

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

State of North Dakota,

Plaintiff,

vs.

New Holland LW230B Payloader, VIN:
ZEF00W23100955104

Defendant.

and

Arnie Rummel, Agent of the North Dakota
Bureau of Criminal Investigation,

Interested Party and Appellant.

SUPREME COURT NO. 20140409

Criminal No. 11-2014-CR-00080

ON APPEAL FROM THE CONTEMPT ORDER DATED
NOVEMBER 4, 2014
STATE OF NORTH DAKOTA
DICKY COUNTY DISTRICT COURT
THE HONORABLE DANIEL D. NARUM, PRESIDING

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

[¶1] The district court did not abuse its discretion in awarding remedial contempt sanctions for willful violations of multiple court orders.

STATEMENT OF THE CASE

[¶2] In May 2014, Arnie Rummel (“Rummel”), a Special Agent with the North Dakota Bureau of Criminal Investigation, submitted an application and affidavit for a search warrant to the Dickey County District Court. (App., p. 19). Rummel informed the court that Darrell Schrum was in possession of a wheel loader in Forbes, North Dakota. (Id.) Rummel claimed the loader was stolen, but noted Mr. Schrum “claimed to have purchased it in good faith and had done work on it.” (Id.) Rummel told the court he intended to seize the loader as evidence. (Id. at 19; 6/4/14 Tr., p. 75). The Honorable Daniel D. Narum subsequently issued a search warrant, directing agents to seize the loader within ten days and bring it before the court. (Id. at 18).

[¶3] Rummel did not immediately execute the search warrant, but instead spent the next two days coordinating with a civilian trucking company to remove the loader from North Dakota. (App., pp. 13-14; 9/2/14 Tr., pp. 39-40). This trucking company was present during the execution of the warrant, took immediate possession of the loader, and transported it out of the state. (6/4/14 Tr., pp. 41, 66, 110). When Rummel told the Dickey County State’s Attorney he had no intention of trying to return the loader to North Dakota, Mr. Schrum moved for its return under N.D.R.Crim.P. 41(e). (App., pp. 3-4). Mr. Schrum, the Dickey County State’s Attorney, Rummel, and Assistant Attorney General Jonathan Byers all participated at the hearing on Mr. Schrum’s motion. (See 6/4/14 Tr.; see also, 10/9/14 Tr., p. 12). The court concluded the loader “should have never left Dickey County” and ordered its return within 48 hours. (App., p. 23; 6/4/14 Tr., p. 153).

[¶4] Upon the expiration of the 48-hour window, and in contravention of two separate orders from the district court, the loader remained outside of Dickey County and North

Dakota entirely. Mr. Schrum moved for contempt sanctions against Rummel. (App. at 24). Mr. Schrum, Rummel, and Attorney Byers participated fully in the subsequent contempt hearing. (See 9/2/14 Tr.; see also, 10/9/14 Tr., p. 12). The court held the State and Rummel in contempt for willfully violating the initial search warrant, and for their subsequent failure to return the loader to North Dakota. (10/14/14 Tr., p. 9; 9/2/14 Tr., p. 54). As a result of this willful disobedience, the court imposed remedial sanctions against Rummel in the amount of \$53,705.02, plus the costs of the current appeal. (App., p. 34). The State's obligation to pay the remedial sanctions has been stayed pending the resolution of this appeal. (Doc. #47).

CLARIFICATION OF THE ISSUE

[¶5] At the outset, the actual issue before the Court must be clarified in order for the relevant facts to be properly recited. The State's purported factual recitations are woefully incomplete, extraneous to or lacking a citation to the record, and irrelevant to the sole issue in this matter: whether the district court abused its discretion in imposing remedial contempt sanctions. The issue before the Court is not a determination of Darrell Schrum's ownership and possessory interests in the loader. Mr. Schrum, the Dickey County District Court, and all other interested parties were deprived of the opportunity to address that question by Rummel's willful disregard of multiple court orders, and his actions in having the loader immediately and permanently removed from North Dakota. As Attorney Byers stated to the district court at the initial motion hearing on June 4, 2014, "[T]he question that can be answered here is whether the court's gonna order the State to attempt to return [the loader]. I think that's the only issue." (6/4/14 Tr., p. 135). Indeed, the sole issue has always been the propriety and consequences of Rummel's removal of the loader from North Dakota without any opportunity for a court to address

the questions of ownership and possession. The statements of fact and law, and framing of the issues in the State's brief, obscure the inexcusable abuse of process which disrespected the authority of the court and irreparably harmed a North Dakota citizen.

STATEMENT OF THE FACTS

[¶6] The statement of facts presented by the State should be rejected because it is inaccurate and lacking citation to the record and transcripts. Darrell Schrum is a resident of Ellendale, who owns a shop in Forbes from which he operates his trucking and gravel business. (See 6/4/14 Tr., pp. 15, 32). In February 2014, a colleague advised Mr. Schrum about a New Holland wheel loader offered for sale in Iowa by Jay Hansell. (Id. at 16). Before purchasing the loader, Mr. Schrum conducted his own due diligence. He traveled to Iowa and personally inspected the loader, determining it had many problems that would require repair. (Id. at 18). Upon his return from Iowa, Mr. Schrum sought confirmation that the loader was not stolen from his bank, his insurance provider, a heavy equipment dealer in Fargo, the colleague that alerted him to the loader's existence, and Mr. Hansell. (Id. at 19-23). Mr. Schrum testified, "I just didn't go out and buy it because it was reasonable. I wanted to make sure it wasn't stolen." (6/4/14 Tr., p 49). Having received multiple assurances that the loader was not stolen, Mr. Schrum negotiated its purchase for \$13,500. (Id. at 17, 28).

[¶7] Mr. Schrum transported the loader to Forbes, and over the next month-and-half, spent considerable time and money repairing its numerous mechanical problems. Purchasing all parts and providing all labor himself, Mr. Schrum installed or replaced multiple items including a radiator, fan parts, a turbo charger, filters, and o-rings. (See id. at 30; App., p. 25). It was not until 40 days after Mr. Schrum purchased the loader—and had completed substantial repairs—that it was reported stolen. (6/4/14 Tr.. p. 23). In

fact, at the time Mr. Schrum purchased the loader, investigating officials had concluded the transfer of the loader to Jay Hansell was a civil dispute. (Id. at 60-61).

[¶8] Subsequently, a national insurance fraud investigator, a member of the Memphis, Tennessee Police Department, Travelers Insurance, the North Dakota Highway Patrol, and Pyramid Transportation all contacted Mr. Schrum regarding the allegedly stolen loader. (6/4/14 Tr., pp. 31-37). Mr. Schrum's answer to all inquiries remained the same: the parties were welcome to come and inspect the loader (as the national insurance investigator did) and were even welcome to take the loader. (Id. at 31, 35-36, 38.) He simply wanted to be reimbursed for the money and time that he had invested in the loader, which he purchased in good faith. (Id. at 31-32, 37-38.)

[¶9] Mr. Schrum was at all times candid about his possession of the loader, and his willingness to return it so long as his investment could be recouped. (6/4/14 Tr., pp. 31-32, 35-38.) Nonetheless, Rummel secured a criminal search warrant to seize the loader from Mr. Schrum's shop in Forbes. Despite seeking a criminal search warrant in Dickey County, Rummel elected not to notify the Dickey County State's Attorney. (6/4/14 Tr., p. 103). Instead, he presented an affidavit and application for a search warrant to the court, alleging the loader was being "concealed," and it was "used in the commission of a crime . . . or may constitute evidence of a criminal offense." (App., p. 21). Rummel specifically told the court the loader would be held as evidence. (6/4/14 Tr., p. 75; App., p. 19). Rummel admits he never informed the court that he planned to turn the loader over to a third-party, nor did the court ever give him authority to do so. (6/4/14 Tr., p. 75). Rather, the warrant directed:

YOU ARE HEREBY COMMANDED to search and seize, upon completion of requirements, within 10 days after receiving this warrant the

premises above described for the property specified; serving this warrant and making the search in the daytime (6:00 a.m. to 10:00 p.m. local time) unless otherwise authorized below, and if the property seized, and bring the property before me.

(App., p. 18) (emphasis added).

[¶10] Rummel disregarded the terms of the warrant, and openly ignored the authority of the court and the rights of Mr. Schrum. Rather than seize the loader as evidence, Rummel coordinated with Brad Whelan, an employee of Pyramid Transportation, to give the loader to Whelan. (App., p. 5, 13; 6/4/14 Tr., 83-85). Rummel originally believed Whelan owned the loader. (6/4/14 Tr., pp. 95-96; 9/2/14 Tr., pp. 33-34). Ultimately, Rummel admitted neither Whelan nor Pyramid had any ownership interest in the loader. (9/2/14 Tr., p. 34). Nonetheless, Rummel and Whelan arranged for a civilian trucking company, Knight Trucking, to accompany agents during the execution of the search warrant, and immediately transport the loader to Aberdeen, South Dakota. (App., pp. 13-14, 6/4/14 Tr., pp. 41, 89-90).

[¶11] Rummel's brazen disregard of the search warrant's terms was compounded by the reckless nature of the warrant's execution. In seizing the loader, law enforcement broke down the door to Mr. Schrum's shop, an act which Rummel characterized as "not my problem." (6/4/14 Tr., pp. 39-40). Officers disabled the surveillance system in Mr. Schrum's shop, despite Rummel's admission that they had no authority to do so. (Id. at 65, 81-82). Rummel also admitted that while executing the search warrant, he contacted Mr. Schrum by telephone and falsely informed him the loader was being seized as evidence and retained for the court. (Id. at 113). During this phone call, Mr. Schrum offered to have his brother assist law enforcement in moving the loader, as there was other equipment blocking its path to the shop's door. (Id. at 39-40). When Mr. Schrum's

brother arrived, he was greeted by law enforcement with guns drawn. (Id. at 107). Agents also accosted an onlooker, took her camera, and deleted pictures of the search. (Id. at 43).

[¶12] Not long after the warrant was executed, Mr. Schrum learned the loader had not been stored in North Dakota for evidence, but was instead in Knight Trucking's lot in Aberdeen, South Dakota. (6/4/14/ Tr., p. 41). Recognizing that time was likely of the essence, Mr. Schrum contacted the Dickey County State's Attorney, who in turn contacted Rummel. (Id. at 110). When asked to have the loader returned, Rummel informed the State's Attorney that he had never delivered property to the court in his 33 years of law enforcement, and he was not going to bring the loader back to Dickey County. (Id.).

[¶13] When Rummel made clear his intent to continue defying the terms of the search warrant, Mr. Schrum moved for the loader's return under N.D.R.Crim.P. 41(e). (Doc. #2). The Dickey County State's Attorney appeared on behalf of the State. (See 6/4/14 Tr.). Attorney Byers was also present at the hearing, and he considered the State's Attorney to be "adverse to the Attorney General" due to the State's Attorney's disagreement with the Bureau of Criminal Investigation violating the court's order. (See Appellant's Br. at ¶ 7). Attorney Byers participated fully in the hearing. (See 6/4/14 Tr.) The district court concluded the loader "should have never left Dickey County" and ordered that it be returned within 48 hours. (App., p. 23; 6/4/14 Tr., p. 153).

[¶14] Despite the court's order, the loader still has not been returned to North Dakota. After agents did not return the loader, Mr. Schrum moved for contempt sanctions. (App. at 24). At the contempt hearing, Rummel and Attorney Byers were present and

participated fully. (See 9/2/14 Tr.; see also, 10/9/14 Tr., p. 12). The court concluded “the State of North Dakota and Agent Arnie Rummel are in contempt for the unauthorized disposition of property ordered to be seized under this court’s search warrant given to a third party out of state.” (9/2/14 Tr.. p. 54). Following a subsequent hearing to address objections and incurred costs, the court concluded Rummel was “in contempt of court for violating the terms of the warrant and for failing to return the property as directed by the Court.” (App., p. 33). The court directed Rummel and the State to pay remedial contempt sanctions in the amount of \$53,705.02, representing the value of the loader and repairs, attorney’s fees and other costs. (Id.) The court further ordered that any additional prospective costs incurred by Mr. Schrum in defending this appeal shall be included in the contempt sanctions. (App., pp. 25, 34).

LAW AND ARGUMENT

I. The district court did not abuse its discretion in directing that remedial contempt sanctions be paid for the multiple violations of court orders.

A. Legal Standard

[¶15] “Determining whether a contempt has been committed lies within the district court’s sound discretion, which will not be overturned on appeal absent an abuse of that discretion.” Sall v. Sall, 2011 ND 202, ¶ 7, 804 N.W.2d 378 (quoting Prchal v. Prchal, 2011 ND 62, ¶ 5, 795 N.W.2d 693). The district court possesses broad discretion to order contempt sanctions. Rath v. Rath, 2014 ND 171, ¶ 6, 852 N.W.2d 377. This Court has defined its review “of a district court’s contempt decision [as] ‘very limited.’” Id. (quoting Sall at ¶ 7). This Court will not overturn the district court’s decision merely because the Court would have ruled differently had it decided the motion. In re Estate of Cashmore, 2010 ND 159, ¶ 21, 787 N.W.2d 261.

[¶16] Under N.D.C.C. § 27-10-01.1(c), “contempt of court” is defined as “[i]ntentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate.” (emphasis added); see also, Holkesvig v. Welte, 2012 ND 14, ¶ 9, 809 N.W.2d 323 (“Intentional, willful, and inexcusable disobedience of a court order constitutes contempt of court”). When contempt occurs, a district court is empowered to impose remedial or punitive sanctions under N.D.C.C. § 27-10-01.2(1). Permissible remedial sanctions include payment of a sum of money “sufficient to compensate a party or complainant . . . for a loss or injury suffered as a result of the contempt, including an attempt to reimburse the party for costs and expenses incurred as a result of the contempt.” N.D.C.C. § 27-10-01.4(1)(a); see also, N.D.C.C. § 29-01-20 (allegedly stolen property must be held subject to a judicial order directing disposal.)

B. The district court properly imposed remedial contempt sanctions

[¶17] “Intentional disobedience of a court order constitutes contempt, and absent a showing that an order is transparently invalid or frivolous, the order must be obeyed until stayed or reversed by orderly review.” State v. Sevigny, 2006 ND 211, ¶ 36, 722 N.W.2d 515. The district court concluded Rummel and the State were in contempt for both violating the terms of the warrant and for failing to return the loader as directed in the court’s subsequent order. (10/14/14 Tr., p. 9; 9/2/14 Tr., p. 54). The district court based its decision on undisputed findings of fact which included:

- By investing substantial effort and resources into repairing the loader, Mr. Schrum had a perfected possessory security interest in the loader (App., pp. 31-32);
- “At the time Darrell Schrum purchased the loader, no reasonable person could have known or should have known the loader was “stolen.” (Id. at 33);

- “[W]ithout lawful authority,” Rummel transferred the loader to Pyramid Trucking which he now admits did not have an ownership interest in the loader (Id. at 32);
- Rummel refused to return the loader when directed to do so by the Dickey County State’s Attorney (Id.);
- Rummel and the State were unable or unwilling to comply with court’s subsequent order to have the loader returned to Dickey County within 48 hours (Id.);
- The loader is either in Mexico or awaiting delivery to Mexico in Texas, thus, Rummel’s actions permanently deprived Mr. Schrum of his ownership and possessory interests. (Id.)

The court concluded, “By transferring the loader without legal authority, Agent Rummel divested Mr. Schrum of any meaningful ability to assert his ownership and possessory interest in a North Dakota court.” (App., pp. 33-34).

[¶18] The undisputed facts in the record support the court’s findings. Under the plain terms of the warrant, the court directed law enforcement to seize the loader and bring it before the court. (App., p. 18). Rummel admitted this was the extent of the authority granted by the court. (6/4/14 Tr., pp. 83-84). However, at the time Rummel was applying for the search warrant and telling the court he would hold the loader as evidence, he was already coordinating with Whelan to send the loader out of state. (See App., p. 5). Rummel waited two days to execute the warrant to permit Knight Trucking to immediately transport the loader out of North Dakota. (App., pp. 13-14; 6/4/14 Tr., p. 105). During the actual search, agents disabled the shop’s surveillance cameras without any authority to do so. (6/4/14 Tr., p. 82). When later approached by the Dickey County State’s Attorney to remedy the situation and have the loader returned, Rummel remained obstinate, declaring he had never delivered evidence directly to the court in his 33 years of law enforcement, and he would not try to get the loader back. (Id. at p. 110). When

the same court which Rummel had deliberately disobeyed subsequently ordered him to have the loader returned within 48 hours, he and the State unsurprisingly failed to comply.

[¶19] After repeated denials of wrongdoing and refusals to remedy the same, Rummel finally admitted at the contempt hearing that his actions were improper. (9/2/14 Tr, pp. 38, 42-43). Given the undisputed facts in the record demonstrating a persistent pattern of disobedience, and considering Rummel's late admission of fault, a clear basis for a finding of contempt under N.D.C.C. § 27-10-01.1(c) exists in the record. The State has failed to advance any arguments to negate the district court's contempt finding.

[¶20] The remedial sanctions ordered by the court are appropriate to remedy the harm inflicted by the contempt. By permitting the loader to be immediately transported out of North Dakota contrary to the warrant and legal obligation to hold stolen property under N.D.C.C. § 29-01-20, Rummel and the State divested Mr. Schrum of any meaningful opportunity to protect his ownership and possessory interests in the loader. (App., p. 33). Accordingly, the remedial contempt sanctions properly encompass the value of Mr. Schrum invested into the loader, including the purchase price, time, materials, and labor related to his repairs. (See App., p. 25). The remedial contempt sanctions also properly encompass the legal expenses and costs he incurred solely as a result of the State's disregard of court orders. N.D.C.C. § 27-10-01.4(1) (costs and fees incurred as a result of the contempt may be awarded as remedial contempt sanction).

[¶21] The State has argued that awarding Mr. Schrum the value he put into the loader was an inappropriate sanction, and that other alternatives are available. (Appellant's Br., ¶¶ 31-48). Any assertion that Mr. Schrum should be forced to litigate his interests in a

civil proceeding in Iowa, Tennessee, or Mexico, are absurd given that he lost his interest because of the State's illegal actions. These assertions further demonstrate the callous disregard of the rights afforded North Dakota's citizens.

[¶22] Even if the court had other options, it does not follow that the court's choice of sanctions was an abuse of discretion. For example, Rummel could be criminally prosecuted for misapplication of entrusted property. See N.D.C.C. § 12.1-23-07 ("A person is guilty of misapplication of entrusted property if the person . . . transfers any interest in property that has been entrusted to the person . . . in the person's capacity as a public servant") see also State v. Blunt, 2008 ND 135, 751 N.W.2d 692 (outlining elements of the offense). If convicted, restitution could be ordered. N.D.C.C. § 12.1-32-02(1)(e). The court could imprison Rummel as a remedial contempt sanction. N.D.C.C. § 27-10-01.4(1)(b). Likewise, the district court could have ordered payment of up to \$2,000 per day as the contempt continued as authorized by N.D.C.C. § 27-10-01.4(1)(c), and as originally requested by Mr. Schrum. (Doc. #12, Brief in Support of Mot. for Contempt Sanctions, ¶ 8). The State has not produced any authority for the proposition that a chosen remedial sanction is an abuse of discretion simply because other alternatives exist—especially when those alternatives could reasonably be viewed as more severe.

[¶23] This Court has made clear that a "heavy burden" is placed on a party alleging an abuse of discretion, and that such an abuse is never assumed. Martin v. Trinity Hosp., 2008 ND 176, ¶ 17, 755 N.W.2d 900. Consistent with this heavy burden, this Court has a longstanding history of concluding a district court has not abused its discretion in ruling on contempt matters. See e.g., Rath, 2014 ND 171, ¶ 10, 852 N.W.2d 377 (record

sufficient for district court to order contempt sanctions against husband, and decline to order them against wife); Nieuwenhuis v. Nieuwenhuis, 2014 ND 145, ¶ 43, 851 N.W.2d 130 (record supported the district court’s denial of contempt petition); Lind v. Lind, 2014 ND 70, ¶ 16, 844 N.W.2d 907 (“Under this Court’s standard of review, we conclude the district court did not abuse its discretion in denying Christopher’s motion to find Karla in contempt.”); Krueger v. Krueger, 2013 ND 245, ¶ 20, 840 N.W.2d 613 (district court did not abuse its discretion in ordering contempt sanctions for disobeying order to pay spousal support); Estate of Cashmore, 2013 ND 150, ¶ 17, 836 N.W.2d 427 (no abuse of discretion to order contempt sanctions for personal representative’s failure to comply with court order to pay monies to specified party); Sall, 2011 ND 202, ¶ 9, 804 N.W.2d 378 (district court did not abuse its discretion in declining to impose contempt sanctions); Prchal, 2011 ND 62, ¶ 8, 795 N.W.2d 693 (district court’s finding that an adequate basis for contempt sanctions had not been proven was not an abuse of discretion); Woodward v. Woodward, 2009 ND 214, ¶ 7, 776 N.W.2d 567 (district court did not abuse its discretion in finding a party in contempt for violating a parenting time order); Graner v. Graner, 2007 ND 139, ¶ 34, 738 N.W.2d 9 (district court did not abuse its discretion in finding a party in contempt for removing her children from the state in order to obstruct the court’s ordered parenting time schedule); Sevigny, 2006 ND 211, ¶ 36, 722 N.W.2d 515 (court did not abuse its discretion in finding attorney in contempt after he disobeyed order not to give personal belief in closing argument). Given the undisputed facts in the record, and given Rummel’s late acknowledgement of wrongdoing, there is simply no basis for this Court to disregard its precedent of upholding contempt decisions of this nature. This Court should affirm the district court’s order, remand for a determination of

costs and fees on appeal, and finally compensate Mr. Schrum for the continuing injury caused solely by willful violations of court orders.

C. The State's arguments are irrelevant to the contempt issue

[¶24] Mr. Schrum attempted to stipulate with the State and Rummel to simply require that the loader be returned to North Dakota. (9/2/14 Tr., p. 7). This offer was refused. (Id.; 6/4/14 Tr., p. 110). Stubbornly refusing to admit or remedy its wrongdoing, the State's efforts have been geared at denying fault, confusing the issues, and generally deflecting all responsibility for the harm inflicted upon an innocent North Dakota citizen. The appellate brief filed by the State continues this pattern by misstating the issues in a smoke-and-mirrors attempt to divert this Court's attention from the true contempt at issue.

[¶25] The State claims alleged underlying procedural problems, alleging two main arguments: (1) the Attorney General's office was not properly given notice of the initial Rule 41(e) hearing; and (2) sanctions which included compensation for the value of the loader could only be awarded in a separate civil case. (Appellant's Br., ¶¶ 5-10, 20-30).¹ Neither argument has merit.

[¶26] The State argues the district court's order is defective because the Attorney General was not given notice of the initial hearing for return of property under N.D.R.Crim.P. 41(e). This argument ignores the fact that the Dickey County State's

¹ The State also includes an argument regarding a claimed requirement of filing financial claims with the Office of Management and Budget. (Id. at ¶¶ 24-28). In addition to being irrelevant to the contempt issue, the State cites evidence which is not in the record, and therefore cannot be considered by this Court on appeal. See State v. McKinney, 518 N.W.2d 696, 703 (N.D. 1994) (evidence which is not part of the certified record on appeal cannot be considered).

Attorney received notice and appeared. See N.D.C.C. §§ 11-16-01(1), (2), and (6) (providing the State’s Attorney is the public prosecutor, responsible to “[a]ttend the district court and conduct” hearings on behalf of the state). Moreover, Attorney Byers and Rummel fully participated in all relevant hearings. (See 6/4/14 Tr.; 9/2/14 Tr.; 10/14/14 Tr.) Such participation waives any purported claim of notice deficiency. See Forman v. Healey, 19 N.D. 116, 121 N.W. 1122, 1124-25 (appearance at hearing waives notice thereof); Petition of Vill. Bd. of Wheatland, 77 N.D. 194, 208, 42 N.W.2d 321, 329 (superseded on other grounds) (appearance by counsel conducting direct and cross-examination of witnesses waives all notice defects); see also, N.D.R.Civ.P. 4(b)(4) (district court acquires jurisdiction by voluntary general appearance).

[¶27] The incredible stance taken by the State is crystallized in Paragraph 29 of its appellate brief. The State contends the Fourteenth Amendment to the United States Constitution and Article I, Section 12 of the North Dakota Constitution—both of which protect against the deprivation of property without due process—were violated when “the trial court deprived the Attorney General of any meaningful due process in defending itself” (Appellant’s Br. at ¶ 29). This argument overlooks the very reason this appeal is before the Court. By willfully violating multiple court orders, Rummel and the State have deprived Mr. Schrum of his property without due process. Not only are they asking this Court to approve their willful disobedience, but they have the audacity to cite the protections of Fourteenth Amendment in making their appeal.

[¶28] The tenor and substance of the State’s disagreement with the chosen contempt sanctions are similarly distasteful. The State glibly accuses Mr. Schrum of seeking relief through a criminal matter because he “had his eyes on a different prize” and chastises

him for not filing a prolonged and costly civil suit (in another state or Mexico). (Appellant's Br. at ¶¶ 20-30). This argument is as illogical as it is offensive, considering the State and Rummel placed this matter in a criminal posture by obtaining—and then violating—a criminal search warrant. Rule 41(e) of the North Dakota Rules of Criminal Procedure specifically provides, “A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move the trial court for the property's return.” Given it is undisputed that Rummel unlawfully gave away Mr. Schrum's loader, the State cannot in good faith criticize Mr. Schrum for exercising his rights afforded him under North Dakota's criminal rules. Rule 41(e) exists for exactly this type of scenario, but the State's position is that a civil suit is needed to address questions of possession. (Appellant's Br., pp. 20-30). However, what the State suggests now is impossible because of Rummel's willful violation of the criminal search warrant. (App., pp. 33-34).

[¶29] The State also argues at length that Mr. Schrum acquired no title to the loader. (App., ¶¶ 31-48). To the extent this Court believes this question can appropriately be considered, the district court's findings should be upheld. “Mr. Schrum invested substantial effort and resources repairing and improving the loader, and accordingly had a perfected possessory security interest in the loader at the time it was seized.” (App., pp. 31-32). Such an interest is protected by both a repairman's lien under N.D.C.C. § 35-13-01, and a general possessory lien under N.D.C.C. § 35-20-11. See N. Dakota Mineral Interests, Inc. v. Berger, 509 N.W.2d 251, 256 (N.D. 1993) (work not precisely meeting the definition of a repairman's lien is nonetheless covered by a general possessory lien). Moreover, because “no reasonable person could have known or should have known the loader was ‘stolen’”, the court concluded Mr. Schrum had an ownership interest as a

good-faith purchaser. These conclusions have a firm basis in the record, and should not be disturbed on appeal.

[¶30] More importantly, the State's entire attempt to litigate the factual issues regarding ownership and possessory interests is a red herring. The State's entire position is couched on the premise that Mr. Schrum has somehow reaped a windfall as a result of the contempt committed by Rummel and the State. No such thing has occurred. The only compensation to be received by Mr. Schrum is for the amount of money he has invested in the loader, and for his legal fees and costs. As Attorney Byers remarked to the district court:

[T]he only contempt we may be talking about, the only thing that didn't occur that maybe was to the letter of the statute, was the release of the loader back when it was taken on the search warrant. If the court feels some kind of sanction is appropriate that—with that—for that you'll have to do what you think is appropriate to make it right to you.

(9/2/14 Tr., p. 51). In the court's discretion, "making it right" required the modest step of allowing him to recoup what he had invested in the loader, and what he was incurring in terms of fees and costs, all as a result of the undisputed contempt in this case. Such an award is not a windfall by any stretch, but rather is a logical remedy for the State's malfeasance. There was no abuse of discretion, and there is no basis to disturb the court's reasoned sanction.

CONCLUSION

[¶31] As the Dickey County State's Attorney sagely remarked to the district court, "I think in cases like this you need to proceed with an abundance of caution because I would rather protect a North Dakota purchaser than someone from out-of-state where I am unsure what their interest in that property is." (6/4/14 Tr., pp. 13-14). The Attorney General and the Bureau of Criminal Investigation disagree, having worked tirelessly to

protect out-of-state and foreign parties, while ignoring the rights of an innocent citizen of North Dakota, all in direct contravention of two separate court orders. The contempt sanctions imposed by the district court were entirely proper under these circumstances, and the district court exercised sound discretion in its ruling. The district court's order should be affirmed, and the case remanded for a determination of Mr. Schrum's costs and fees incurred in this appeal.

Respectfully submitted this 23rd day of March, 2015.

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**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

State of North Dakota,

Plaintiff,

vs.

New Holland LW230B Payloader, VIN:
ZEF00W23100955104

Defendant.

and

Arnie Rummel, Agent of the North Dakota
Bureau of Criminal Investigation,

Interested Party and Appellant.

SUPREME COURT NO. 20140409

Criminal No. 11-2014-CR-00080

**CERTIFICATE OF
ELECTRONIC SERVICE**

I hereby certify that on March 23, 2015, the following documents:

APPELLE'S BRIEF

were filed electronically with the Clerk of Court through Odyssey, and that Odyssey will send a Notice of Electronic Filing (NEF) to the following:

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Dated this 23rd day of March, 2015.

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