IN THE SUPREME COURT OF NORTH DAKOTA

July 8, 2007

State of North Dakota, Plaintiff and Appellee, v. Brian Shawn Hurt, Defendant and Appellant.	Supreme Court No. 20070081 Cass County No. 06-K-1542

APPEAL FROM THE DISTRICT COURT
CASS COUNTY, NORTH DAKOTA
EAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE DOUGLAS R. HERMAN, PRESIDING

REPLY BRIEF OF APPELLANT

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I. The State's Brief Misconstrues Hurt's Position.

[¶ 3] The State begins its argument by stating in Paragraph 13 of its brief that Hurt "contends that the probation officers entered the apartment without justification..." From there the State's first section of argument goes on to explain why it was ok for the probation officers to enter Hurt's home. Just to clarify, Hurt is not contending that probation officers should not have been allowed to enter his home. Hurt's position is that "the search should be deemed invalid to him alone," and that the search "can still be considered valid as to his probationer roommate." See Brief of Appellant at ¶ 33. This issue is not whether probation officers were justified in entering Hurt's home. The issue is whether the evidence obtained during that search can lawfully be used against Hurt in court. As Hurt explained in his initial brief, "Mr. Hurt does not bring this appeal to ask that the entry into to his home be declared unlawful for all purposes, but to implore this Court to strike a reasonable balance by declaring the fruits of that search inadmissible as to him alone." See Brief of Appellant at ¶ 14.

II. Hurt Does Not "Lose Out" Under The Principles Of Georgia V. Randolph, 547 U.S. 103 (2006).

[¶ 4] The State argues in Paragraphs 22 through 27 of its brief that if Georgia v. Randolph, 547 U.S. 103 (2006), applies to Mr. Hurt's situation, he is still not protected by the principles of that case. The State relies upon this passage from Randolph:

> if a potential defendant with self interest in objecting is in fact at the door and objects, the co-tenant's permission does not suffice for a reasonable search, whereas the potential objector, nearby but not invited to take part in the threshold colloquy, loses out.

Id. at 1527. (emphasis added). The State seems to ignore the fact that in this case, the probation officers did not ask for permission to enter. In fact, they did not even make their presence at the front door known before they walked right in. It is undisputed that Hurt's girlfriend, Rosally Mortenson let the probation officers into Hurt's building. Once inside the building, Mortenson walked to Hurt's apartment. (T. at 27). She knocked on Mr. Hurt's door and heard her friend, Jessica Bickler, say, "It's Rosie," just before opening the door. (T. at 28, 32). As Mortenson knocked on the door, the women she had let into the building stood off to the side. Id. When Bickler opened the door, Mortenson walked in only to have the women brush her off to the side and walk into Hurt's living room. (T. at 29). Under the circumstances, the manner in which the probation officers entered could arguably be considered a subterfuge. They stood off to the side and let a trusted friend knock on the door rather than doing it themselves. Once the door was opened they did not give anyone a chance to protest. Had the officers knocked themselves, the persons inside may not have even answered the door. Had Bickler not stated that "Rosie" was at the door Hurt may have been the one to answer the door. It can hardly be assumed that Hurt would not have been present at the door to refuse consent had there been any kind of colloquy at the door.

CONCLUSION

[¶ 5] For all of the foregoing reasons and for those reasons stated in his initial brief, Mr. Hurt asks this Court to reverse his convictions and remand with instructions to allow him to withdraw his guilty pleas.

Dated this the 8th day of July, 2007.

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[¶ 6] CERTIFICATE OF SERVICE

A copy of this document was e-filed with the North Dakota Supreme Court and served upon Reid A. Brady, pursuant to Administrative Order 14 on the 8th day of July, 2007. Specifically, the preceding Reply Brief of Appellant was electronically filed and served as follows:

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