ORIGINAL (e-filed)

20070027

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JUN 06 2007

STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota, Plaintiff-Appellee. vs. James Eugene Wegley, Defendant-Appellant.	)	Supreme Court No. 20070027

APPEAL FROM THE WILLIAMS COUNTY DISTRICT COURT

NORTHWEST JUDICIAL DISTRICT

THE HONORABLE ROBERT W. HOLTE, PRESIDING

BRIEF OF APPELLEE STATE OF NORTH DAKOTA

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1. STATEMENT OF THE ISSUES

2. Whether the District Court erred in allowing hearsay testimony of the minor child's mother and the Social Worker without sufficient guarantees of trustworthiness and reliability.

3. Whether the District Court erred in it's denial of Defense Counsel Motion to exclude evidence of a previous conviction.

4. Whether the District Court erred in denying defense counsel's Motion to Dismiss the action based on insufficient evidence to prove the elements of the crime charged.

5. STATEMENT OF THE CASE

6. The Defendant's brief correctly recites the procedure of this case.

7. STATEMENT OF THE FACTS

8. P.S., the victim in this case, (hereinafter "P.S."), was seven years old at the time of the incident and at the time of her testimony at trial. She is the granddaughter of James Eugene Wegley, the Defendant, (hereinafter "Wegley"). Wegley is often referred to by family members as "Gene", or in the case of P.S., "Grandpa Gene." P.S. testified that she likes to watch TV in her mom and dad's room and then went on to state there was a time when she was watching TV in her mom's room and Grandpa Gene [Wegley] came in. P.S. was wearing her pajama pants and had her underwear on. P.S. was lying under the covers. (T. at 260). P.S. testified that Grandpa Gene [Wegley] touched her "in my private parts." (T. at 260-261). P.S. testified that her mom, Kandi Stearns (hereinafter "Kandi") came into the room when Grandpa Gene [Wegley] was touching her and that P.S. told her mom, Kandi, what Grandpa Gene [Wegley] did and her mom got upset. (T. at 261).

9. Kandi, mother of P.S., is the daughter of Wegley. Kandi testified that on September 30, 2005, she went outside her home to smoke a cigarette and see her

husband who had just came home from work. Kandi testified that she was outside for approximately five minutes. (T. at 343). Kandi testified that when she came back into the house, she saw Wegley in the kitchen walking towards Kandi's bedroom and that P.S. was in Kandi's bedroom watching TV. (T. at 347). Kandi testified that P.S. was wearing a Strawberry Shortcake nightgown. (T. at 348) Kandi testified that when she saw her father walking into her bedroom, she kind of paused for a few seconds wondering why he was going in her room. (*Id.*) Kandi testified that she decided to follow Wegley and walked into the bedroom, to the doorway. (T. at 349). Kandi testified that she saw Wegley kissing P.S., a long kiss on the lips, a really long, kind of leaned over, weird kiss. (*Id.*) Kandi testified that she noticed Wegley's hand under the blanket and she walked over and pulled off the blanket and saw him rubbing P.S.'s privates. Kandi testified she saw Wegley's hand directly on P.S.'s vagina and his fingers moving around. (T. at 349-350). Kandi testified that she looked at P.S. and said something-- "he was touching private, has he did that before?" And P.S. nodded yes. Kandi testified that she thinks she told Wegley you are a pervert. (T. at 350). Kandi testified that she started swinging, hitting Wegley and then he started saying "I'm sorry, I'm sorry, I'll leave, I'll leave." (*Id.*) Kandi testified that she remembers following Wegley out to the kitchen and screaming and stopping and hitting him some more. (*Id.*) Kandi testified that she has no doubt in her mind as to where she saw Wegley's hand and no doubt in her mind as to having seen his fingers moving. (T. at 351) Kandi testified that Wegley didn't notice Kandi in the doorway at all. (T. at 352) Kandi testified that when she came into the room, P.S. looked scared and didn't know what to do. (*Id.*) Kandi testified that since the incident, P.S. has become a lot more aggressive and more emotional just towards everything. (T. at 353).

10. P.S.'s father, Wes Stearns, Jr., (hereinafter "Wes") testified that he arrived home from work around 6:00 PM on the day in question. (T. at 289). Wes testified that he

didn't go directly in the house as he was finishing up a report in his pickup on a laptop. (T. at 289-290). Wes testified that Kandi came out and smoked a cigarette and visited with him for approximately two to three minutes and then said she better get back in there. (T. at 290). Wes testified that he heard Kandi screaming "Wes, Wes get in here, get in here." Wes testified that he started to go inside and "we" met at the door coming out. "We" being Wes, Kandi and Wegley. *(Id.)* Wes also testified that Wegley was ahead of Kandi and she kind of had a hold of Wegley. Wegley was stating "I didn't do it, Wes, I didn't do it. I didn't do it." (T. at 291) Wes testified that he knew what Wegley was talking about because Kandi said first "He was touching P.S. He was touching P.S." *(Id.)* Wes testified that Wegley appeared to him to be very frazzled, very nervous looking, really flustered. *(Id.)* Wes testified that Wegley was trying to get out of the house and Kandi kept telling Wes to hold him, hold him. (T. at 292). Wes testified that he has seen changes in P.S. since this happened. P.S. doesn't seem quite as warm, lot more easily frustrated now, some anger there. *(Id.)*

11. Monique Goff, (hereinafter "Goff") a Child Protection Social Worker with Williams County Social Services for four years, testified that she is trained to complete forensic interviewing – interviewing that you use for sexually abused or physically abused children. (T. at 302). Goff testified that she has conducted approximately 50 forensic interviews and observed approximately 30-35 interviews. (T. at 303). Goff explained the protocol for conducting a forensic interview. (T. at 304-312) Goff testified that she conducted an interview of P.S. on October 3, 2005, following protocol. (T. at 312) Goff testified that she used a drawing with P.S. where P.S. would name body parts and their functions. (T. at 313-316, See State's Exhibit #2) Goff testified that she started asking P.S. about touches and P.S.'s demeanor changed, becoming more timid, eye contact was little to none. (T. at 316-317) Goff testified that changes in demeanor means they're not wanting to talk about

it. Or they're afraid to talk about it. (T. at 317) Goff testified, that based upon her training and experience, P.S.'s demeanor and attitude and the way she was behaving was consistent with a child who had suffered a traumatic event. *(Id.)* Goff testified that when talking about secret touches, P.S. started clamming up and her body language changed as P.S. started slumping, she was looking down, not wanting to answer any more questions. *(Id.)* Goff testified that when she indicated to P.S. that Kandi thought that something may have happened to P.S., P.S. responded yes, something did happen. (T. at 318) Goff testified that P.S. was not willing to vocalize to Goff what happened, but P.S. was willing to show Goff on the picture and did show her. P.S. showed Goff the vagina which she had previously labeled as her pee pee. (T. at 318-319)

12. **LAW AND ARGUMENT**

13. **WHETHER THE DISTRICT COURT ERRED IN ALLOWING HEARSAY TESTIMONY OF THE MINOR CHILD'S MOTHER AND THE SOCIAL WORKER WITHOUT SUFFICIENT GUARANTEES OF TRUSTWORTHINESS AND RELIABILITY**

14. The State filed its Notice of Intent to Offer Hearsay Testimony and Brief on June 21st, 2006. On the notice, the State listed its intent to admit out-of-court statements pursuant to Rule 803(24), North Dakota Rules of Evidence. The statements included those given by P.S. to her mother, Kandi Stearns, and Monique Goff, Williams County Social Worker, in revealing the allegations of sexual abuse.

15. Rule 803(24) of the North Dakota Rules of Evidence – Child's Statement about Sexual Abuse, reads as follows:

16. An out of court statement by a child under the age of 12 years about sexual abuse of that child or witnessed by that child is admissible as evidence (when not otherwise admissible under another hearsay exception) if:

17. The trial court finds, after hearing upon notice in advance of the trial of the sexual abuse issue, that the time, content and circumstances of the statement provide sufficient guarantees of trustworthiness; and

18. The child either:

a. Testifies at the proceedings; or

b. Is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement.

19. Regarding rulings related to this matter, the North Dakota Supreme Court in *State v. Hirschkorn*, 2002 ND 36, ¶ 9, 640 N.W.2d 439, offered the following:

20. "Under N.D.R.Ev. 803(24), the child's hearsay statements are not admissible unless the trial court finds that the 'time, content, and circumstances of the statement provided sufficient guarantees of trustworthiness.' Factors to consider include spontaneity and consistent repetition, the mental state of the declarant, the use of terminology unexpected of a child of similar age, and a lack of a motive to fabricate. A trial court must make explicit findings as to what evidence it relied upon regarding the factors and explain its reasons for either admitting or excluding the testimony so a defendant can be assured the required appraisal has been made, and so this Court can properly perform its appellate review function. Although written findings are preferred, duly recorded oral findings satisfy the requirements of the child-hearsay rule."

21. On the second day of jury trial and after the testimony of P.S., the State made a motion to withdraw its motion to allow hearsay evidence only as to Monique Goff. (T. at 265) The trial court granted the State's motion to withdraw as to Monique Goff. (T. at 270) Goff did not testify as to any statements made to her by P.S. The trial court did issue a ruling that the testimony of Monique Goff relating to the anatomically-correct drawing which P.S. gestured to can be admitted. (T. at 274-275) The trial court based its decision in this matter on Monique Goff's training and experience and also on the issue of trustworthiness. P.S. had labeled on the diagram different body parts and their functions. Her labeling and descriptions were appropriate for a child her age. These labels and functions were done prior to the child being asked anything about touching. When it got to that point, P.S. had to gesture to the drawing where Wegley touched her because she couldn't vocalize it.

This just emphasizes the fact that this is a difficult thing for a seven year old to talk about.

22. With respect to the mother's testimony, the trial court made a finding that the statements made by P.S. to her mother were trustworthy. The trial court stated that this applied to not only the touching, but P.S.'s response to "Has this happened before?" asked by her mother. The trial court went on to say that it would be difficult to believe that the child, the seven year old child, would have had time to think and fabricate an answer. The trial court felt that the statement of the touching was contemporaneous with the alleged incident. (T. at 280-281)

23. The trial court did not error in allowing the hearsay testimony of Kandi Stearns or the testimony of Monique Goff with respect to the diagram.

24. WHETHER THE DISTRICT COURT ERRED IN ITS DENIAL OF DEFENSE COUNSEL'S MOTION FOR MISTRIAL

25. The Brief of the Petitioner – Appellant, lists this issue on its Table of Contents (page i). This issue is not raised, however, in the argument. The State will respond to this issue as well.

26. The voir dire conducted in this jury trial was a lengthy process. Upon completion of the voir dire process, Wegley made a motion for a mistrial due to the number of potential jurors left after challenges for cause were granted. After the reading of the Information and during Wegley's voir dire, very broad questioning of the jury panel occurred. Wegley asked the panel if the fact that the alleged victim in this Gross Sexual Imposition trial is a person under 15 lead anyone to have any hesitancy with remaining fair and impartial. Hands were raised. Some of the responses were that the potential jurors knew someone (unrelated to this case) who had been sexually abused or the jurors themselves had kids the same age as the victim. Those that raised their hands felt they could not be impartial. However, upon the State pursuing more specific answers during its voir dire, the question was posed to all potential

jurors asking them if there was anyone who didn't see Wegley as an innocent man. No one raised their hand. The panel was also asked by the State if anyone here could not evaluate the evidence. No one raised their hand.

27. Wegley contends that there were eight individuals who stated they could not be fair and impartial simply because of the subject matter and the fact that the case involved sexual allegations against a seven year old. The State argued that some of the people Wegley wanted challenged for cause stated they needed to hear the evidence in the case. A couple others challenged for cause by Wegley were simply because they had kids and because sex is an uncomfortable subject matter.

28. Based on the arguments of both parties, the trial court decided to bring those potential jurors that were in question into a separate courtroom for individual voir dire. Prior to the individual voir dire, three potential jurors were dismissed for cause. With thirty-one jurors reporting for duty, twenty-eight were left after the three dismissals. Each party received seven peremptory challenges. If all peremptory challenges were used, this left fourteen people for a thirteen-person jury.

29. The State argued that if the trial court called in another jury and simply asked them the question - if the case is sexual abuse, would that make it difficult to sit on the jury - they're still going to say yes. The question is can they sit on the jury and decide whether this person committed the outrageous acts that they all are offended by. When posed that question, they seemed to think that they could do that. (T. at 132) The State also argued that if the trial court decided to postpone the jury trial, they would still be excluding people two months from now as well if the criteria for challenging is that the potential jurors had kids and because sex is an uncomfortable subject matter. (T. at 137)

30. Individual voir dire was conducted for approximately ten people. Of those ten, six were dismissed for cause by the trial court, thus leaving 22 potential jurors. At this point, the State submitted that if Wegley used all of his preempts, the State would

use two and still seat a thirteen person jury. The State submitted they were comfortable doing this and wanted to move forward with trial.

31. Wegley asked the trial court to reconsider three people brought in earlier for individual voir dire which the trial court denied and asked the trial court to declare a mistrial. The State argued that those three individuals were brought in and by the time they left the room, stated they would be able to look at the evidence presented, apply the law, and if they didn't believe the State had made its case, return a not guilty verdict. It is the State's position that if the trial court were to give in to Wegley's every challenge for cause, that would seat an entire jury of people that are not bothered by the topic of sexual abuse. This is not fair and impartial to the State. The trial court denied Wegley's motion for a mistrial and proceeded on to jury selection.

32. In *State v. McLain*, 301 N.W.2d 616, 623 (N.D. 1981), the North Dakota Supreme Court issued a ruling on a challenge for cause:

33. "Section 29-17-35, N.D.C.C., provides that a challenge for cause in a criminal case may be based upon actual or implied bias. Implied bias may be based upon any of the enumerated causes found in § 29-17-36, N.D.C.C. None of the enumerated causes are applicable here. Similarly, the testimony of the challenged juror indicates that she could be an impartial juror. We must ascribe great weight to a juror's statement at voir dire that she will give a defendant a fair and impartial trial. See *State v. Olson*, 274 N.W.2d 190 (N.D.1978). The defendant must demonstrate the actual existence of such an opinion in the mind of the juror to overcome a presumption of impartiality to raise a presumption of partiality. The challenged juror's early statements appear to be the result of confusion which arose due to the nature of the questions posed by McLain's attorney. Further questioning by the court revealed that such juror could be an impartial juror. Thus, we conclude that the district court did not abuse its discretion when it overruled McLain's challenge for cause of the challenged juror because she expressed no opinion on McLain's guilt or innocence sufficient to raise a presumption of partiality. *Reynolds v. United States*, 98 U.S. 145, 25 L. Ed. 244 (1878)."

34. In *United States v. Jones,* 865 F.2d 188, 190 (8th Cir. 1989), the Court addressed the issue of a juror being so offended by the subject of a criminal trial that the juror would have difficulty judging the case solely on the evidence:

35. "The district court has broad discretion in determining whether to strike jurors for cause, and we will reverse only where actual prejudice has been demonstrated." *United States v. Huddleston,* 810 F.2d 751, 753 (8th Cir. 1987) (per curiam). We conclude that the district court did not abuse its discretion. During the voir dire examination by Butler's counsel, Mr. Lawless, the following exchange took place:

MR. LAWLESS: And as a general question to all of you, is there anyone here who with regard to the whole subject of drugs is so offended by their use, possession, whatever, that they would have difficulty sitting here and judging this case solely on the evidence as it comes in at this trial? Yes, ma'am.

MS. DAHMAN: Dahman.

MR. LAWLESS: Yes, ma'am?

MS. DAHMAN: I do feel very strongly, raising teenagers.

MR. LAWLESS: I appreciate it. It's a problem. I guess the question is this: Has it been something that's affected your family? Have your kids come home and said people have offered them drugs?

MS. DAHMAN: No.

MR. LAWLESS: Do you feel so strongly about drugs that you think it might color or influence the way you might listen to the evidence here if you were picked as a juror?

MS. DAHMAN: I honestly don't know. I would try, you know. I would hope that it wouldn't, but I don't know.

MR. LAWLESS: I think everyone here would probably try. I guess the question is, how much doubt? We can't obviously be inside you and know exactly what you're thinking about. How much doubt do you have about your own ability to do that?

MS. DAHMAN: Well, enough that I spoke up.

Trial Transcript, Vol. I at 61-62 (emphasis added).

In *United States v. Murray*, 618 F.2d 892 (2d Cir. 1980), a prospective juror stated that she was "against drugs, had a nephew that was on drugs, and could not guarantee that her feelings about drugs would not affect her judgment. Id. at 899. In concluding that the district court did not abuse its discretion in denying the defendant's challenge for cause, the court wrote that "the crucial fact is that [the prospective juror] stated in effect that she would do her best to determine the case on the evidence presented." Id. In contrast to the juror in Murray, Ms. Dahman's family had not been affected by drugs. Like the juror in Murray, Ms. Dahman stated that she would try to base her decision on the evidence, but honestly did not know if her feelings would influence the way in which she viewed the evidence. We therefore conclude that the district court did not abuse its discretion in refusing to strike Ms. Dahman for cause."

36. The present case is comparable with *Jones* in that the subject matter of gross sexual imposition upon a seven year old is something no one likes to think about, or even worse, listen to the intimate details. The jurors that remained stated to the trial court they could listen to the evidence and apply the law. Once the thirteen jurors were selected and seated in the jury box, both parties were asked if they were satisfied that these are the persons chosen to serve as the jury. Both parties responded yes.

37. There was no error on behalf of the trial court in denying Wegley's Motion for Mistrial.

38. WHETHER THE COURT ERRED IN ITS DENIAL OF DEFENSE COUNSEL'S MOTION TO EXCLUDE EVIDENCE OF PREVIOUS CONVICTION

39. On June 21, 2006, the State filed a Notice of Rule 404(b) Evidence. This notice indicated that the State may use evidence of other crimes, wrongs, or acts committed by the Defendant for rebuttal and/or impeachment purposes with respect to sexual acts or contact with minors. Wegley has a prior conviction for Rape – 1st Degree, from 1975.

40. Rule 404(b) of the North Dakota Rules of Evidence states:

41. "Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity herewith. However, it may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial."

42. The trial court had ruled earlier in the trial that the State could not use its 404(b) evidence of prior conviction or bad act in its case in chief. However, at the close of the State's case-in-chief, Wegley asked the trial court for a ruling assuring Wegley that Wegley's prior conviction or bad act would not be used regardless of what the testimony of Wegley may be. (T. at 392) Wegley cited Rule 609(b) of the North Dakota Rules of Evidence: "Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of conviction or of the release of the witness from any confinement imposed for that conviction, whichever is the later date unless the witness is still in confinement for that conviction."

43. The State argued that the time limit referenced in Rule 609(b) refers strictly to impeachment only. If Wegley testified and opened the door for the State to question his motive, opportunity, intent, preparation, plan, knowledge, or absence of mistake the State should be able to do so. There is not the same time limit under Rule 404(b).

44. The trial court had no idea what Wegley would say during his testimony. If Wegley testified and made a misleading statement, under the blanket ruling Wegley wanted, the State would not be able to disprove that statement because it would be precluded from using the prior conviction or bad act. The State argued that a ruling like this would be denying the State a fair trial and the State's right to develop evidence.

45. The trial court ruled that it could not give Wegley the assurance he was looking for. The trial court denied Wegley's request for a blanket ruling that the State couldn't use the prior conviction under any circumstance during its cross-examination of Wegley. Because of the denial of his motion, Wegley chose not to testify.

46. "The admissibility of evidence lies within the sound discretion of the trial judge, and rulings on the admission of evidence will not be disturbed on appeal absent an abuse of that discretion. *United States v. Reed*, 724 F.2d 677, 679 (8th Cir. 1984). The district court's broad discretion in making evidentiary rulings extends, perforce, to rulings on the admissibility of prior wrongful acts. *United States v. Bowman*, 798 F.2d 333, 337 (8th Cir. 1986)." *United States v. Weddell*, 890 F.2d 106, 107 (8th Cir. 1989).

47. The State would submit there was no error on the part of the trial court in denying Wegley's motion excluding evidence of his prior conviction.

48. WHETHER THE COURT ERRED IN DENYING DEFENSES MOTION FOR ACQUITTAL BASED ON INSUFFICIENT EVIDENCE

49. The Defendant insists that the verdict of guilty is not supported by the evidence presented at trial. The State strongly disagrees. The jury in this case was presented with sufficient testimony to convict the Defendant of Gross Sexual Imposition.

50. First, the seven-year-old victim herself testified. She was watching TV in her mom and dad's bedroom. Wegley came in and P.S. stated he touched her private parts. She was able to point to the private area, her vagina, on an anatomically-correct diagram while being interviewed by a social worker.

51. The State has in this case something it rarely sees: a witness to the sexual abuse. Kandi Stearns testified that she saw Wegley kissing her daughter inappropriately. Kandi also saw Wegley touching her daughter's vagina with his fingers, which were

moving, when she pulled back the covers on the bed. Wegley was so focused on what he was doing to P.S. he didn't even notice Kandi had come into the room. Immediately after Kandi's discovery, Wegley kept stating to Kandi "I'm sorry" and "I'll leave." It is the State's position that Wegley could only have been apologizing for the sexual contact he had just had with his seven year old granddaughter. If Wegley hadn't done anything wrong he wouldn't have needed to apologize and leave so abruptly.

52. Other testimony was offered by the State. The jury heard testimony from Wes Stearns, Jr., P.S.'s father. He observed Wegley trying to leave their residence and Kandi yelling at Wes to stop him after Kandi stated Wegley was touching P.S. The jury also heard testimony from Williams County Social Worker Monique Goff. Goff is trained in conducting forensic interviews. She testified as to the demeanor of P.S. and that it was consistent with a child who has gone through a traumatic event. Goff showed the jury a diagram where P.S. identified body parts and their functions. P.S. showed Goff on this diagram where Wegley touched her because she couldn't vocalize it.

53. Wegley wants the Court to believe that his hand got tangled up on the blankets. This just doesn't fit what Kandi saw. Wegley was sneaking into the bedroom where P.S. was because he thought Kandi was outside. Kandi comes into the doorway of the bedroom and sees Wegley kissing P.S. on the lips, a long, inappropriate kiss. Kandi sees Wegley's hand under the covers and immediately pulls off the blankets. Kandi sees Wegley's hand on the vagina of P.S. with his fingers moving. Wegley stated this was simply an accident with no purpose to satisfy sexual or aggressive

desires. The State argues that we can't see into the mind of a sexual abuser, but from the totality of the circumstances we can infer that he was satisfying his sexual desires.

54. After presentation of the State's case-in-chief, Wegley made a motion pursuant to Rule 29(a) for a judgment of acquittal. The trial court denied this motion.

55. The Court has made clear that in order to challenge the sufficiency of the evidence of criminal trial on appeal, "a defendant must convince us that the evidence, when viewed in the light most favorable to the verdict permits no reasonable inference of guilt. *State v. Purdy*, 491 N.W.2d 402, 410 (N.D. 1992) (citing *State v. Raulston*, 475 N.W.2d 127. 128 (N.D. 1991)). The Court has stated, "The tasks of weighing the evidence and judging the credibility of witnesses belong to the jury." Id. (citing *State v. Lovejoy*, 464 N.W.2d 386, 388 (N.D. 1990)). When a case is before the Court on appeal, the Court "must assume that the jury believed the evidence which supports the verdict and disbelieved any contrary evidence." *Id.* (citing *State v. Manke*, 328 N.W.2d 799. 806 (N.D. 1982)).

56. The State feels there is sufficient evidence to prove the elements of the charge of Gross Sexual Imposition and the subsequent jury verdict.

57. CONCLUSION

58. The State would respectfully request that this Court uphold all the decisions made by the trial court in this case, the verdict that was returned by the jury, and find that if any errors did occur, they were harmless errors.

Dated this _____ day of June, 2007.

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IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	
Plaintiff – Appellee,	)	Supreme Court No. 20070027
	)	
vs.	)	
	)	
James Eugene Wegley,	)	
	)	
Defendant – Appellant.	)	

AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA)
:ss.
COUNTY OF WILLIAMS)

Nicole E. Foster, being first duly sworn, deposes and states:

That on the 6th day of June, 2007, at approximately 10:05 AM, the **APPELLEE'S BRIEF** in the above-entitled matter was served upon counsel for the Appellant via e-mail at the following address:

bonnie2@bis.midco.net

That the above e-mail address is the one assigned to:

Bonnie L. Storbakken
Attorney on Appeal for James Eugene Wegley

Date this 6th day of June, 2007.

NICOLE E. FOSTER

SUBSCRIBED AND SWORN TO Before me this 6th day of June, 2007.

Shari L. Erdman
Notary Public
Williams County, North Dakota