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BEFORE THE SUPREME COURT OF NORTH DAKOTA

North Dakota) Appealant's Reply Brief
plantif) East Central Distric Court
v.) 09-07-K-03531
Joe R Blurton)
defendant) 20090009 Supreme Court No.

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(A) Supreme Court Case Number 20090009

(B) East Central Distric Court 09-07-K-03531

(C) North Dakota vs. Joe R. Blurton

(D) Reply to Appealee's Brief

(E) Prepared Pro Se

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The appealant certifies this brief was prepared on a manual typewriter and no electronic version exist.

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Prepared by:

Joe R. Blurton

Signed this 8 day of May 2009.

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NDRAppP§ Rule 28 (d) Reply Brief Issue One-Elements

From the September 06, 2007 First Appearance transcript (1) Blurton is told by the Court, as recorded on page 5 at 9-11.

"You have the right to have a lawyer advise you before making any statements, answering any questions or at any time WHEN EVENTS HAPPEN RELATING TO YOUR CASE."

On page 11 at 6-15 Blurton wishes to speak with an attorney, he has questions. Mr. Mertz replies:

"Your Honor I'm not in any position to speak to it."

And then same page at 9-11:

"Because, you know, obviously one of the problems is everyone in the Courtroom knows about these cases [ITV Cases] except the defense attorney."

And then at 13-15 same page:

"You know you have a file, he has a file, she has a file. I know nothing except the guy's name. So I can't speak to--"

NDRCrimP§Rule 10, Arraignment (a) " In general. Arraign-(a) ment must be conducted in open Court and consist of:

(1) ensuring the defendant has a copy of the indictment, information, or complaint;

(2) reading the indictment, information, or complaint to the defendant or stating to the defendant the substance of the charge; and then

(3) asking the defendant to plead to the indictment, information or complaint."

N.D. Sup. Ct. Admin.§Rule 52 states of Interactive (b) Television under Section 1: "This rule is intended to enhance the current level of judicial services available within

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the North Dakota court system through the use of interactive television and not in any way to reduce the current levels of judicial review."

The defendant was arrested on September 02, 2007 in Ramsey County on a warrentless arrest.(2) NDCC§29-06-25 was not applied. The Legislative Intent of NDCC§29-06-25(c) is defined citing State vs. Iverson, 187 N.W. 2d 1(ND 1971)(c) Cert. denied,(d) 404 US 956 92 S. Ct. 322 30 L 2d 273 (1971):

"The intent of this section is to interpose the judgement of of an independant magistrate between the judgement of the peace officer or a private person in arresting another person without a warrant and the decision to hold him for premliminary examination or to stand trial."

Blurton has repeatedly asked during his four days of custody for legal assistance. States Evidence (5) and (6) would verify that on Sept. 02, 2007(3) Blurton told Investigator Stanger he would gladly speak about the events of that morning with an attorney present. While held without an explanation inside a concrete cell Blurton has attempted to contact an attorney. Jail Officers have told him to sign the ITV consent and present his problems to the Court.(4) Blurton finally refuses to continue signing papers presented to him by Jail Officers. His complaints about (3C)(37) the inability to dial 1-800 phone numbers or directory assistance leave him without contact as Blurton is unknowing of Court Room Proceedure, his extent of Criminal charges as well as the City of Fargo or North Dakota for that

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matter.

Here the defendant has no real understanding of his situation except that he has been held by police without explanation for four days and unable to obtain any form of legal representation, indeed he is under a great deal of stress.

The Court has not "...examine[d] on oath the complainant and any other witnesses..." as prescribed by NDRCrimP§Rule 3(b). There has been no magistrial review as prescribed by NDCC§29-06-25. The sole basis for Counts 1,2,3 & 4 is Officer Abel's Sept 03, 2007 Affidavit of Probable Cause.

Without legal representation these abuses of due process go unoticed. Clearly Mr. Mertz has been kept in the dark and the Court is only acting in favor of the States Attorneys.

Indeed: intake prosecutors are also dependant upon the statements of Officer Abel. Without legal counsel at a critical juncture, without the Court's unbias discretion, Blurton has been maliciously accused not based upon facts.

The Court is asked to review NDCC§12.1-20-03(1) (a),(b) and (c) and review the "elements of offense" as intended by the State Legislature. A Submitted Request to use Citation of Supplemental Authorities: State vs. Vantreece 2007 ND 126, 736 N.W. 2d 428, 2007. Force, resistance and gross imposition to be compared to the Medical Examination presented in the SANE report completed at 4:08 am, within one hour of the event.

Here an experienced medical exam, conducted by a sympathetic

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situation by a female Rn. In review the "pt. denies" being (9) "grabbed" or "strangled" or "physical blows by hands or feet" (9) (9) (9) among other physical actions. There is "Ø trauma appreciated (10) on exam"; the result of an acute forensic medical examination that has a proven Court Record. Detection of subtle trama of sexual assult is not proven on the patients body, neck, (10) (10) anus; there is "Ø trauma reported". There is no mention of (11) intoxication and as well the Rn saw no reason to collect urine for evidence of a drug-facilated rape.

(12) The State argues from ¶19 to ¶20 they have "won", their "proof" exist in deception and Blurton's Complaint only a "buyers remorse".

(13) From the time of arrest of 09/02/2007 until arraignment (2) (1) of 09/06/2007 Blurton had neither an explanation of charges, (3) legal representation or a judicial review as required by (3) (1) NDRCrimP§Rule 3(b) or by NDCC§29-06-25.

(e) (c) There is no"...real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process."

Smith v. O'Grady 312 US 329, 334 85 L Ed 859, 61 S. Ct.572.

(h) Presently there are four Amended Informations and (14) Criminal Judgements, three being completed after incarceration at NDSP! NDCC§12.1-20-03(1)(b) is clearly agreed upon by the (f) Court in the October 3, 2008 Transcript Page 6 at 4-8.

(15) "A manifest injustice includes proceedural errors by the sen-tencing court." State v. Gunwall, 522 NW 2d 183 (ND1994)

(i)

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Mr. Haugen's belated involvement of Sept. 19, 2007 (Court Action #14) is evidence of his lack of effort to defend Blurton. Mr. Haugen blindly accepts probable cause by an assumption of judicial review at arraignment. Clearly there is a lack of diligence by the State, the Court and both defense attornies. There is no effort to defend or pursue Justice, only to "force"Blurton into a position where he has no choice but to accept a plea bargain.

(16)

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At ¶ 11 the State argues the defendant had knowledge of the reprecussions, the sentence requirements. The defendant argues he was decieved, whether intentionally or due to a lack of diligence, it's effect the same.

NDCC§12.1-32-06.1(3) requires the Court shall impose a mandentory 5 years probation. There is no evidence the defendant knew this or probations restriction on his ability to return home. Indeed Blurton is stuck in North Dakota.

Item 23 of the State's Appendix is a page from Mr. Haugen's reply to a complaint before the State Disciplinary Board. The argument of a "feeler offer" is stupid, there was no "feeler offer."It was clearly an offer of 3 years and a chance for Blurton to go home before his mother dies and a chance to prevent the complainant's grief during pregnancy at trial.

"Mr. Blurton was very interested in this offer, yet he wanted to discuss the more specific terms of the offer (including the amendant of the charge, probation, length of registration, ect...)" That is exactly where a year later we are at. There is no discussion in the May 05, 2008 Change of Plea of the "amend on the Defendant's plea of guilty to that amended charge" (page 4 at 16 to 17). AS discussed there is no mention of mandatory probation, and never was the term registration mentioned. As written across the top of the page "This is a manifest injustice by Blacks Dictionary".

The appealant introduces the "Affidavit of Cherie Clark". Originally attached to the defendant's NDR Crim§Rule

35, Court Action No.109. States Attorney Clark chooses to defend Mr. Haugen in the complaint before the State Disciplanary Board. Item VI: (18)

"That despite all of the evidence against Mr. Blurton including but not limited to: witnesses, DNA results, victim impact statements, photographic line-up and vehicle description; I was still willing to agree to a plea of maximum of 5 year penality."

A DISCUSSION OF EACH OF THE ABOVE TERMS:

Witnesses: The original brief by the Appealant covered (18) the issues of the witnesses. Clear exculpatory evidence exist that is being witheld by the State, there was no response to this in the States Appellee Brief but a denial. Ms. Clark is in possesion of witness statements. (see Blurtons Argument, Brady vs. Maryland Page 29 at 1-24 and Appealants Appendix items 4 and 5. (original brief.)

DNA Results per NDCC§31-13-14: Lab Results of Item 2I1 male (18) (19) (1) fraction have been submitted to NDIS database. (19) The questioned contamination, evident from Items (20) 3C and 3D a bra and shirt, has occurred since Deputy Smith (19) Sealed the collected evidence Sept. 02, 2007 at Devils Lake Police Dept. at 12:08 pm. In Blurton's Brief Page17 at 24 through page 18 at 18 there was discussion of this as well as unexplained rectal swabs of the defendant along with Item 1A an unidentified (19) male's semen. The submitted Item 2I1 (19) is questionable at the least, NDCC§31-13-14 considers tampering a Class C felony. The State (1)

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still denies at ¶56 stating: "...there is no reliable evidence that [Blurton] was prejudiced by any law enforcement misconduct...". There has been no investigation by Cass County Sheriff or Fargo Police, however there is probable cause of wrongdoing in the handling of the DNA. Blurton request the right to pursue this in an evidentiary trial, and has filed complaint with the Department of Justice and Civil Rights Office. At some point in time the "unidentifed male Semen" might become evident in (19) a database search, falsely implicating Blurton.

(20) Victim Impact Statement: Court Action #94, dated Aug. (18) 15th, 2008; disclosure of pre-sentence report and addendum. Ms. Clark's affidavit is dated Aug. 6th, 2008. Their authenticity is questioned, as the "victim's impact statement" is dated Aug. 04, 2008. Court Action #93 is John Knutson's completion of his pre-sentence report. Blurton's Brief discusses, on Page 25 at 2 to 18 and in Appendix pages 17,18 and 19 these issues. This is protected and personel information of both Blurton and "A.R." the complainant.

Photographic Line-up: Blurton addressed the contamination (18) of witness by Investigator Stanger's line-up in his brief page 17 at 14 to 23. Citing Simmons vs. US 390 US 377 383 88 (m) S Ct. at 971 Ed 2d 1247, 1253 (1968) the Supreme Court said:

"..a pre-trial identification by photograph will be set aside on that grounds only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irrepairable misidentification"

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Here the Court is asked to compare the photographs used by Stanger and in compairison to the defendant. The descriptions by witnesses use "man in a red hat", "a man with brown or gray hair, no glasses, no facial" and again a young man is said to accompany the complainant to the Hotel Office. For the record Blurton is shaven Bald, had a full beard and wears glasses. His clothing that night of a Sturgis T-shirt and appearance would have been viewable on the lost Survailance tape. Presently, Court should be asked to review the record for any motions filed by Attorney to contest the pre-trial identification or at least to find out what they were. Again with an evidentiary trial "the ability of disclosure would bring more evidence to light and factuality." (See State's brief at ¶56.)

Vehicle Description: The State reveals it misunderstandings of the issues of this case. Blurton was in the parking lot at 3:00 am awaken by his car alarm. By his criminal record Robert Wenzlof is highly suspected of wrong-doings. Mr. Mertz makes this point clear in the Sentencing Transcript page 12:

"Why her boyfriend showed up a little later. Speculation about her history. She was sleeping in her car, at a Motel where the investigation shows that the manager admits that prostitution occurs. And, that is what he was expecting."

This is clearly an issue of Consent. (See page 13 of sentencing transcript.) And an issue of respect for the complainant's pregnancy. Ms. Clark's charge of NDCC12.1-20-03

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(1)(b) is repeatedly stated on page 6 @ 9 of the Sentencing (15)
transcript: the charges are not a "clerical error". Capric-
ously the State accuses Blurton of drugging a woman while she
is in her first trimester of pregnancy. (Pages 3-5 of senten- (15)
cing transcript). These clearly erroneous allegations then can
be cited at a later date as "sexually predatory conduct" as
cited in NDCC§25-03.3-01(9)(a) (1),(2) &(3). The "clerical (n) (14)
errors" become Medical Evidence for Civil Commitment, using
"Charged or Convicted" as credibility for evidence.
(o)
The defendant would argue in Court the exact nature of
the complainant's intoxication, based upon photographs and (33)
relevant evidence, the lack of sleep due to methamphetamine
useage. This is called "tweeking", photos of the car's interior (33)
and the complainant do illustrate. In Court there would be a
review of criminal records (pages 00055-00095 of States Attor-
ney Exhibit) reguarding witness Jason Prince, Bradley Pederson (22) (22)
and Henry Head. Unavailable due to incomplete investigation is (22)
Robert Wenzolf III extensive record and current convictions as (7)
well as the Complainant's Minnesota similar incidents in Becker
County 03-T6-05-000922 or 03-T9-04-000726. Blurton insist:
"...reliable evidence that he was prejudiced by prosecution or
law enforcement misconduct in the prosecution or investig-
ation of the case." (See States Brief at ¶56)

A Plea of Maximum 5 Year Penality: Based upon an offer (18)
of 3 years confinement a max of 5 years including probation,
this was considered "negotiable by counsel".(States App. 23)