

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

CITY OF BISMARCK) SUPREME COURT #
PLAINTIFF'S) BISMARCK MUNICIPAL COURT BI-2020-CR-02426
)
VS.) DEFENDANT'S PETITION FOR SUPERVISORY
) WRIT FOR JURY TRIAL
ERIC SMITH)
DEFENDANT)

The above named Defendant hereby Petitions the North Dakota Supreme Court for a Supervisory Writ mandating that the Bismarck Municipal Court honor the Defendant' s timely and lawful demand for a jury trial and move the trial for the above City Ordinance Violation to the South Central Judicial District Court in Bismarck, ND, Court for a jury trial.

HISTORY

On the second of September of 2020 the City of Bismarck issued a Summons and Complaint regarding a Trump Stand that had been setup in the right of way in the City of Bismarck.

On the 16th of September without ample time allowed by law the Defendant was forced to show up in Court to plead not guilty and asked for and requested a Jury Trial.

The trial Judge William Severin said he had no time and had not looked at any paperwork in regards to the case and that it was his belief despite an explanation clearly drawn out by the Defendant that there was no right to a Jury Trial for an infraction.

On September 16th, 2020 there was paperwork filed again same day to request a Jury Trial and paperwork submitted before the 16th of September of 2020. Despite all this the request was denied on October, 28th of 2020. Months later. The law clearly states a right to a Jury trial.

LEGAL ARGUMENT

The right to a jury trial for a \$20 ordinance violation was extensively discussed in this Court's recent decision of Eslinger v. Riemers, 2010 ND 76, 781 N.W.2d 632. While the Municipal Court is correct, that decision did refer only to traffic ordinance violations, the very extensive discussion by this Court of the case clearly spelled out that this right was for any city ordinance violation and not just traffic violations.

In any case, the Municipal Court is also wrong in declaring that City Ordinance Violations are not entitled to a Jury Trial.

It appears clear that the Bismarck Municipal Court is not pleased with the last Riemers decision, and it appears to be trying to circumvent that decision by redefining what a City Ordinance Violation is.

Also see ND State Constitution article 1 Section 13.

Section 13. The right of trial by jury shall be secured to all, and remain inviolate. A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases, provided that the jury consists of at least six members. All verdicts must be unanimous. Note: only Size can be changed by the legislature. The Constitution states ALL OTHER CASES.

Furthermore, If the City of Bismarck does not want the people to be entitled to a Jury Trial, then they should go to the state legislature and have them draw up a measure to put it on the ballot and put it to the vote of the people.

To change the Constitution you have to have the PEOPLE vote to change it. WE THE PEOPLE. IF the legislature wanted to change this they would have in 1973-1974 when updating and amending the Constitution as the Supreme Court discussed in Riemers. If there is any dispute, the Audio of the hearing is on YOUR OWN WEBSITE!

Original Judge William Severin Recused himself from this case. New judge is in place.

There are also 2 to 3 different Attorney General Opinions that deem Infractions (City Ordinance Violations) as Criminal and it is also listed on one's criminal record if convicted even if it means the offense is non-jailable. This also makes it pretty clear that Defendant is allowed to a Jury Trial.

Last but not least a FBI Background will show any City Ordinance Violations. You can find this on the Attorney Generals page in North Dakota. Defendant argues that this means there is yet one more reason he should be entitled to a jury trial. What is a "Reportable" Crime? State law requires local law enforcement agencies to report arrest information about certain offenses to NDBCI. These offenses are contained in NDCC §12-60-16.4, and include: all felony offenses, many misdemeanor offenses, some violations of city ordinances, as well as charges of "nonsufficient funds" (NSF) and "no account" checks.

CONCLUSIONS and RELIEF SOUGHT

1. Smith ask that this Court uphold its previous rulings that a ND citizen does have a state constitutional right to a jury trial for a \$20 non-traffic city ordinance violation.
2. And/or in the alternative, rule that a City Ordinance Violation falls under your existing rulings which require a jury trial right.
3. That this Court issue a supervisory writ directing that the Bismarck Municipal Court transfer this case to the South Central Judicial District Court in Bismarck for a jury trial.
4. Any and all other remedies and relief that this Court can give Smith. Smith asks for \$10000.00 in Court Costs and Expenses for travel, hotel, food in case of hearing before the Supreme Court. The charges are based on what an attorney would charge per hour at 300.00 per hour.

Dated this 5th Day of January 2021

ERIC N SMITH

Eric Smith
415 Hammond Ave
Superior, WI 54880

