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SUPREME COURT

20150270

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

OCT 05 2015

APPELLANT'S BRIEF ON APPEAL

STATE OF NORTH DAKOTA

Supreme Court No. 20150270
Burleigh County Court No. 2014-CV-0924

State of North Dakota,

Plaintiff and Appellee

v.

1998 Jeep Grand Cherokee Automobile,
\$618.00 United States Currency,

Defendants

and

Mark Matuska

Interested Party and Appellant

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LEGAL AUTHORITIES

- 1) North Dakota Century Code

STATEMENT OF ISSUES

1. James Hill, Judge of the District Court, Burleigh County, North Dakota, erred in accepting the “Amended Finding of Fact and Conclusions of Law” as offered by Assistant States Attorney, Justin J. Schwartz, for Burleigh County and representing the State (Plaintiff) in this matter. It appears that Judge Hill made no investigation into the evidence and factual basis of the document and law cited to bring this action or Judge Hill would have rejected it as without merit.
2. The District Court abused its discretion in amending the judgment in this case. The North Dakota Century Code cited does not provide for the action the Court takes on behalf of the State and incorrectly takes action where relief is requested but not provided for in the Statute cited.
3. North Dakota Century Code (N.D.C.C.) cited as the authority for bringing this action for Civil Forfeiture does not include for the specific action taken in the Judgment or Amended Judgment or specific authority for the judgment(s) rendered and ordered by the Court.
4. The N.D.C.C. law cited to bring this action simply does not allow for the forfeiture of Matuska’s \$618.00 United States Currency or the property on Matuska’s person or as contained within the vehicle that was seized by law enforcement and the subject of this action for Civil Forfeiture.
5. The Court did not have the authority to create or expand current law to satisfy a finding of fact and conclusions of law and ordered judgment in this case.

FACTUAL BACKGROUND OF PROCEEDINGS

This case originated from a prior “Summons and Complaint for Forfeiture” dated September 26, 2013, Burleigh County Case No. 08-2013-CV-02150, as was filed by Dawn M. Deitz, Assistant States Attorney, Burleigh County, North Dakota. This action for Civil Forfeiture was brought pursuant to N.D.C.C. Chapter 29-31.1 and Section 19-03.1-36(1)(h) as stated in the “Complaint For Forfeiture”, and lists a 1998 Jeep Grand Cherokee Automobile as Defendant. Mark Matuska, the legal titled owner of this automobile, proceeding Pro Se, as an interested party, contested this action. Matuska filed responses to the complaint and provided the Court with facts disputing the State’s allegations.(Appendix Section 1).

A hearing was held and an “Oral Order for Judgment” was entered by Cynthia Feiland, District Court Judge assigned to this case, on March 17, 2014. This “Order for Judgment” was subsequently vacated by Judge Feiland on March 26, 2014.

The State, as represented by Assistant States Attorney, Dawn Deitz, filed a new “Summons and Complaint for Forfeiture”, Burleigh Case No. 08-2014-CV-00924, on April 1, 2014, citing N.D.C.C. section 19-03.1-36(1)(e) as authority for bringing the action against Matuska’s automobile. An additional Defendant, \$618.00 United States (U.S.) Currency was added to this “Summons and Complaint for Forfeiture”. This currency was removed from Matuska’s person and the 1998 Jeep Grand Cherokee. Additional items of personal property were removed from Matuska’s person and were contained within his vehicle which was seized by law enforcement during Matuska’s arrest on September 25, 2013. The items included Matuska’s wallet containing identification and assorted cards, one pair of Oakley sunglasses, key ring of keys, LG

brand cell phone, and property within his vehicle which included tools and tool belt, clothing, mirrors, music CDs, 2 pair binoculars, jumper cables, various papers, reading glasses, work boots, stereo equipment, and other items which were not attached to the vehicle or part of the vehicle required for its normal operation. Additional items such as a cell phone and other property was also removed from a garage subject to a search.

On May 21, 2014, Assistant States Attorney, Dawn M. Deitz, filed a “Motion to Dismiss” of Burleigh Case No. 08-2013-CV-02150. This motion was granted and dismissed on May 23, 2014.

In Burleigh case No. 08-2014-CV-00924, Matuska again responded and objected to the new case for forfeiture of his vehicle and his currency while attempting to have his other property returned through correspondence with law enforcement. Requests and letters were again filed by Matuska in addition to responses to the Complaint. A hearing was held on September 9, 2014. Matuska was not allowed to attend as is stated in the North Dakota State Penitentiary “Inmate Handbook” which prohibits inmates from attending civil hearings. Judge James S. Hill presided over this hearing and the State was represented by Assistant States Attorney, Dawn M. Deitz. A Finding of Fact, Conclusions of Law and Order for Judgment was entered on October 6, 2014. Matuska filed a notice of appeal and continued to pursue the return of his property through letters to law enforcement and requests for investigation into loss of his personal property.

On July 15, 2015, Matuska received an unsigned copy of an “Amended” Finding of Fact, Conclusions of Law and Order for Judgment through the U.S. mail at the North Dakota State Penitentiary. Matuska responded immediately by filing an objection to the “amending”. An Amended Judgment was entered by the Court on July 17, 2015. This

Order lists Assistant State Attorney, Justin Schwartz, as representing the State during those proceedings.

ISSUES AND ARGUMENT

- 1) The basis for this action for Civil Forfeiture was brought by Assistant States Attorney, Dawn Deitz, dated April 1, 2014, pursuant to N.D.C.C. Section 19-03.1- 36(1)(e). (See table of citations (1) while this Statute may provide for forfeiture of the subject vehicle, it does not provide for forfeiture of the \$618.00 U.S. Currency or any of Matuska's personal property removed from his person by law enforcement or contained within his vehicle. The wording of this statute is very explicit of what it allows for and what it does not. The State attempts to change the scope of existing law to meet its needs or knowingly misapplies the law while expecting Matuska to be unable to defend against its actions as Matuska is an incarcerated lay person without financial means.

- 2) The Court errors in its discretion in accepting the Summons and Complaint for Forfeiture as these documents were flawed in application of the N.D.C.C. statute cited and well as terminology used to express "facts" that were not facts at all but speculation. The State is fond of using terms such as "based upon experience and belief" or "upon information and belief" which are not facts at all. A specific instance is the use of the term "Methamphetamine" when there is no lab test or other scientific document offered as proof that any substance was in scientific fact this drug. The State further uses the statement, "The methamphetamine was sent to the N.D. State Crime Lab and confirmed to be methamphetamine," yet no proof is provided as is normally required in a factual statement. Certainly the State should be required to provide test results

or have a lab technician testify as to this statement at the minimum. The Court must require a minimum standard of proof. It is Matuska's contention that this statement is a complete fabrication and basically a fraud upon the court. Further, at no point has Matuska ever verbally admitted to or in any other way stated that he used, possessed, or delivered methamphetamine. Burleigh Case No. 08-2013-CR-2451 is cited in the original "Complaint for Forfeiture" and is with no factual basis. This case is currently the subject of civil action for errors committed in the criminal proceeding. No factual basis for this was ever presented before the Court.

- 3) The "Amended" Finding of Fact, Conclusions of Law and Order for Judgment contain four (4) additional words that do not appear in the original Finding, Conclusions, and Order dated October 6, 2014. These words are contained under the section: "Ordered (1)...and all contents therein... . Matuska contends that these words were added to the "Amended" Findings, Conclusions, and Order as the "amending portion" only after Matuska requested an investigation be made into the loss/theft or non return of his personal property seized and in the hands of law enforcement. Shortly after receiving the Amended Judgment, Matuska received a letter from Dawn Deitz, now with the Attorney General's Office, stating that an Amended Judgment had been obtained by the State and that Matuska no longer had any claim to the property he was still requesting return of. This act is at least suspicious and has the appearance of attempting to circumvent the law on behalf of law enforcement.

4) In both the original 2014 Findings of Fact and Conclusions of Law and the 2015 Amended Findings of Fact and Conclusions of Law, [11] it states, "...as such was furnished or intended to be furnished in exchange for controlled substances." Prior to this, the State had contended that Matuska received money in exchange for illegal controlled substances as is stated in an accompanying affidavit attached to the original 2013 and 2014 Complaint(s) for Forfeiture. Even though law enforcement documentation and the State content that money provided by a confidential informant was duly recorded and photocopied prior, none of this money was found in Matuska's possession. No evidence has been entered into the record proving that Matuska intended to furnish or furnished money for the purchase of controlled substances at all. In fact, the State contended that Matuska received money, not furnished it. The money seized from Matuska's person and his vehicle is nothing more than his own personal property. The N.D.C.C. cited by the State as the authority for its Complaint for Forfeiture does not provide for law enforcement or the State to confiscate this money for its own purposes. Again, no evidence has been offered as proof in any event. The State again attempts to set new precedence and create law for its own purposes while illegally depriving Matuska of his rightful property.

5) Law enforcement officials and representatives for the State such as an Assistant States Attorney are Officers of the Court and therefore bound to a higher standard than the average lay person, witness, or defendant. These individual are expected to adhere to the letter of the law and not attempt to

expand, circumvent, or stretch the law to suite their needs. Courts have historically sided with the defendant in cases where a gray area has existed. The Court has also held the law as explicit in what it allows and provides for. In this case, there are serious questions as to how these members of society and the Courts justified their actions where justification should have no part. Either the law allows for something or it does not. In this case, the Law does not in any way allow for the action of the Plaintiff or any of its representatives.

CONCLUSION

The State relies on mere statements it has created to support its position that have no basis in fact as the foundation for its Summons and Complaint for Forfeiture. The State continues to misapply, exaggerate the meaning of, and add wording and meaning to the North Dakota Century Code statutes it cites as authority in bringing this action. The State relies on statements such as “upon experience and belief,” “upon information and belief,” and “as often or likely happens” as its evidence to present to the Court to act upon. This appears to be a common practice throughout these proceedings by those representing the State as well as members of law enforcement. What these statements are is not fact or evidence at all but an unsupported opinion. Matuska’s “information and belief” is that aliens visit this planet everyday but this is neither fact nor evidence in any form. It is Matuska’s opinion only and not supported by fact, lab analysis or proof by any other means. The District Court may have been fooled into accepting this information as fact or has simply abused its discretion in accepting it. A fact is this very action is an attempt to deprive Matuska of his legal personal property without calling it theft.

Lastly, it is Matuska’s firm belief based upon the documented actions of the State’s representatives and law enforcement that they now attempt to cover the tracks of their prior actions in violating the law. Law enforcement has taken possession of and retained property legally belonging to Matuska since September 25, 2013, despite multiple and continued efforts by Matuska and his designees to have this property returned.

On August 5, 2015, Matuska did receive a letter from Dawn Deitz, now of the Attorney General's Office stating that Matuska no longer had any claim to his rightful property and specifically the property contained within his vehicle. This letter was sent in response to Matuska's latest request to law enforcement for the return of his lawful property. It would seem that a conflict of interest would exist for Ms. Deitz but apparently she did not believe so.

WHEREFORE, Matuska asks this Court for the following relief:

- 1) Void the Amended Finding of Fact, Conclusions of Law, and Judgment dated July 17, 2014, as not based upon the Statute cited and outside of the scope of N.D.C.C.
- 2) Void the Original Finding of Fact, Conclusions of Law, and Judgment, as without foundation and beyond the scope of applicable and cited law.
- 3) Order the District Court to dismiss this entire action or provide to District Court with explicit instruction as to properly proceeding to correct its errors.
- 4) Order the immediate return of all personal property being held by law enforcement as was seized from Matuska on September 25, 2013.
- 5) Order the State to pay Matuska the reasonable costs of defending against this action
- 6) Add punitive damages to be determined by the Court for knowingly depriving Matuska of his property and deliberate misapplication and manipulation of the law.
- 7) Order the District Court to determine Matuska's exact losses as seized by law enforcement if such items are no longer available.

8) Any further relief the Court may deem necessary to restore Matuska's rights and property that he has been deprived off

Dated this 5th day of October, 2015.


Mark Matuska, Pro Se
Interested Party and Appellant

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20150270

APPELLANT'S CERTIFICATE OF NON-COMPLIANCE FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

Supreme Court No. 20150270
Burleigh County Court No. 2014-CV-0924 OCT 16 2015

STATE OF NORTH DAKOTA

State of North Dakota

Plaintiff and Appellee

v.

1998 Jeep Grand Cherokee Automobile
\$618.00 United States Currency

Defendants

and

Mark Matuska

Interested Party and Appellant

I, Mark Matuska, Interested Party and Appellant, does hereby certify that I am unable to comply with the filing requirement under Rule 31(b), N.D.R. App. P., in that I am unable to provide an electronic copy of the Appellant's Brief on Appeal and Appendix, by diskette, e-mail, or any other electronic method. As an inmate of the North Dakota State Penitentiary proceeding Pro Se, I am not allowed access to any device capable of producing or transmitting an electronic copy of the Appeal Brief and Appendix. In addition, no employee of the North Dakota Penitentiary is allowed to assist with or provide me access to do so.

Dated this 14 day of October, 2015.

Mark Matuska
MARK MATUSKA, PRO SE
Interested Party and Appellant

Subscribed and sworn before me this 14th day of October, 2015

PATRICK SCHATZ
Notary Public
State of North Dakota
My Commission Expires January 1, 2021

[Signature]
NOTARY PUBLIC

20150270



CERTIFICATE OF SERVICE BY MAIL
DEPARTMENT OF CORRECTIONS & REHABILITATION
PRISONS DIVISION
SFN 50247 (Rev. 04-2001)

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OCT 06 2015
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CLERK OF SUPREME COURT

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF BURLEIGH)

OCT 05 2015

STATE OF NORTH DAKOTA

The undersigned, being duly sworn under penalty of perjury, deposes and says: I'm over the age of eighteen years and on the 5th Day of October, 2015, 7:00 A M, I mailed the following:

8 copies of Appellant's Brief on Appeal
8 copies of Appendix to Appellant's Brief on Appeal
Letter to Clerk of the Supreme Court

by placing it/them in a prepaid enveloped, and addressed as follows:

Clerk of the Supreme Court
Office of the Clerk
600 East Boulevard Ave
Bismarck, ND 58505-0530

and depositing said envelope in the Mail, at the NDSP, P.O. Box 5521, Bismarck, North Dakota 58506-5521.

AFFIANT

Mark Matusek

P.O. Box 5521
Bismarck, North Dakota 58506-5521

Subscribed and sworn to before me this 5th day of October, 2015.

Notary Public

[Signature]

My Commission Expires On

PATRICK SCHATZ
Notary Public
State of North Dakota
My Commission Expires January 1, 2021

Master

10/05/2015

US POSTAGE

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CERTIFICATE OF SERVICE BY MAIL
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STATE OF NORTH DAKOTA)
) SS.
 COUNTY OF BURLEIGH)

OCT 16 2015

STATE OF NORTH DAKOTA

The undersigned, being duly sworn under penalty of perjury, deposes and says: I'm over the age of eighteen years and on the 14th Day of October, 2015, 7:00 A.M., I mailed the following:

Copy of Brief on Appeal to Supreme Court
Copy of Appendix to Brief

by placing it/them in a prepaid enveloped, and addressed as follows:

Justin J. Schwartz
Assistant States Attorney
Burleigh County Courthouse
514 East Thayer Ave
Bismarck, N.D. 58501

and depositing said envelope in the Mail, at the NDSP, P.O. Box 5521, Bismarck, North Dakota 58506-5521.

AFFIANT

Mark Matrak

P.O. Box 5521
 Bismarck, North Dakota 58506-5521

Subscribed and sworn to before me this 14th day of October, 2015.

Notary Public

[Signature]

My Commission Expires On

PATRICK SCHATZ
 Notary Public
 State of North Dakota
 My Commission Expires January 1, 2021