

20160201

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

NOV 02 2016

STATE OF NORTH DAKOTA

State of North Dakota,)	Supreme Court: 20160201
)	
Plaintiff/Appellee)	
v.)	
)	
Steven Gibson,)	District Court: 08-2015-CR-02568
)	
Defendant/Appellant)	
)	

APPELLEE'S BRIEF

APPEAL FROM THE JANUARY 20, 2016
ORDER DENYING MOTION TO DISMISS

Burleigh County District Court
South Central Judicial District
Honorable Bruce Romanick, Presiding

Submitted November 4, 2016

/s/Wade Davison/

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(ID#08167)
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Plaintiff and Appellee

TABLE OF CONTENTS

	<u>Page/Paragraph No</u>
Table of Contents.....	i
Table of Authorities.....	ii
Statement of the Issues.....	¶¶ 1, 2
Statement of the Case	¶ 3
Statement of the Facts	¶¶ 4-6
Argument.....	¶¶ 7-12
I. The State concedes that defendant has the right to appeal to the North Dakota Supreme Court	¶ 7
II. The State did not violate the Defendant's right to a speedy trial because trial was scheduled within the ninety days.....	¶ 8-12
A. The State did not violate the Defendants right to a speedy trial because the Defendant's trial was scheduled within ninety days of the clerk of court and the prosecuting official's reception of the speedy trial request.....	¶ 9-11
B. The Defendant did not properly elect his right to a speedy trial because it was not elected within fourteen days following the arraignment.....	¶ 12
CONCLUSION	¶ 13

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Paragraph No.</u>
<u>State v. Fulks</u> , 1997 ND 143, 566 N.W.2d 418.....	¶¶ 9, 10
<u>State v. Ripley</u> , 548 N.W.2d 24, 27 (N.D. 1996)	¶ 9
 <u>Statutes</u>	
N.D.C.C. § 29-01-06(5).....	¶ 8
N.D.C.C. § 29-19-02.....	¶¶ 8, 12
N.D.C.C. § 29-28-03.....	¶ 7
N.D.C.C. § 29-33-01.....	¶9
N.D.C.C. § 29-33-02(2).....	¶ 8
N.D.C.C. § 29-33-03.....	¶¶ 8, 10
 <u>Rules</u>	
N.D.R.Crim.P. Rule 37.....	¶ 7

STATEMENT OF THE ISSUES

[¶1] Whether the defendant has the right to appeal to the North Dakota Supreme Court.

[¶2] Whether the State violated the Defendant's right to a speedy trial.

STATEMENT OF THE CASE

[¶3] The State concurs with Gibson's statement of the case.

STATEMENT OF THE FACTS

[¶4] On or about October 2, 2015 Gibson completed and signed his inmate's request for disposition of indictments, information, or complaints, and notice of place of imprisonment. App. 28-31. On or about October 13, 2015, the North Dakota Department of Corrections sent that paperwork by certified mail to 1) Richard Rhia, the Burleigh County State's Attorney, and 2) the Clerk of Court. App. 32-29.

[¶5] On or about October 15, 2015, the certified mail article addressed to the Clerk of Court was received by an individual identified as J. Haas. App. 38. On or about October 16, 2015, the same individual, J. Haas, received the certified mail article addressed to Richard Rhia and signed the receipt. App. 34. By the signed reception dates of the certified mail articles, the Clerk of Court received the paperwork on October 15, 2015, and the prosecuting official received the paperwork on October 16, 2015.

[¶6] Gibson's arraignment was held on November 30, 2015. App. 2 at Cr. Doc ID #30. Gibson's trial was scheduled for January 6, 2016. January 6, 2015 is 83 days from October 15, 2015, and 82 days from October 16, 2015.

ARGUMENT

I. The State concedes the Defendant has a right to appeal to the North Dakota Supreme Court.

[¶7] Under N.D.C.C. § 29-28-03 and in conjunction with N.D.R.Crim.P. Rule 37, the State concedes that Gibson has a right to appeal to the North Dakota Supreme Court.

II. The State did not violate the Defendant's right to a speedy trial because trial was scheduled within the ninety days.

[¶8] The Defendant has a right to a speedy trial. N.D.C.C. § 29-01-06 (5); N.D.C.C. § 29-19-02. "The right to a speedy trial in a criminal case in which the charging instrument contains a charge of a felony offense . . . is for the trial to begin within ninety days of the date the party elects this right. The . . . defendant shall elect this right within fourteen days following the arraignment." N.D.C.C. § 29-19-02. The speedy trial "request must be delivered to the warden or other official having custody of the prisoner, who shall forthwith: 2) [s]end by registered or certified mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting official to whom it is addressed." N.D.C.C. § 29-33-02(2). The law requires the case to be tried "within ninety days after the receipt of the request and certificate by the court and prosecuting official." N.D.C.C. § 29-33-03.

A. The State did not violate the Defendants right to a speedy trial because the Defendant's trial was scheduled within ninety days of the clerk of court's and the prosecuting official's reception of the speedy trial request.

[¶9] This Court has made clear that it is from the date that the clerk of court and prosecuting official both have received notice of Defendant's speedy trial request that the ninety days begins to run. State v. Fulks, 1997 ND 143, ¶2, 566 N.W.2d 418; State v. Ripley, 548 N.W.2d 24, 27 (N.D. 1996). In State v. Fulks, the Defendant "signed an 'Inmates Request for Disposition of Indictments, Information, or Complaints, and Notice of Place of Imprisonment,' pursuant to Section 29-33-01, N.D.C.C." on June 12, 1996. The trial court and the State's Attorney both received that document, and were thus both notified of Defendant's speedy trial request, by July 24, 1996. "From that date [July 24, 1996], the State had 90 days, until October 22, 1996, to bring the charges to trial" 1997 ND 143, ¶ 2, 566 N.W.2d 418, 419. By law, the ninety day time limitation on Defendant's elected right to a speedy trial begins once the clerk of court and prosecuting official receives the proper documentation. Id.

[¶10] In the matter at hand, the clerk of court and the prosecuting official both received noticed of Defendant's speedy trial request by October 16, 2016; the clerk received notice on October 15, 2016, while the State received notice on October 16, 2016. Based on the

holding of Fulks and N.D.C.C. § 29-33-03, the ninety day countdown would commence on October 16, 2015. Gibson's trial was scheduled on January 6, 2016, which is well within the required ninety day limit.

[¶11] Considering Gibson's trial was scheduled on January 6, 2016, which is only 82 days after his election of a speedy trial, the State did not violate the Defendant's right to a speedy trial.

B. The Defendant did not properly elect his right to a speedy trial because it was not elected within fourteen days following the arraignment.

[¶12] Gibson prematurely filed a speedy trial request before his arraignment, and thus the request was not properly put into effect within the required time frame. Under N.D.C.C. § 29-19-02, the right to a speedy trial must be elected "within fourteen days following the arraignment." Gibson's arraignment took place on November 30, 2015. Despite that arraignment date, Gibson did not elect his right to a speedy trial within the fourteen days following the arraignment, but made the request before the arraignment even took place, before the State had provided Gibson and the District Court with a formal charging document. Considering the premature election of his right to a speedy trial outside of the required statutory timeframe, Gibson did not properly elect his

right to a speedy trial as per the requirements of N.D.C.C. § 29-19-02.

CONCLUSION

[¶13] For these reasons, the State did not violate Gibson's right to a speedy trial, and the Order of the trial court should be affirmed.

Dated this 4th day of November, 2016

/s/Wade Davison/
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Petitioner and Appellee

IN THE SUPREME COURT
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State of North Dakota,)	
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Plaintiff/Appellee,)	
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-vs-)	Supreme Court No. 20160201
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Marcus Peltier,)	District Court No. 08-2016-CR-02568
)	
Defendant-Appellant,)	
.....)	

STATE OF NORTH DAKOTA)	
)ss	
COUNTY OF BURLEIGH)	

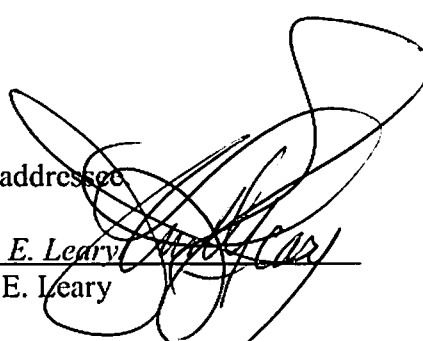
Michelle E. Leary, being first duly sworn, depose and say that I am a United States Citizen over 21 years old, and on the 4th day of November, 2016, I deposited in a sealed envelope a true copy of the attached:

1. Appellee's Brief; and
2. Affidavit of Mailing

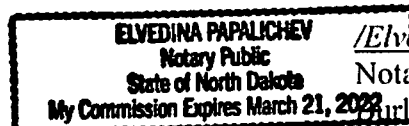
in the United States mail at Bismarck, North Dakota, postage prepaid, addressed to:

Thomas J. Glass
Attorney at Law
418 E. Rosser Ave., Ste 102
Bismarck, ND 58501

which address is the last known address of the addressee


/Michelle E. Leary
Michelle E. Leary

Subscribed and sworn to before me this 4th day of November, 2016.



/Elvedina Papalichev
Elvedina Papalichev
Notary Public

Burleigh County, North Dakota

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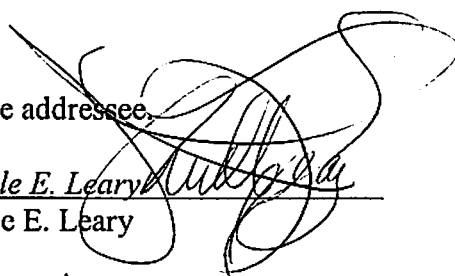
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