

ORIGINAL

20070042

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

City of Minot,)	
Plaintiff/Appellee,)	Supreme Court No. 20070042
)	
vs.)	
)	District Court No. 06-K-02309
Mitchell Holbach,)	
Defendant/Appellant.)	

APPEAL FROM THE DISTRICT COURT OF WARD COUNTY
NORTHWEST JUDICIAL DISTRICT
DISTRICT COURT NO. 06-K-02309
THE HONORABLE DOUGLAS L. MATTSON

APPELLEE'S BRIEF

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STATE OF NORTH DAKOTA

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ISSUES PRESENTED TO REVIEW

- I. District Court did not err when it denied the Defendant's motion(s) for new trial.
- II. District Court did not err when it allowed the limited testimony of Kristin Plessas.

STATEMENT OF CASE

A. Procedural History of this Charge

A warrant was issued on September 27, 2006 for the arrest of the defendant for the offense Criminal Trespass, in violation of Minot City Ordinance 23-18. He was arrested on October 6, 2006. A jury trial was held January 5, 2007. The defendant was convicted. The defendant filed a motion for new trial on January 10, 2007. The State responded. The defendant filed another motion for new trial on January 11, 2007. The State responded to that motion.

B. Separate Proceedings Ongoing Current with is Incident

The defendant was charged with Stalking, a class A misdemeanor, (51-06-K-0110, Supreme Court No. 20060297), on March 1, 2005. On July 17, 2006 the defendant plead guilty to the charge. As part of the conditions of probation and the Criminal Judgment, the defendant was not to come within 500 feet of the victim, Joy Dixon, or her children, throughout areas of town, including Minot State University. On September 15, 2006 a Petition to Revoke the defendant's Probation was filed. A hearing on the petition was held on October 13, 2006. The defendant's probation was partially revoked. The defendant then filed a number of motions pro se, which Judge Lee ruled upon on October 19, 2006. The defendant filed an appeal of the revocation at the same time he filed an appeal in this conviction. It is important to point out the intertwining of these matters, as some of the issues raised in the defendant's Motion for New Trial, were actually matters and issues ordered in the 51-06-K-0110 case, and are actually in Appellant's Appendix for Supreme Court No. 20060297.

C. Statement of Facts

Officials (Lisa Ericksmoen and Dr. Jenkins) at Minot State University learned that a student, Joy Dixon, had a court order prohibiting the defendant from being within a 300 feet of her. (T. 33) An attempt was made to contact the defendant for purposes of discussing this issue. (T.34, 38). On March 1, 2006 Lisa Ericksmoen wrote a letter, in conference with Dr. Jenkins, to the defendant prohibiting him from being on Minot State University property. (ie: a No Trespass Letter).(T.35). Ericksmoen knew the defendant was in jail, so she brought the letter down to the Ward County Jail to be given to him. (T. 36, 39). Ericksmoen testified that she, as a designee of Dr. Jenkins, did have authority to ban persons from the property of Minot State University. (T. 32, 35, 37). On August 29, 2006, Twyla Llewellyn saw the defendant on Minot State University property. (T. 42-43, 44-45). On September 15, 2006, pursuant to the terms and conditions of the defendant's probation(51-06-K-0110), Kristin Plessas conducted a search of his vehicle. Found during the search, was the No Trespass Letter written to the defendant and delivered by Ericksmoen to the jail.

SUMMARY OF ARGUMENT

The Defendant had actual notice that he was not allowed on Minot State University. (Trial Exhibit 1). Ericksmoen took the letter to the Ward County Jail to be given to the defendant. The letter was found with other property of the defendant's during a probation search by Plessas. Plessas was endorsed as a witness three days before the trial. The Court allowed Plessas to testify for the limited purpose of chain of custody of the No Trespass Letter.

LAW AND ARGUMENT

I. District Court did not err in denying the Defendant's motion(s) for new trial.

The granting of a new trial is at the discretion of the trial court. N.D. Crim. P. Rule 33. The defendant filed two motions for new trial. The basis for the motions essentially were 1) the interests of justice based upon the surprise endorsement of the City's witness, Kristin Plessas and 2) the City failed to comply with the Court Order of providing an inventory of the property taken from his vehicle. (Order in 51-06-K-0110, Supreme Court No. 20060297). The trial court, first orally, and then in writing denied the defendant's motion for new trial. (Appellant's Supplemental Appendix to Brief, Supreme Court No. 20060297, p. 000027). A motion for new trial is also addressed to the trial court's judicial discretion and its decision will not be set aside unless an abuse of discretion is shown. State v. Olmstead, 261 NW2d 880, 887 (ND 1978). The defendant failed to prove the trial court abused its discretion in denying his motions for new trial. The trial court did not abuse its discretion in denying a motion for new trial.

II. District Court did not err it allowed the limited testimony of Kristin Plessas.

The defendant asserts the trial court erred in permitting the late endorsement of Kristin Plessas as a witness. It is within the discretion of the trial court to permit endorsement of the name of a witness on the indictment during trial and to allow such witness to testify. State v. Olson, 274 NW2d 190 (ND 1978). The defendant received notice via fax the City's Notice to Endorse Additional Witnesses on January 2, 2007. The record does not reflect whether or not the defendant sought a continuance in the interest of justice to prepare for the additional witness. Rule 7(g). The defendant failed to show the trial court

abused its discretion in allowing limited testimony of Plessas. The trial court did not abuse its discretion in allowing Plessas to testify.

CONCLUSION

For the reasons set forth above the City of Minot respectfully requests that Court deny the defendant's request for Reversal and Remand in this matter.

Dated this 15th day of May, 2007.


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