

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

State of North Dakota,

Plaintiff and Appellant,

vs.

Madison Jo Dearing,

Defendant and Appellee.

**SUPREME COURT NO.
20210295**Case Number
34-2021-CR-00108**Oral Argument Requested**

ON APPEAL FROM SEPTEMBER 28, 2021 ORDER
DISMISSING COUNT 1 OF COMPLAINT FOR LACK
OF PROBABLE CAUSE

PEMBINA COUNTY DISTRICT COURT
NORTHEAST JUDICIAL DISTRICT
HONORABLE KARI AGOTNESS PRESIDING

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

[¶1] Issue 1: A defendant may have a charge against them dismissed if there is no probable cause for the charge. Here, the district court correctly determined there was no probable cause to support the felony charge against Madison Jo Dearing and dismissed it.

[¶2] Issue 2: North Dakota statutes must be construed according to the rules of statutory interpretation. Here, the district court correctly applied these rules, determined the plain language of N.D.C.C. § 12.1-08-03(2)(a) didn't apply to Madison Jo Dearing's conduct, and dismissed the charge.

[¶3] Oral argument: This case involves two topics on which this Court has the final say: (1) the proper interpretation of a North Dakota statute; and (2) the constitutionality of a North Dakota statute. Given this, oral argument is needed to help the Court work through these issues and their implications.

STATEMENT OF THE CASE

[¶4] This case is about Madison Jo Dearinger allegedly lying to the police to cover up her dad's crimes and whether those lies constituted a misdemeanor or felony offense under N.D.C.C. § 12.1-08-03. The state believed it constituted a felony, and charged it as such in a May 13, 2021 complaint.¹ Madison disagreed and moved to dismiss the felony at a June 21st preliminary hearing. After receiving testimony from a witness, listening to an audio recording submitted by the state,² and reading the parties' briefs,³ the district court sided with Madison and dismissed the felony charge.⁴

[¶5] Dissatisfied with this result, the state appealed, and now asks this Court to reverse the district court's dismissal order. The Court should resist the invitation. For the reasons set forth in Madison's district court brief, and those in this brief, the correct answer is for the felony to remain dismissed. It's correct both as a matter of statutory interpretation (discussed in the district court brief), and because it preserves the fundamental purpose of § 12.1-08-03 (discussed here). The Court should affirm the district court's order dismissing the felony charge against Madison.

¹ Felony Complaint (R1).

² May 14, 2019 Interview of Madison (R12).

³ Parties' Probable Cause Briefs (R16, R17).

⁴ Dismissal Order (R18).

STATEMENT OF THE FACTS

[¶6] On the night of May 13, 2019, and extending into the early hours of May 14th, Madison's father, Adam Dearing, committed several crimes in the city of Walhalla, North Dakota.⁵ Madison didn't participate in these crimes, but she was aware of some of them.

[¶7] First, she knew that Adam had violated a restraining order that prohibited him from having contact with his wife, T.D., or going near her home. This was for two reasons: (1) because she had dropped Adam off a block from T.D.'s home at about 11:30 p.m. on May 13th;⁶ and (2) because she had seen Adam inside the home later that same night when she was there retrieving a friend's cell phone.⁷

[¶8] Next, she knew that Adam had likely committed trespass at T.D.'s residence for the same reason — he didn't have permission to be there, and she saw him inside the home.⁸ This wasn't a certainty, however, as Madison didn't know how Adam got into the house. For all she knew, T.D. could have invited him inside or not objected to his presence.

⁵ June 21, 2021 Preliminary Hearing Transcript ("Tr.") at 6:9-22.

⁶ Tr. at 15:6-12, 17:8-19.

⁷ *Id.* at 20:13-25–21:1-6.

⁸ *Id.*

[¶9] Finally, she knew that Adam had possibly assaulted T.D. because a police officer told her that when he came to Madison’s residence at about 4:00 a.m. on May 14th to question her about Adam’s whereabouts that night.⁹ So while Madison never saw Adam assault T.D., nor had Adam told Madison he had assaulted T.D., she was at least on notice that it might have happened.

[¶10] When questioned by the officer, Madison made several statements. When she made them, she knew the following:

- Adam had “beaten up” T.D., according to the officer, but Madison didn’t know that for sure.¹⁰
- There was a restraining order against Adam that prohibited him from contacting T.D. or going near her residence.¹¹
- Madison had dropped Adam off near T.D.’s residence, knowing he didn’t have permission to go there.¹²
- Madison had seen Adam inside T.D.’s residence, in the kitchen, knowing he likely didn’t have permission to be there.¹³

⁹ *Id.* at 10:19-25–11:1-10, 11:18-25–12:1-10.

¹⁰ *Id.* at 12:6-10.

¹¹ *Id.* at 13:17-25–14:1-7.

¹² *Id.* at 15:6-12, 17:8-19.

¹³ *Id.* at 20:13-25–21:1-6.

Eventually, the police suspected that Madison hadn't been honest with them on May 14th, and so they charged her with two crimes related to providing false statements to them — a felony and a misdemeanor.¹⁴

[¶11] Madison moved to dismiss the felony, arguing there was no probable cause to support it. The district court agreed with her and dismissed the charge. The state appealed that decision to this Court. This appeal thus focuses on the felony offense, and whether the district court was correct in dismissing it. The state filed its opening brief two months ago. This response follows.

LAW AND ARGUMENT

[¶12] One purpose of N.D.C.C. § 12.1-08-03 is to punish people who lie to the police to cover up someone else's crime.¹⁵ Anyone who lies in this way is guilty of a misdemeanor.¹⁶ But not all lies are created equal; some are worse than others. And the statute's felony enhancement reflects this, as it makes the punishment for lies that cover up serious crimes greater than the punishment for lies that cover up less serious crimes.¹⁷ The logic is that if you lie to cover up a DUI, you deserve to be punished less than if you lie to cover up a murder.¹⁸

¹⁴ Felony Complaint (R1).

¹⁵ N.D. Cent. Code § 12.1-08-03(1)(e).

¹⁶ *Id.* § 12.1-08-03(2).

¹⁷ *Id.* § 12.1-08-03(2)(a) and (b).

¹⁸ *Cf. State v Steen*, 2015 ND 66, ¶¶ 1–3, 860 N.W.2d 470, 472 (defendant convicted of felony enhancement for lying to cover up a murder); *State v. Kelley*,

[¶13] Underlying both the misdemeanor offense and the felony enhancement is the principle that, at the time of the lie, the lie-teller must know what crime they are covering up for the enhancement to be fairly applied. For without that requirement, the enhancement could be applied in absurd and unfair ways. Madison’s case is one example, but there are plenty more. Applying this logic proves that the state’s expansive interpretation of the enhancement is incorrect. Instead, it should be interpreted in the narrow way Madison recommends — to apply only when (1) the person telling the lie knows of the crime they’re covering up; and (2) the crime is an objectively serious offense — here, a class AA, A, or B felony.

1) N.D.C.C. § 12.1-08-03 should be interpreted the way Madison explained in her district court brief.

[¶14] In North Dakota, the first step of statutory interpretation is to look to the “plain language” of the statute.¹⁹ If the language is “clear and unambiguous, the letter of the statute is not to be disregarded under the pretext of pursuing its spirit.”²⁰ Only when the language is “ambiguous or of doubtful meaning” may a court “resort to extrinsic aids to determine the

450 N.W.2d 729, 733 n.1 (N.D. 1990) (VandeWalle, J. concurring) (same).

¹⁹ *State v. Willard*, 2022 ND 34, ¶ 10, 970 N.W.2d 197, 199.

²⁰ *Indus. Contractors, Inc. v. Taylor*, 2017 ND 183, ¶ 11, 899 N.W.2d 680, 684 (cleaned up); *see also* N.D. Cent. Code § 1-02-05.

intention of the legislation.”²¹ That said, the “rule of lenity requires ambiguous criminal statutes to be construed in a defendant’s favor.”²²

[¶15] That’s exactly what the district court did here. It looked to the words of N.D.C.C. § 12.1-08-03, determined they were clear and unambiguous, applied them to Madison’s case, and dismissed the felony charge.²³ The state in its opening brief missed this first step, however, and instead simply analyzed § 12.1-08-03 according to the North Dakota pattern jury instructions and the statute’s legislative history.²⁴ But those are both extrinsic aids, to be used only when the statute is ambiguous.²⁵ It’s not, which makes the state’s arguments related to the proper interpretation of § 12.1-08-03 moot.²⁶

[¶16] Despite the state’s attempt to avoid the actual text of § 12.1-08-03, it should be the guide for the Court’s decision here, just as it was for both Madison’s district court brief and the district court’s opinion. The felony charge should be dismissed based on statutory interpretation alone. That’s what the

²¹ *Id.*; *see also* N.D. Cent. Code § 1-02-39.

²² *State v. Rath*, 2017 ND 213, ¶ 15, 901 N.W.2d 51, 56; *see also* Madison’s Dismissal Brief (R17:11).

²³ Dismissal Order (R18).

²⁴ Opponent’s Brief (“Opp. Br.”) at 19–21, ¶¶ 27–29.

²⁵ *W. Gas Res., Inc. v. Heitkamp*, 489 N.W.2d 869, 872 (N.D. 1992).

²⁶ Opp. Br. at 19–21, ¶¶ 27–29.

district court did, and that's what this Court should do. Madison's district court brief makes the clear, convincing case for why the felony enhancement in § 12.1-08-03 doesn't apply to her conduct.²⁷ The analysis should end there.

2) The state's interpretation of N.D.C.C. § 12.1-08-03 is incorrect and would lead to absurd results.

[¶17] While the Court should dispose of this appeal based on the statutory interpretation and rule of lenity arguments identified in Madison's district court brief, it's important to also explain why the state's interpretation of N.D.C.C. § 12.1-08-03 is wrong and would lead to absurd results.

a) Madison's alleged lie was to cover up her dad's violation of a protection order, trespassing, and possibly an assault, but not a burglary.

[¶18] At its core, the state's argument is simple: it need only prove that (1) Madison knew of her dad's conduct; and (2) she knew the conduct was a crime — indeed, any crime.²⁸ The state proposes this broad interpretation because that's the only way it wins. Here, since Madison knew her dad's conduct constituted the crimes of violating a protection order, trespassing, and possibly assault, they argue that counts for purposes of the felony enhancement. So even though the crime that triggered the enhancement—the burglary—was never known by Madison, it's enough so long as she knew of a crime.

²⁷ Madison's Dismissal Brief (R17).

²⁸ Opp. Br. at 20, ¶ 27.

[¶19] That can't be the way the statute works, nor should it be the way we want it to work. Under that scenario, Madison's punishment wouldn't fit her crime, a fundamental tenet of the criminal law.²⁹ She should be punished for lying to cover up crimes she knew about, not ones she didn't. Had Madison seen her dad in T.D.'s home holding a pillowcase and putting items in it—which to anyone suggests a burglary is taking place—and then later lied in the same manner she allegedly did, it would make sense for the enhancement to apply. Or if the assault Madison knew about when she allegedly lied turned out to be a class AA, A, or B felony, it would make sense for the enhancement to apply.

[¶20] But to make it apply in this situation is a total mismatch. Madison's alleged lie was to protect her dad from getting in trouble for violating a protection order, trespassing, and possibly an assault. It was not to protect him from getting in trouble for a burglary, because she had no idea he had committed one when she allegedly lied. And the state's attempt to shoehorn in knowledge of a burglary, simply because she saw him in a home she knew he wasn't supposed to be in, is a bridge too far and this Court should reject it.³⁰

²⁹ *Harmelin v. Michigan*, 501 U.S. 957, 992 (1991) (“the Eighth Amendment bars not only those punishments that are barbaric but also those that are excessive in relation to the crime committed”) (cleaned up).

³⁰ Opp. Br. at 23–25, ¶¶ 34–36; *see also* Madison's Dismissal Brief (R17:10-11).

b) The state's misinterpretation of § 12.1-08-03(2)(a) eviscerates the distinction between misdemeanor and felony cover-up lies.

[¶21] The distinction between a misdemeanor and felony cover-up lie centers on the crime being covered up. If the crime is serious, the felony applies.³¹ If it's not, the misdemeanor applies.³² The state's misinterpretation of § 12.1-08-03(2)(a) guts this distinction because it allows a person lying to cover up a non-serious crime to receive the felony enhancement. Such a result is "absurd," which should be avoided.³³ A hypothetical proves this true.

[¶22] The dollar store theft. A son drives his father to a dollar store. Before exiting the vehicle, the father turns to the son and tells him he's going to steal a few items from the store. The father then gets out and the son drives away. Unbeknownst to the son, the father instead goes into the store, pulls a gun, and uses it to beat the cashier nearly to death. When the police investigate the crime, they see on store video the son drop off the father. They go talk to the son and question him about his father's whereabouts that day. The son lies and says he doesn't know, hoping to cover up his father's crime of petty theft, which he knew about at the time of the lie.

³¹ N.D. Cent. Code § 12.1-08-03(2)(a) and (b).

³² *Id.* § 12.1-08-03(2).

³³ *Breeze v. Panos*, 2021 ND 43, ¶ 13, 956 N.W.2d 408, 412 (VandeWalle, J., concurring and dissenting); *see also* Opp. Br. at 19, ¶ 26.

[¶23] Here’s the inflection point between the parties’ interpretations of § 12.1-08-03(2)(a). According to the state, the son could be charged with the felony enhancement because even though he was lying to cover up the theft, since his dad committed a violent assault—something the son knew nothing about when he lied—the enhancement could apply. That can’t be right, however, because it eliminates the offense’s mens rea requirement.³⁴ According to Madison, by contrast, the only way the enhancement would apply is if the theft ended up constituting an AA, A, or B felony. There, even though the son could claim he didn’t think the petty theft would be large enough to qualify as such a serious offense, he assumed that risk when he chose to lie.

[¶24] In sum, the prospective punishment should relate to the offense the son knew he was lying about, not the one he didn’t. The same goes for Madison, which is why the felony charge should be dismissed.

c) The state’s misinterpretation of § 12.1-08-03(2)(a) puts it at odds with § 12.1-08-03(2)(b).

[¶25] The state’s misinterpretation of § 12.1-08-03(2)(a) also eliminates the subsection’s notice requirement, which puts it at odds with the clear notice requirement of § 12.1-08-03(2)(b). This is problematic because (2)(a) and (2)(b) both address the felony enhancement. And so an interpretation of a statute

³⁴ *State v. Gedrose*, 2021 ND 111, ¶ 7, 961 N.W.2d 288, 290 (“Courts generally avoid interpreting a statute to eliminate the mens rea requirement if doing so criminalizes a broad range of apparently innocent conduct.”) (cleaned up).

that eliminates the notice requirement of one subsection, but not the other, is once again “ludicrous and absurd” and should be avoided.³⁵

[¶26] The text of (2)(b) establishes a clear notice requirement because it can be violated only when a person lies to the police to cover up another’s crime, and that individual has already been charged with or convicted of the crime. The lie-teller is on notice, then, because she knows with 100% certainty that the individual she’s lying for has already been charged with or convicted of the crime. So there’s no ambiguity at the time of the lie about what type of conduct or crime the lie-teller is trying to cover up.

[¶27] The same cannot be said about (2)(a), however, which is why it’s so important for it to be tethered to the notice requirement favored by Madison. The requirement is that the lie-teller must know of the crime they are lying about. Otherwise, they would be susceptible to being punished for lying about a crime they didn’t know about — or weren’t on notice about. Allowing such punishment offends basic notions of fairness and due process.³⁶

[¶28] The legislature couldn’t have meant for the felony enhancement to apply with notice in one subsection, but without it in another. The goal of both subsections is to punish people more harshly if they lie to cover up a serious

³⁵ *State v. Sorensen*, 482 N.W.2d 596, 598 (N.D. 1992).

³⁶ *State v. Hatch*, 346 N.W.2d 268, 273 (N.D. 1984) (criminal provisions that don’t “clearly define the conduct prohibited” violate the “notice requirements of the” Fourteenth Amendment’s “Due Process Clause”).

crime that they definitively know another person committed.³⁷ Under (2)(b), that's easy to determine, because once a crime is charged or a person is convicted, there's no debate. But under (2)(a) it's not, because it doesn't depend on a charge or conviction, just conduct. Thus, the only way for the subsections to be "harmonized" is to interpret (2)(a) the way proposed by Madison — for the lie-teller to be on notice of the crime they are lying about when the lie is told.³⁸ Not part of the crime, like the state incorrectly suggests.³⁹ All of it.

[¶29] Here, because Madison wasn't on notice of her dad's completed burglary when she lied, she cannot be held liable under (2)(a) without putting it at odds with (2)(b). But such a construction violates the North Dakota rules of statutory interpretation and should be rejected.⁴⁰ Instead, the rule of lenity should apply, and the statute should be construed in Madison's favor.⁴¹

³⁷ N.D. Cent. Code § 12.1-08-03(2)(a) and (b).

³⁸ *State v. Marcum*, 2020 ND 50, ¶ 21, 939 N.W.2d 840, 846 ("When statutes relate to the same subject matter, this Court makes every effort to harmonize and give meaningful effect to each statute.").

³⁹ Opp. Br. at 23–25, ¶¶ 34–36; *see also* Madison's Dismissal Brief (R17:10-11).

⁴⁰ *Marcum*, 2020 ND 50 at ¶ 21 ("When a general statutory provision conflicts with a specific provision in the same or another statute, the two must be construed, if possible, so that effect may be given to both provisions.")

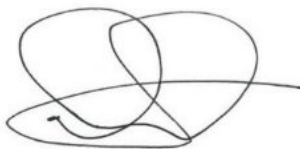
⁴¹ *Rath*, 2017 ND 213 at ¶ 15 (the rule is defined as "the judicial doctrine holding that a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment."); *see also* Madison's Dismissal Brief (R17:11).

CONCLUSION

[¶29] Madison Jo Dearing was correct at the district court and she's correct here too. From both a statutory interpretation perspective, and to preserve the fundamental purpose of the statute, § 12.1-08-03's felony enhancement is not meant to cover Madison's alleged lie on behalf of her dad. The state may charge Madison for the misdemeanor offense, and possibly other offenses, but the felony is too much. The district court understood this and dismissed the charge. This Court should follow suit. Whatever Madison may have lied about to protect her dad, it wasn't to cover up a burglary he was later determined to have committed. To punish her for lying about something she didn't know about would be to undermine several sacrosanct safeguards of the criminal law. The dismissal should be affirmed.

Respectfully submitted April 22, 2022.

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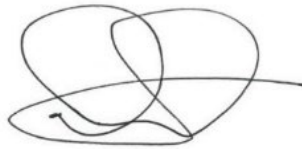
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CERTIFICATE OF COMPLIANCE

Under to Rule 32(d) of the North Dakota Rules of Appellate Procedure,
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Dated this 22nd day of April, 2022.

RINGSTROM DEKREY PLLP

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

State of North Dakota, Appellant, vs. Madison Jo Dearing, Appellee.	SUPREME COURT NO. 20210295 Case Number 34-2021-CR-00108
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Appellee's Brief and Appellee's Appendix

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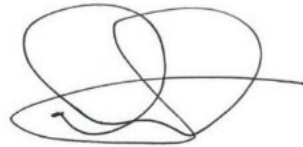
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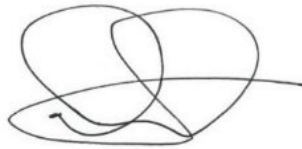
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Dated this 25th day of April, 2022.

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IN THE SUPREME COURT
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State of North Dakota,

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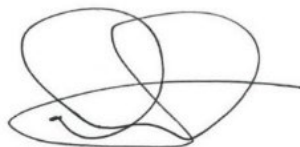
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20210295**Case Number
34-2021-CR-00108

CERTIFICATION OF ELECTRONIC SERVICE

[¶1] I hereby certify that on April 25, 2022, the following document:

Appellee's Brief

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