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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA,	)	
Plaintiff/Appellee,	)	**Supreme Court No. 20170006**
vs.	)	**District Court No. 2016-CR-02587**
CHRISTIAN JOHN HEDSTROM,	)	
Defendant/Appellant.	)	

APPELLANT'S BRIEF

Appeal from Judgment Entered upon Conditional Guilty Plea Reserving the Right to Appellate Review of the District Court's Order Denying Motion to Suppress, Entered on January 3, 2017, by the Cass County District Court, East Central Judicial District, State of North Dakota, The Honorable Frank L. Racek, Presiding.

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[¶ 3] STATEMENT OF THE ISSUES

[¶ 4] Whether the District Court abused its discretion by denying Hedstrom's motion to suppress evidence by finding (a) the bounty hunters acted as private persons and not state actors and (b) probable cause in justifying the night time search.

[¶ 5] STATEMENT OF THE CASE

[¶ 6] Christian Hedstrom ("Hedstrom") appeals from the criminal judgment entered by the Honorable Frank L. Racek, East Central District Court, on January 3, 2017. (Doc ID# 35; App. 32). Hedstrom was charged in the Amended Information with possession of controlled substance, pursuant to N.D.C.C. § 19-03.1-23(7), a class C felony, possession of a controlled substance, pursuant to N.D.C.C. § 19-03.1-23, a class C felony and possession of drug paraphernalia, pursuant to N.D.C.C. § 19-03.4-03, a class A misdemeanor. (Doc ID# 31, App. 6). Hedstrom entered a Rule 11 Conditional Guilty Plea to the charges, reserving the right to appellate review of the District Court's order denying his motion to suppress under N.D.R.Crim.P. 11(a)(2). (Doc # 32, 33, & 34; (App. 38). Judge Frank Racek was assigned to this case for its duration. However, when Judge Racek was on vacation, Judge Norman Anderson conducted the evidentiary hearing on the motion, and entered the order denying Hedstrom's motion. This is why the order and the judgment were signed by two different judges. No one objected to that procedure, so it is not an issue.

[¶ 7] Hedstrom filed a timely notice of appeal on January 10, 2017, within thirty days of the entry of judgment under N.D.R.App.P. 4. (Doc ID# 38; App. 39). The District Court had jurisdiction under N.D.C.C. § 27-05-06 and N.D. Const. art. VI, § 8. The Supreme Court has jurisdiction under N.D.C.C. § 29-28-06 and N.D. Const. art. VI, § 2.

[¶ 8] STATEMENT OF THE FACTS

[¶ 9] On July 12, 2016 at 12:09 a.m., Aaron Kackman ("Kackman") and Tanner Cook ("Cook") requested assistance from Fargo law enforcement. Transcript of Hearing on October 17, 2016 ("Tr.") 4-5. Kackman and Cook informed law enforcement that they were bounty hunters from Fugitive Task Force Company. Tr. 4. According to Fargo Police Officer Jesse Helm ("Officer Helm") the bounty hunters were looking for a male Cole Hedstrom ("Cole"). Tr. 4:24-25: Tr. 5:1-2. (Officer Helm's police report is found at Doc ID# 24, App. 17). Officer Helm has been a Fargo Police Officer since November 2013. Tr. 9. Officer Helm testified the bounty hunters asked for assistance from law enforcement while they searched for Cole at the address. Tr. 4-5. At approximately 12:30 a.m., Officer Helm and two other officers arrived at 1415 9th Street South in Fargo, which is where Kackman and Cook had requested their assistance. Tr. 4-5, 25. They were "representing a bondsman." Tr. 5. Officer Helm was "shown some paperwork" but did not know whether bounty hunters have any lawful status in North Dakota. Tr. 10:19-25; 11:1-25; 12:1-25; 13:1-25; 14:1-14. Officer Helm understood that there was an arrest warrant out for Cole. Tr. 10:13-14. (See the two warrants for Cole's arrest at Doc ID# 23 & 24; App. 15 & 16). Officer Helm was not aware of any training or department policy covering assistance to bounty hunters. Tr. 11:18-25. No inquiry was made as to whether or not Cole was in custody at the time. Tr. 5.

[¶ 10] Kackman told the officers that he had knocked on the door prior to their arrival and no one answered. Kackman also stated that there was a pit bull inside. Tr. 19. Kackman told the officers that he requested their assistance "to prevent bodily injury." Tr. 7. Officer Helm was informed by his supervisor and then informed Kackman that the

officers would enter the home if an exigency existed. Tr. 17. Officer Helm and the two other Officers formed a perimeter outside the home, and watched Kackman kick in the front door and break into the home. Tr. 14. Kackman and Cook searched the home and no one was located inside. Tr. 20. The officers would have arrested Cole for the warrant had he tried to escape the residence. Tr. 16. The officers were on the private property of the residence. Tr. 16:14-25; 17:1-5. The officers were prepared to enter the house if the two bounty hunters had called for assistance. Tr. 17:6-25. There were lights on in the house, and a dog was present. A neighbor reported that if the dog was there the residents were likely there. Tr. 20:2-11.

[¶ 11] After Kackman and Cook exited the home, they reported that they saw several small and large marijuana plants in the upstairs bedroom closet and in the basement of the home. Tr. 20-21. No one was in the house. Tr. 20:22-25; 21:1. One of them had photographed several of the plants and showed images to Officer Helm. Tr. 21. Officer Helm relayed the information to Sergeant Christianson who directed the officers to secure the exterior of the home while he attempted to obtain a search warrant. Tr. 22-23.

[¶ 12] At this point Kackman and Cook spoke with a neighbor who informed them that Hedstrom lives at the home and his brother Cole is often there. Tr. 21-22. The neighbor also informed Kackman and Cook that if the dog is inside someone is generally home. Tr. 20. After this conversation, Kackman and Cook searched the home a second time to make sure no one was home while the officers remained outside watching. Tr. 22.

[¶ 13] After the bounty hunters searched the home a second time a white SUV pulled onto the driveway. Tr. 22. The vehicle was occupied by Hedstrom and Tessa Wetch

("Tessa"). Tr. 22. Hedstrom and Tessa informed the officer's that they live in the home and Cole lived in the basement. Tr. 22. Hedstrom and Tessa also informed the officers that his brother Cole had turned himself into jail and was now in custody. Tr. 24-25. Hedstrom and Tessa were then detained. Tr. 22. Officers released Kackman and Cook from the scene before the search warrant was issued while Hedstrom and Tessa continued to be detained. App. 21.

[¶ 14] Shortly after the warrant was issued narcotics officers arrived on scene to search the home at about 3:00 a.m. Tr. 26:1-25. Hedstrom and Tessa were still being detained while law enforcement searched the home. Hedstrom was placed under arrest at 4:30 a.m. Tr. 27:9-12. No one gave consent to search the home, and Hedstrom was quite upset that people had entered the home without a warrant. Tr. 29:13-25; 30:1-4. A search of the home by law enforcement revealed three large marijuana plants approximately six-feet tall, some other very small plants, drug paraphernalia, and other items used to grow marijuana. Hedstrom was arrested at 4:31 a.m. Tr. 27. The officers did not ask the bounty hunters to look for contraband or evidence. Tr. 33:2-20.

[¶ 15] ARGUMENT

[¶ 16] The District Court erred in denying Hedstrom's motion to suppress the evidence obtained in violation of Hedstrom's Fourth Amendment rights. The law enforcement officers had knowledge of and participated in the criminal actions of the bounty hunters when they broke into Hedstrom's home to search for Cole. Since the Fourth Amendment applies to private party searches with the participation or knowledge of government officials, this Court should find the Fourth Amendment applies to the bounty hunters since law enforcement participated and had knowledge. The District Court

further erred by finding probable cause for a nighttime search. The three experienced law enforcement officers and Magistrate should have reasonably known the six-foot-tall marijuana plants would not have been destroyed in the short time left before the summer sunrise. The District Court abused its discretion in denying Hedstrom's motion to suppress and should be reversed.

[¶ 17] This Court reviews a District Court's decision on a motion for suppressing evidence under the abuse-of-discretion standard. State v. Johnson, 2009 ND 76, ¶ 19, 764 N.W.2d 696 (citations omitted). "A trial court acts in an arbitrary, unreasonable or unconscionable manner when its exercise of discretion 'is not the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination,' or when the court misinterprets or misapplies the law." Id. The District Court abused its discretion in denying Hedstrom's motion to suppress. Hedstrom respectfully requests this Court to reverse and remand this case for further proceedings.

A. The Fourth Amendment Applies to the Bounty Hunter's Illegal Search of Hedstrom's Home Because Law Enforcement had Knowledge and Participated in the Search Beforehand.

[¶ 18] The Fourth Amendment to the United States Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." Terry v. Ohio, 88 S.Ct. 1868, 1873 (1968) (Citing U.S. Const. amend. IV). The United States Supreme Court has defined a search, within the meaning of the Fourth Amendment, as an intrusion into a person's reasonable expectation of privacy. See Katz v. United States, 389 U.S. 347, 351 (1967). "The Fourth Amendment of the United States Constitution, made applicable to the

states by the Fourteenth Amendment and Article I, § 8 of the North Dakota Constitution protects individuals from unreasonable searches and seizures by the government." State v. Blumler, 458 N.W.2d 300, 301 (N.D. 1990); see also U.S. Const. amend. IV; U.S. Const. amend. XIV; N.D. Const. art. I, § 8.

[¶ 19] The Fourth Amendment applies to private party searches with the participation or knowledge of government officials. State v. Nickel, 2013 ND 155, ¶ 33, 836 N.W.2d 405. North Dakota Law does not afford "bounty hunters" any rights or privileges beyond those enjoyed by private individuals. State v. Lehman, 2010 ND 134, ¶ 15, 785 N.W.2d 204. "There is no legal authority that provides for restraining an individual to obtain a ransom or reward." Id. In North Dakota, only when "a private person, in order to make an arrest when a felony was committed in the arresting person's presence... if the person is refused admittance after the person has announced their person's purpose, may break open a door or window of any building in which the person to be arrested is, or is reasonably believed to be." N.D.C.C. § 29-06-22. In this case, no felony was committed in anyone's presence. The bounty hunters were evidently working for a bail bondsman and trying to locate a person who had outstanding warrants for his arrest. Tr. 4:24-25; 5:1-15. These bounty hunters had no legal authority beyond any private citizen. Lehman, supra. They had no authority to enter Hedstrom's home, and certainly not by kicking down a door to his home. A person is guilty of the felony offense of criminal trespass when he knowingly enters another's residence without permission. N.D.C.C. § 12.1-22-03. People are charged with knowledge of the law. Certainly the Fargo Police Department and its officers are charged with knowing that bounty hunters have no status in North Dakota. Lehman, 2010 ND 155 case was decided in 2010, and originated in

Fargo. Officer Helm was unaware of any training or policy with regard to bounty hunters. Tr. 11:22-25. The District Court correctly ruled that bounty hunters have no legal status in North Dakota. Doc ID# 29, App. 26. The bounty hunters in this case committed the crime of felony criminal trespass, twice, when they kicked in the door and entered Hedstrom's home. They committed these crimes with the full knowledge and support of three law enforcement officers. The officers were there at the request of the bounty hunters. There is no evidence that the officers asked the bounty hunters to look for any contraband or other evidence of a crime. Tr. 12:1-9; 14:15-24. However, the officers did enter onto the private property, and they did intend to arrest Cole if he emerged from the house. Tr. 16:1-25. In addition, they asked the bounty hunters to let the officers know if they needed any help in case of threat if bodily injury. Tr. 17:20-25. The officers fully intended to enter the house if needed. Tr. 12:20-25. The problem with the situation before the bounty hunter's criminal acts is that the officers knew Cole Hedstrom had two outstanding warrants for his arrest. Doc ID# 22 & 23; App. 15 & 16. This begs a question; why didn't the officers enter the home to search for Cole themselves? The answer is they had no legal authority to do so, because they did not have any reason to believe he was in the house. Of course we also know that Cole was actually in the Cass County jail. So, what the officers did was use private persons to do what they themselves could not legally do. Or, the reverse may be true; given what they learned at the scene, the officers may well have had probable cause to believe Cole was in the house. In that case, they also allowed persons with no legal authority to enter the house. As a matter of public policy, this Court should not condone the actions of law enforcement officers watching the commission of felony offenses with prior knowledge that those offenses were about to

occur. The officers encouraged and facilitated the actions of the bounty hunters. Officer Helm testified that he had no reason to believe that there would be marijuana in the house. Tr. 7:18-22. Yet, one of the warrants for Cole which Helm was aware of was for a drug case. Doc ID# 23; App. 16. Prior convictions for both Hedstrom and his brother Cole were used to support the application for the search warrant. Doc ID# 19; App. 12. So, Officer Helm and the other officers knew Hedstrom and his brother Cole had a history of drug use before the bounty hunters entered the home.

[¶ 20] Actions of private persons that lead to the discovery of evidence in a criminal case often do not implicate the Fourth Amendment. For example, a shipping business may search an individual's private shipment without the restraint of the Fourth Amendment when the store policy allows opening suspicious containers. State v. Nickel, 2013 ND 155, ¶ 18, 836 N.W.2d 405. In Nickel, the plaintiff contacted law enforcement about a suspicious package and opened it in front of the officers under the store policy. Id. at ¶ 17. The plaintiff acted on his own store policy to open the container in front of law enforcement and was not obligated or ordered to do so. Id. This Court held that the person acting under his own store shipment policy without any obligation or order from law enforcement did not trigger Fourth Amendment protections. Id. at ¶ 18.

[¶ 21] This Court has held that bounty hunters have no legal authority in this state. State v. Lehman, 2010 ND 134, ¶ 15, 785 N.W.2d 204. In Lehman, the defendant was a bounty hunter who was ultimately found guilty of kidnapping after picking up a man who had skipped bail. Id. at ¶ 3. The defendant kept him against his will for approximately two hours. Id. This Court explained that the conduct of the bounty hunter was not justified under the authority given to a private party to make an arrest in this state. Id.

[¶ 22] The purpose of the exclusionary rule is to deter unlawful police conduct. If the police are not involved in the conduct complained of, suppressing the evidence serves no valid purpose. In Adkins v. U.S., 679 A.2d 1017, 1024-1027 (D.C. 1996), (negative treatment on other grounds) bounty hunters broke into and entered a residence in search of a bail jumper, and stayed there, eating, sleeping and watching movies. They located and watched an incriminating videotape, which they turned over to law enforcement sometime later. Id. at 1021. Evidently bounty hunters had some greater legal status in that jurisdiction than in North Dakota, and although the defendant argued they were quasi-law enforcement, the court disagreed and ruled that their actions were not bound by the Fourth Amendment. Id. at 1026. Adkins is distinguishable from this case because bounty hunters have no legal status in North Dakota and the law enforcement officers aided and abetted in their criminal actions of committing felony crimes of criminal trespass. The officers in this case had prior knowledge of and participated in the actions of the bounty hunters by entering the private property, acting as lookouts, and agreeing to enter the house if needed.

[¶ 23] In State v. Jorgensen, 660 N.W.2d 127, 132 (Minn. 2003), the court concluded that the Fourth Amendment did not apply to the actions of a dead woman's sister. Officers had gone to the victim's house to do a welfare check, and found the sister there sitting in her car. They did not know she would be there. Id. at 129-130. She told the officers she was going to enter the home even if she would be charged with a crime. They told her there was nothing they could or would do. She tried to open the door, and it opened only partially. It was blocked by something covered in a blanket. The officers refused to intervene. She lifted the blanket and the officers looked and saw the victim's

body. Id. The court held that the sister was not acting as a government instrument, although the officers did acquiesce in her actions, she was acting for her own private interest in the welfare of her sister. Id.

[¶ 24] Jorgensen is distinguishable from this case because bounty hunters have no legal status in North Dakota and the law enforcement officers aided and abetted in their criminal actions of committing felony crimes of criminal trespass. Unlike in Jorgensen, the officers in this case had prior knowledge of and participated in the actions of the bounty hunters by entering the private property, acting as lookouts, and agreeing to enter the house if needed. Id.

[¶ 25] Bounty hunters, who are people working for a bail bond company, have no legal standing beyond any private citizen. They have no right to search, seize, or arrest individuals who skip bail. Unlike in Nickel, 2013 ND 155, where the plaintiff acted under an established private procedure of opening suspicious packages within a shipping store, bounty hunters have no legal right to enter a private home to apprehend a bail jumper. The bounty hunters contacted Fargo law enforcement to assist them in "whatever their scope of their task was." Tr. 7:4-6. The bounty hunters learned that there was a pit bull inside after attempting to enter the house before the three law enforcement officers arrived. Tr. 19:13-14; 19:20. The three law enforcement officers then set up a perimeter outside the home and watched the bounty hunters commit a felony by entering Hedstrom's home. Tr. 14:15-24; 15:24-25; 16:1. The three law enforcement officers not only had knowledge that the bounty hunters were about to enter Hedstrom's home, they were participants in enabling the bounty hunters to illegally enter and wrongfully search the house. The three law enforcement officers should have reasonably known bounty

hunters are private citizens without any special privileges. Because the three law enforcement officers had knowledge of and participated in the illegal entry of Hedstrom's house by the bounty hunters, this Court should reverse the lower court's ruling.

[¶ 26] In this case, the bounty hunters requested police assistance and entered Hedstrom's home in search of Hedstrom's brother Cole who had skipped bail. Tr. 4:24-25; 5:1-2. As in Lehman, 2010 ND 134, the bounty hunter's attempted to make an arrest acting under the authority and with the participation of three Fargo police officers. Id. The bounty hunters, although not charged for a felony in this case, had no further rights under North Dakota law than the defendant in Lehman. Id. In Lehman, the defendant's conduct was found to constitute kidnapping. Id. In this case, the bounty hunters planned to detain Cole, which would also have been a kidnapping. The bounty hunters did commit the felonies of criminal trespass. Yet the three law enforcement officers enabled them to commit felony crimes, by choosing to assist to private persons with no legal authority over another private person. Tr. 14:15-24; Tr. 15:24-25; Tr.16:1. This Court should find that the bounty hunters received improper, illegal, and inexcusable assistance from the law enforcement officers. The three law enforcement officers did not treat the bounty hunters as private citizens, otherwise they would have arrested them for criminal trespass.

[¶ 27] The purpose of the exclusionary rule is to deter police misconduct. The three law enforcement officers engaged in misconduct which directly resulted in the discovery of the evidence against Hedstrom in this case. The three law enforcement officer's acted as accomplices to the bounty hunters actions of criminal trespass. "[A] person may be convicted [of being an accomplice] based on another's conduct when: (b) with intent that a crime be committed having a statutory duty to prevent its commission

he fails to make proper effort to do so." N.D.C.C § 12.1-03-01. The Fargo police must be held to know that bounty hunters have no legal authority in North Dakota. Tr. 9:2-6. It is unreasonable and unjustifiable that they did not know that bounty hunters are illegitimate. (Tr. at 13, ln. 10-25: Tr. at 14, ln. 1). Instead of stopping the criminal entry into Hedstrom's home, the law enforcement officer's set up a perimeter, stood by the bounty hunters, and watched them trespass into Hedstrom's home not once, but twice. Tr. 14:15-24; 15:24-25; 16:1; 22:2-3. Officer Helm was asked, "They actually had to kick in the front door?" Officer Helm replied, "That's correct." Tr. 14:20-22. These law enforcement officers not only failed to prevent the bounty hunters from committing a felony crime, they were accomplices. By collaborating with the bounty hunters before they broke into Hedstrom's home the officers became accomplices in a private party's illegal activity. This blatant disregard for their duty to prevent criminal activity is police misconduct. Therefore, this Court should suppress any evidence unconstitutionally obtained by law enforcement due to police misconduct in aiding the bounty hunters to trespass into Hedstrom's home. This Court should not allow the illegal and unreasonable police conduct that occurred in this case.

B. There was Insufficient Probable Cause for the Nighttime Search Warrant of Hedstrom's home because there was no reasonable possibility that the evidence would be destroyed before a day-time search warrant could have been executed.

[¶ 28] North Dakota Criminal Procedure Rule 41(c)(1) requires a sufficient showing of probable cause for a magistrate to issue a nighttime search. N.D.R.Crim.P. 41(c)(1); See State v. Fields, 2005 ND 15, ¶ 9, 691 N.W.2d 233. Moreover, N.D.R.Crim.P. 41(c)(1)(e) states in part, "[t]he warrant may be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown" finds

a nighttime warrant necessary. N.D.R.Crim.P. 41(c)(1)(e). A nighttime warrant may be justified by a magistrate if the affiant shows that evidence would likely be destroyed or removed from the premises before a search could be executed in the morning hours. State v. Zeller, 2014 ND 65, ¶ 14, 845 N.W.2d 6. "Necessity for a nighttime search exists where there is a reasonable possibility that the fruits, instrumentalities or evidence of crime sought would not be expected to be at the searched premises during the day or might be removed or dissipated if the search is delayed." State v. Holly, 2013 ND 94, ¶ 10, 833 N.W.2d 15. "Merely alleging the presence of [drugs] does not allow one to infer the drugs [are] easily disposable." State v. Utvick, 2004 ND 36, ¶ 21, 675 N.W.2d 387. The fact that evidence exists is not enough to show that evidence will likely be destroyed without a nighttime search warrant. State v. Torkelsen, 2008 ND 141, ¶ 32, 752 N.W.2d 640.

[¶ 29] In Zeller, law enforcement had opened an investigation on Zeller for distributing methamphetamine. 2014 ND 65 at ¶ 2. Officer Witte had previously received information in 2010 regarding Zeller distributing methamphetamine in the Fargo area. An investigation was opened, but police were not able to corroborate the information and the investigation was closed. Two years later, law enforcement reopened the investigation of Zeller after a confidential informant was told by a seller he needed to get more methamphetamine from his "dealer." Id. at ¶ 3. Officers witnessed the seller in the alley behind Zeller's house. Id. After officers arrested the seller, they searched his phone, and found a text from Zeller asking if the man selling methamphetamine to the confidential informant was close by. Id. The officer requested a nighttime search warrant "to allow the officers the ability to get closer to the residence before being detected under the cover of

darkness." Id. This Court explained that there was nothing in the record to indicate evidence would have been destroyed or removed before a search could be executed during the daytime. Id. at ¶ 14.

[¶ 30] Additionally, in Holly, the Court found that the affidavit contained evidence of defendants plans to travel out of state to purchase marijuana and return in the late hours of the evening. State v. Holly, 2013 ND 94, ¶ 44, 833 N.W.2d 15. Given the mobility of the vehicle and the likelihood that the narcotics would no longer be present if the search was delayed the court found sufficient evidence in the affidavit to justify a nighttime search warrant of the defendant's car. Id. at ¶ 44.

[¶ 31] This case is very similar to the ruling in Zeller, 2014 ND 65. In Zeller, officers had reason to believe Zeller had drugs in his house. Similarly, the officers in this case had viewed photos of marijuana plants inside the house providing a reason to believe there were drugs in the house. In Zeller, the officer listed "to allow the officers the ability to get closer to the residence before being detected under the cover of darkness" as his justification for seeking a nighttime search warrant. Id. In this case, the officer requested "authorization to complete a nighttime search of the residence to avoid loss of any potential evidence, which may be destroyed if the scene is released." Doc ID# 19; App. 13. In Zeller, the nighttime search warrant was issued at 3:25 a.m. and was executed at approximately 4:00 a.m. Similar to this case, the nighttime search warrant was issued at 3:04 a.m. and executed shortly thereafter. Id. Doc ID# 24; App. 21.

[¶ 32] Here law enforcement was aware of three six-foot tall marijuana plants in the basement area where they were told Cole resided. App. 14. There is no explanation

in the application for the search warrant how these large plants could be removed or destroyed if the search had been delayed until daylight hours.

[¶ 33] This case is distinguishable from Holly, 2013 ND 94, supra. In Holly, law enforcement requested a nighttime search warrant to search the defendant's car. Id. In this case, law enforcement was requesting to search a house. It would be much easier to remove evidence from a car than from a house. A car can be driven to a different location to dispose of the evidence without being observed. Additionally, in Holly the officers were searching for narcotics which were small and easily discarded. Id. In this case, law enforcement had pictures of several six-foot tall marijuana plants. In the search warrant application, there was no attempt to explain how these large marijuana plants could be removed or destroyed if the search had been delayed until daylight hours. This Court should find that there was insufficient information to justify the issuance of a nighttime search warrant. The evidence obtained during the execution of the invalid nighttime search warrant must be suppressed.

[¶ 34] The State may argue that the officers acted in good faith reliance upon the search warrant in this case. The Good Faith exception does not apply when law enforcement was not reasonably relying on an invalid search warrant. State v. Lunde, 2008 ND 142, ¶ 16, 752 N.W.2d 630. An officer is objectively unreasonable in his reliance on a search warrant issued by a magistrate "when the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." Id.; See also (State v. Herrick, 1999 ND 1, ¶ 15, 588 N.W.2d 847). Therefore, this Court should conclude that a reasonable Fargo Police Officer should have known: 1) bounty hunters have no legal rights; and 2) multiple six-foot plants could not be

destroyed before a daytime search could be conducted. Because law enforcement could not have reasonably relied on the search warrant, all evidence derived from the execution of the illegal nighttime search warrant should be suppressed.

[¶ 35] CONCLUSION

[¶ 36] The search of Hedstrom's residence was an unconstitutional intrusion on his right to be free from unreasonable searches and seizures. The District Court abused its discretion by denying Hedstrom's motion to suppress evidence. Therefore, Hedstrom respectfully requests that this Court reverse the District Court's Order and Judgment and remand this case.

Dated this 1st day of March, 2017.

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IN RE State v. Hedstrom
Supreme Court No. 20170006
Cass Co. No. 2016-CR-02587

CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I, Monty G. Mertz, do hereby certify that, on the 1st day of March, 2017, I served the Brief of Defendant/Appellant Christian John Hedstrom and the Appendix in this case on the following:

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Cass County Courthouse
211 9th Street South
Fargo, ND 58103
Attorney for Appellee

by sending an E mail to sa-defense-notices@casscountynd.gov with the documents attached in PDF format. To the best of my knowledge, this is the Eservice address for Mr. Boening.

Dated this 1st day of March, 2017.

Monty G. Mertz, ND Bar ID#03778
Supervising Attorney
Fargo Public Defender Office
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IN RE State v. Hedstrom
Supreme Court No. 20170006
Cass County No. 2016-CR-02587

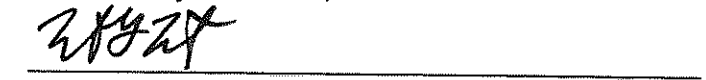
CERTIFICATE OF SERVICE
N.D.R.App.P. 24

I, Monty G. Mertz, do hereby certify that, on the 1st day of March, 2017, true copies of the **Brief of Defendant/Appellant Christian John Hedstrom** and **Appendix** in this case were mailed to:

Mr. Christian John Hedstrom
1415 9th Street South
Fargo, ND 58103
Defendant/Appellant

To the best of my knowledge, this is the mailing address for Mr. Hedstrom.

Dated this 1st day of March, 2017.



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