

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

JUN 19 2007

---

State of North Dakota.	)	Supreme Court No.	20070080
	)		
Plaintiff-Appellee.	)	District Court No.	47-04-K-1111
	)		
vs.	)		
	)		
Andrew T. Jager,	)		
	)		
Defendant-Appellant.	)		

---

**BRIEF OF DEFENDANT/APPELLANT**

---

APPEAL FROM CRIMINAL JUDGMENT DATED FEBRUARY 15, 2007, WITH THE DISTRICT COURT, SOUTHEAST JUDICIAL DISTRICT, MIKAL SIMONSON, JUDGE

---

Scott Richard Sandness  
 PO Box 915  
 Jamestown, ND 58402-0915  
 (701) 952-5291  
 Attorney for Appellant

---

## TABLE OF CONTENTS

Table of Cases and Authorities.....	ii.
Issues Presented.....	iii.
Statement of the Case.....	1
Statement of the Facts.....	2
Law and Argument.....	4
I.    Appellant has Right of Appeal to the Supreme Court.....	4
II.   Standard of Review of a Trial Court’s Disposition on a Motion in Limine.....	4
III.  The District Court Abused its Discretion by Allowing the Testimony Indicated in its February 2, 2006 Order.....	4
Conclusion .....	5

## TABLE OF CASES AND AUTHORITIES

	Page(s)
<b>STATE CASES:</b>	
<b><u>Rittenour v. Gibson</u></b> , 2003 ND 14, ¶ 35, 656 N.W.2d 691.....	4
<b><u>State v. Hendrickson</u></b> , 240 N.W.2d 846 (N.D. 1976).....	5
<b>RULES:</b>	
Rule 37, NDRCrimP.....	4
Rule 102, NDRE.....	4
Rule 401, NDRE.....	5
<b>STATUTES:</b>	
Section 29-28-03, N.D.C.C.....	4
Section 29-28-06, N.D.C.C.....	4

**ISSUES PRESENTED**

- I. APPELLANT HAS RIGHT OF APPEAL TO THE SUPREME COURT.
- II. STANDARD OF REVIEW OF A TRIAL COURT'S DISPOSITION ON A MOTION IN LIMINE.
- III. THE DISTRICT COURT ABUSED ITS DISCRETION BY ALLOWING THE TESTIMONY INDICATED IN ITS FEBRUARY 2, 2006 ORDER.

## STATEMENT OF THE CASE

The Defendant, Andrew T. Jager [hereinafter "Jager"], appeals from his criminal judgment dated February 15, 2007 and the district court's ruling from its February 2, 2006 Order allowing certain testimony and evidence to be offered at trial.

This matter began with a search by law enforcement of a hotel room leased under Jager's name in Jamestown, North Dakota on November 3, 2004. Jager was charged with possession of drug paraphernalia. A motion to suppress evidence was filed. [Appendix page 5. hereafter A 5] A hearing on the motion to suppress evidence was held on May 11, 2005 and the district court entered an order on July 9, 2005 suppressing some of the evidence seized in the search. [A 23] The state continued with the prosecution and indicated that it would call as a witness a juvenile found in the hotel room after the initial search that was suppressed and that it would introduce evidence found on the juvenile at trial. A motion in limine was filed in response. [A 26] The district court issued an order on August 17, 2005 in response to the motion in limine saying that testimony made or evidence seized outside the motel room would be permitted if the state could show a nexus between Jager and R.T. [A 35] A hearing was held on December 9, 2005 on whether there was such a nexus. On February 2, 2006 the district court entered an order allowing evidence and testimony related to the juvenile to be used at trial against Jager. [A 37] On September 13, 2006 Jager was found guilty following a jury trial on the charge of possession of drug paraphernalia, a class "C" felony. On February 13, 2007 he was sentenced to two (2) years of supervised probation. [A 40]

On March 16, 2007. Jager filed a Notice of Appeal. [A 46]

## STATEMENT OF THE FACTS

On November 3, 2004 Jager was arrested following a search of a hotel room rented in his name in Jamestown, North Dakota. Officer Swanson of the Jamestown Police Department was called to the motel when the maid there had found what she believed to be illegal items of a narcotic nature in the room. [Transcript on the Suppression Hearing, page 3, hereafter T1 3] Officer Swanson was allowed into the room where he observed a metal spoon that he believed had residue on it and contacted the local drug task force. [T1 4-6]

Two officers with task force arrived at the hotel and around the same time Jager was observed in the hotel parking lot as a passenger in a vehicle. [T1 8]. A traffic stop was initiated and Jager and the driver were detained. [T1 8-11] Officer Swanson testified that he did not recall seeing Jager in possession of a cell phone, nor did he recall seeing one in the vehicle after the stop. [T1 15] While at the traffic stop the task force received a call from the hotel stating that someone had come to the front desk to get a key to the room and that he was thought to be in the room. [T1 35] The officers returned to the hotel and found a juvenile [hereafter referred to as R.T.] in the room. The officers knocked on the room door and R.T. answered. [T1 36]. R.T. was carrying a duffle bag and was detained. A search of the juvenile and his bag yielded items identified as drug paraphernalia. [T1 38].

The district court suppressed evidence following the suppression hearing. Judge Simonson wrote. "As there was no valid consent and exigent circumstances did not exist with Swanson saw the spoon a search warrant was required. The later developments involving officers going into the motel room to stop the activities of the juvenile do not fall within any search warrant exception and that evidence must also be suppressed". [A 24]

Following the suppression order the state indicated that it would call R.T. as a witness and attempt to introduce testimony and the evidence found in R.T.'s duffel bag against Jager. A motion in limine was filed to preclude both the testimony and evidence. The district court issued an order stating that if the state could show a nexus between R.T. and Jager then evidence seized from R.T. outside of the motel room would be permitted.

A hearing was held on December 9, 2005 regarding the nexus between Jager and R.T. Officer Edinger from the local drug task force testified that he encountered R.T. at the hotel room and that R.T. told him Jager had called and asked him to remove items from the room. [Transcript on Motion in Limine Hearing, page 17, hereafter T2 17]. R.T. was arrested for possession of marijuana and drug paraphernalia that was found in his pocket and in the duffel bag. Officer Edinger testified that R.T. claimed some of the items found in his possession belonged to him, but that some of the items belonged to Jager. [T2 19] Although he did not see Jager make a phone call, Officer Edinger testified that he knew that Jager had a cell phone with him at the time of the traffic stop and that he believed that Jager called R.T. during the time he was put in the back of Officer Swanson's patrol car. [T2 23-24]. On cross examination Officer Edinger was shown Jager's inmate personal property receipt from the County Jail which did not list a cell phone being in Jager's possession at the time of booking. [T2 27]. The state then called R.T. to testify. He indicated that he was in the room when Officer Edinger knocked on the door, that he answered the door, and that Officer Edinger told him to get against the wall and searched him. [T2 33-34] R.T. said that he did not have a duffel bag, but rather had a clear plastic trash bag with paraphernalia in it when he answered the door. [T2 34-35]. R.T. said he was in the room because he received a call from Jager to clean out the hotel room. [T2 35] On

cross examination R.T. testified that he never said any of the items belonged to Jager.

## **LAW AND ARGUMENT**

### **I. APPELLANT HAS RIGHT OF APPEAL TO THE SUPREME COURT.**

Pursuant to Section 29-28-03, N.D.C.C., an appeal to the Supreme Court provided for by Chapter 29-28 may be taken as a matter of right. A defendant may appeal from any or all verdicts, judgments or orders enumerated in Section 29-28-06, N.D.C.C.. See also, Rule 37, NDRCrimP. Defendant is appealing the district court's February 2, 2006 Order following a hearing held on the motion in limine.

### **II. STANDARD OF REVIEW OF A TRIAL COURT'S DISPOSITION ON A MOTION IN LIMINE.**

A district court's ruling on a motion in limine is reviewed for abuse of discretion. A court is given broad discretion in determining whether evidence is relevant and the Supreme Court will not reverse a lower court's decision to admit or exclude evidence unless the lower court abused its discretion by acting in an arbitrary, unreasonable, or unconscionable manner. **Rittenour v. Gibson**, 2003 ND 14, ¶ 35. 656 N.W.2d 691.

### **III. THE DISTRICT COURT ABUSED ITS DISCRETION BY ALLOWING THE TESTIMONY INDICATED IN ITS FEBRUARY 2, 2006 ORDER.**

The general purposes of the Rules of Evidence is to secure fairness in the administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence. to the end that the truth may be ascertained and proceedings justly determined. See Rule 102, NDRE. To determine the truth, only relevant evidence is admissible. Relevant evidence is defined as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be



without the evidence. See Rule 401. NDRE (State v. Hendrickson, 240 N.W.2d 846 (N.D. 1976)).

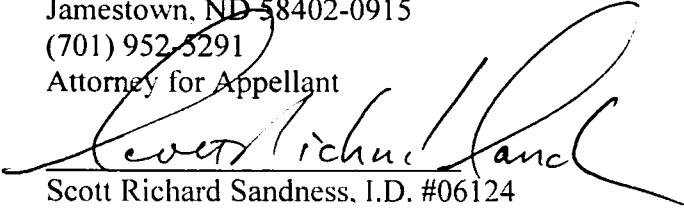
At the hearing on the motion in limine the defense offered evidence that no cell phone was listed in Jager's possession when he was booked at the county jail following his arrest. Officer Edinger also admitted that he did not actually observe Jager placing a phone call. During closing arguments, Jager's counsel also mentioned Officer Swanson's previous testimony that he did not recall ever seeing a cell phone during the traffic stop. The district court nonetheless determined that State had established a nexus between the juvenile and Jager and allowed the state to present testimony regarding the alleged phone call at trial. Jager contends that this was an arbitrary and unreasonable action by the district court as the state did not establish that a nexus existed between R.T. and Jager. Allowing the testimony of the juvenile was improper and an abuse of discretion. Jager requests that the Supreme Court reverse the district court's February 2<sup>nd</sup> Order.

### CONCLUSION

The district court's finding of a nexus between R.T. and Jager was arbitrary and unreasonable and constitutes an abuse of discretion. The North Dakota Supreme Court should reverse the Judgment and remand this matter directing the district court to grant Jager's motion in limine regarding the testimony of R.T.

Dated this 18<sup>th</sup> day of June, 2007.

Scott Richard Sandness  
PO Box 915  
Jamestown, ND 58402-0915  
(701) 952-3291  
Attorney for Appellant

  
Scott Richard Sandness, I.D. #06124