul, James From’s girlfriend (Tr. pp. 131-150); and the defendant himself (Tr. pp. 171-192). Each of the defense witnesses testified to an alibi that Mr. Halvorson was not in the suspect vehicle on the evening of the shooting in West Fargo, because he was attending James From’s birthday party on the night in question.

[¶17] Upon the conclusion of both the defense’s case-in-chief and the State’s final rebuttal witness the State re-rested its case. (Tr. pp. 192-194). The case was then given to the jury. (Tr. pp. 234-235). After a short period of deliberation the jury returned with a unanimous verdict of guilty of the charge of Reckless Endangerment, under NDCC §12.1-17-03, while possessing a firearm,

which provides for a minimum mandatory sentence for use of a firearm under NDCC §12.1-32-02.1. (Tr. pp. 235-237).

[¶18] **LAW AND ARGUMENT**

[¶19] The court properly denied the Defendant's Rule 29 motion because the evidence, viewed in the light most favorable to the prosecution, would clearly allow a jury of reasonable minded people to find that the essential elements of the crime were proven beyond a reasonable doubt thus warranting a conviction.

[¶20] Rule 29(a) of the North Dakota Rules of Criminal Procedure allows a motion by the defendant or the court to enter a judgment of acquittal if the evidence viewed in the light most favorable to the State does not rise to the level "upon which a reasonable mind could find guilt beyond a reasonable doubt." State v. Hafner, 1998 ND 220, ¶ 21, 587 N.W.2d 177. In order to preserve such a motion on appeal a defendant is required to advance the appropriate Rule 29(a) motion before the court. State v. Yineman, 2002 ND 145, ¶ 13, 651 N.W.2d 648.

[¶21] In State v. Krull, this Court further explained the standard of review on appeals related to sufficiency of evidence as follows:

In an appeal challenging the sufficiency of the evidence, this Court "look[s] only to the evidence most favorable to the verdict and the reasonable inferences therefrom to see if there is substantial evidence to warrant a conviction." State v. Knowels, 2003 ND 180, ¶ 6, 671 N.W.2d 816 (quoting State v. Kunkel, 548 N.W.2d 773, 773 (N.D. 1996)).

2005 ND 63, ¶ 14, 693 N.W.2d 631. The Court noted that in looking at the sufficiency of the evidence it "will not weigh conflicting evidence, nor judge the credibility of witnesses." Id. (quoting State v. Klose, 2003 ND 39, ¶ 19, 657 N.W.2d 276). Moreover, this Court has indicated that in order

to reverse a conviction on appeal for sufficiency of evidence it will only reverse if “no rational factfinder could have found the defendant guilty beyond a reasonable doubt.” State v. Jacob, 2006 ND 246, ¶ 6, 724 N.W.2d 118. (quoting State v. Steen, 2000 ND 152, ¶ 16, 615 N.W.2d 555). See Also State v. Goebel, 2007 ND 4, ¶ 33.

[¶22] In the case at bar the trial court properly determined that the State had offered enough evidence, via testimony and exhibits, for a jury of reasonable minded people to find the essential elements of the crime proven beyond a reasonable doubt. In fact, the trial court indicated on the record that at least two of the State’s eyewitnesses had positively identified Mr. Halvorson as the person firing the shotgun in West Fargo that evening.

[¶23] Equally important to the trial court’s ruling is the testimony by each of the eyewitnesses that they were all friends of Mr. Halvorson and really did not want to testify in court against him. They were all friends of Mr. Halvorson indicating that Mr. Halvorson was the hub of their relationship with one another. Outside of Mr. Halvorson’s presence in the vehicle that evening there would have been no reason for Casey Johnson to be with either Paul Condon or Ben Sorenson, Jr.

[¶24] Both parties agreed that there was no issue in that fact that a shotgun slug had been fired into the apartment building on March 7, 2005, and that the slug landed perilously close to a young man relaxing in his living room after traveling through the length of the apartment. The only issue of concern for the jury, as factfinder, was if Shawn Patrick Halvorson was indeed present that evening and pulled the trigger on the weapon that expelled the slug that ultimately ended up three inches from the young man in the apartment.

[¶25] All three eyewitnesses testified that Mr. Halvorson was indeed with them on March 7, 2005, and that throughout the course of the evening he had fired a shotgun several times out in the

“country”. At some point in time they all ended up in West Fargo near the apartment complex in question and that Mr. Halvorson, whether prompted by dare or otherwise, fired the shotgun at the apartment.

[¶26] The record indicates that there was sufficient evidence presented to support a verdict of guilty. The trial court properly and appropriately applied the rule in denying the defendant’s Rule 29(a) motion, in that at the close of the State’s case-in-chief the evidence viewed most favorably for the prosecution was sufficient for a jury of reasonable minded jurors to find that the essential elements were proven beyond a reasonable doubt.

[¶27] **CONCLUSION**

[¶28] For the foregoing reasons, the State respectfully requests that this Court affirm the order denying the Rule 29(a) motion to acquit and that the evidence was indeed sufficient for the jury to enter a verdict of guilty.

Respectfully submitted, this 17th day of January, 2007.

Gary L. Delorme, NDID #05845
Asst. Cass County State's Atty.
211 9th Street South
PO Box 2806
Fargo, ND 58108
701-241-5850

Kimberlee Jo Hegvik, NDID #06194
Asst. Cass County State's Atty.
211 9th Street South
PO Box 2806
Fargo, ND 58108
701-241-5850

[¶29] CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was sent by e-mail on this 17th day of January, 2007, upon:

Attorney Monty G. Mertz
Mertz Law Office P.C.
WDAY Tower
808 3rd Avenue South, Suite 205
Fargo, ND 58103-1865
MGMNDLAW@aol.com

GARY L. DELORME