ORIGINAL

20070141

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

* *

State of North Dakota,

Plaintiff ♦ Appellee,

vs.

Dennis Roy Haugen
Defendant ♦ Appellant.

NDSC Case No 20070141

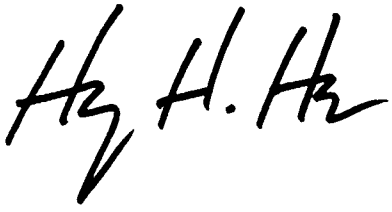
Dist Ct Case No 18-6-K-1059-1

BRIEF OF APPELLANT

On Appeal From The Judgment of the Court and the
Memorandum Decision and Order entered 13 Apr 2007,
by the Honorable Karen K. Braaten
Judge of the District Court
North East Central Judicial District,
Denying Appellant's Motion for New Trial
and Affirming the Judgment and Sentence
Grand Forks County District Court
Grand Forks County North Dakota

BRIEF OF THE APPELLANT

SUBMITTED BY:



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FOR APPELLANT'S BRIEF.

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1. That the Court erred in holding that the charge of carrying a loaded firearm in vehicle was a strict liability offense to which no affirmative defense was permitted.

2. That the jury instructions, as read by the Court, failed to correctly and adequately inform the jury of the applicable law.

3. That the Court erred in denying the motion for new trial or, in the alternative, to vacate the conviction for carrying loaded firearm in vehicle.

STATEMENT OF THE CASE

1. Dennis Roy Haugen, [Haugen], appellant here, was charged with the offenses of Aggravated Assault [1 count], Terrorizing [2 counts] and Loaded Firearm in Vehicle, in the aftermath of events occurring during the early evening of 23 Mar 2006. Mr Haugen was released on bond, and retained Counsel, Stephen Light.

2. Following a dispute with Steve Light, Mr Haugen obtained replacement counsel and the matter was subsequently scheduled for a 12 member jury trial commencing 13 Feb 2007 in Grand Forks with Judge Braaten, presiding. Proposed jury instructions were submitted by the State and Appellant in advance of the trial. During the trial, testimony was

presented by Appellant in support of his claim that he acted in response to threats and aggressive behavior that had been directed against him by William Mutcher and Rodney Hulst, as well as his belief that Rodney Hulst was a drug dealer with a history of violent behavior. Haugen testified that he took a gun – a small, rather rusty, .25 caliber automatic – with him when he left his shop that night because he was afraid for his life.

3. After both the State and Defendant had rested, the State submitted a requested jury instruction to the effect that the charge of Loaded Firearm in Vehicle was a strict liability offense, requiring the state to prove only the elements of the offense, and that no affirmative defense of excuse or justification was permitted to the charge. Defendant argued, first, that some limited time should be permitted to respond[1] and that the requested instruction was objected to as not correctly stating the law. The Court rejected the request for time, and after briefly recessing to print a new instruction, advised – over repeated

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[1] The Grand Forks Courthouse, recently renovated and remodeled at considerable cost, purchased desks with power plugs in the desk, but failed to wire counsel tables in the court rooms [with even cat 5 cable] for broadband, making ad hoc research or research access in the courthouse – other than for judges -- functionally impossible [unless you provide your own, secure, wireless link].

objection by the defense -- that what would be given was an instruction advising the jury that the defenses of Self Defense and Excuse – permitted for the serious felony charges -- are "***...not applicable to the offense of Carrying Loaded Firearm in Vehicle***".

4. Following closing arguments, the Jury returned verdicts of:

    a. NOT GUILTY – Aggravated Assault. [C Felony]
    b. NOT GUILTY – Terrorizing, Count 1. [C Felony]
    c. NOT GUILTY – Terrorizing, Count 2. [C Felony]
    d. GUILTY – Loaded Firearm in Vehicle [B Misdemeanor].

5. Haugen subsequently brought a motion for a new trial or, in the alternative to vacate the conviction, essentially on the basis that the jury instructions failed to correctly and adequately inform the jury of the applicable law. Although a hearing was expressly requested, the request for hearing was overlooked and the Court issued an order denying the motion. Subsequently the Court permitted a hearing, thereafter reentering its order denying the motion for a new trial.

STATEMENT OF FACTS

1. Dennis Roy Haugen, who is partially disabled, is, in his own way, an American success story. "Down and out" and living in his pickup when he first came to Grand Forks in 1997, he started gathering discarded pallets. He repaired broken or damaged pallets in the back

of his truck and then sold them through ads at the truck stops around Grand Forks. Over time he rented a storage shed, and then a garage for a work site as his, "one man", recycling business grew. He won a motorcycle in a drawing and traded it for a semi-truck and trailer to transport pallets. In 2004, requiring more space, he moved to a semi-isolated industrial area near the Interstate in Grand Forks, renting the middle unit of a three unit commercial building to operate his pallet business. Unfortunately, the unit on the north end, next to Dennis Haugen, was occupied by a failing auto repair business that had become a hangout for Rodney Hulst and William Mutcher. Space rented by Dennis Haugen for his pallet storage had previously been used, for free, by Rodney and William, to store junked cars and pieces of what they claimed were "race cars", with the result that a campaign of intimidation and harassment was commenced against Dennis Haugen –setting the stage for the confrontation on the evening of 23 March 2006 – and the charges subsequently brought against Dennis Haugen.

2. Prior to the commencement of the trial, Defendant submitted proposed jury instructions which included jury instructions including instructions on self defense, justification and excuse to all four charges, including the charge of carrying a loaded firearm in a motor vehicle. See Appendix 25
3. Counsel for the State proposed jury instructions including a specific instruction regarding the charge of carrying a loaded firearm. See Appendix 26. It should be noted that the State's proposed, pre-trial, jury instruction failed to request any instruction that the affirmative

defense of necessity/ excuse and/or justification is not a defense to the crime of carrying a loaded firearm, nor did the state request any instruction to the effect that the charge was a "strict liability offense".

4. At the commencement of the jury trial in the above-referenced case, on 13 Feb 2007, the Court provided both Counsel with her tentative, proposed jury instructions. The Court's proposed jury instructions regarding the firearm charge did not include any suggestion that the affirmative defense of necessity, excuse and/or justification are not permissible defenses to the crime of carrying a loaded firearm, or that the offense was a "strict liability offense". See App 27-30.
5. At approximately 3:40 p.m. on the third day of trial, Thursday, 15 Feb 2007, and after the close of the testimony by both sides, the Court resumed, without the jury present, to review the final jury instructions with Counsel. At that point – and for the first time -- the State advanced the theory that the crime of carrying a loaded firearm in vehicle was a strict liability offense, citing ***only*** the case of State v. Eldred, 1997 ND 112, 564 N.W.2d 283, claiming that Defendant, Dennis Haugen, was not entitled to a jury instruction regarding the affirmative defenses including excuse/justification/necessity based on strict liability. Appendix 38 - 46
6. Counsel for Defendant objected to the inclusion of strict liability language and denial of defendant's requested instructions on necessity, excuse and justification, and further requested a brief opportunity to research this previously unconsidered issue inasmuch as there is no internet connection available in the Courthouse except

for Court personnel. The Court rejected Defendant's objection and further denied the request for an opportunity to research and additionally respond to the question as to whether the charge constituted a strict liability offense and whether defenses of necessity, justification and excuse were permissible, making an offer of proof. At that point, the Court ruled that the instructions to be given would expressly preclude any affirmative defense of excuse/justification or necessity in regard to the charge of carrying a loaded firearm in vehicle. The Court recessed briefly, returning to provide the instructions regarding strict liability and absence of any defense of necessity, justification or excuse on the charge of carrying a loaded firearm in vehicle. Appendix 41-42. Defense, receiving the Court's revised instruction approximately 10 – 15 minutes before the final argument, again objected to the instruction, to the failure of the state to earlier request the instruction, and the Court's denial of a brief continuation to research and respond to the questions raised. The Court, again, denied the Defendant's requests, and the matter went forward. See Appendix 42-62. During closing argument, Defense counsel conceded that under the jury instruction given by the Court, there was no affirmative defense of necessity, excuse or justification permitted to the firearms charge. Haugen was convicted on the weapon in vehicle charge – the class B misdemeanor, and ***acquitted*** on the three felony charges for which the requested affirmative defenses were recognized and permitted.

7. Haugen moved for a new trial, or in the alternative, to vacate the judgment of conviction. Haugen's initial request for a hearing was

either ignored or overlooked by Court personnel, and an order was entered denying the motion. Appendix 10-15. After the initial order denying the motion was vacated, the Court held a hearing [Appendix 50 - 68] and then reentered its order denying Haugen's motion. Appendix 16-22. This appeal followed.

STANDARD OF REVIEW

In State v. Gresz, 2006 ND 135, 717 N.W.2d 583, this court held:

> If there is evidence to support a self-defense claim, the accused is entitled to an instruction on it. State v. Olander , 1998 ND 50, ¶ 20 , 575 N.W.2d 658. We review the sufficiency of the evidence for support of a jury instruction in the light most favorable to the defendant. State v. Schumaier , 1999 ND 239, ¶ 9 , 603 N.W.2d 882. [¶ 7] Jury instructions must correctly and adequately inform the jury of the applicable law. State v. Erickstad , 2000 ND 202, ¶ 16 , 620 N.W.2d 136.

In an appeal:

> ...this Court must consider if the trial court's instructions, as a whole, correctly and adequately advised the jury of the law. If we determine that the challenged jury instruction, when read as a whole, is erroneous, relates to a subject central to the case, and affects the substantial rights of the accused, we will have found adequate grounds for reversal.

City of Minot v. Rubbelke, 456 N.W.2d 511 (ND 1990)

The relevant standard of review for a jury instruction, where there has been a

timely objection, is virtually unchanged from that recited in State v. Pfister, 264 N.W.2d 694 (N.D. 1978):

> If a jury instruction, when read as a whole, is erroneous, relates to a subject central to the case, and affects substantial rights of the accused, it is, in itself, grounds for reversal and remand for a new trial. State v. Jensen, 251 N.W.2d 182 (N.D.1977); State v. Jacob, 222 N.W.2d 586 (N.D.1974).

Pfister, further quoted, with regard to "reversible error", that:

> The instruction given misstated the law, prejudiced the defendant, and constituted reversible error." Jensen, at 187.

LAW AND ARGUMENT

1. That the Court erred in holding that the charge of carrying a loaded firearm in vehicle was a strict liability offense to which no affirmative defense of was permitted.

Jury instructions should not mislead or confuse the jury and must fairly inform the jury of the law that must be applied in the case. State v. McIntyre, 488 N.W.2d 612 (N.D. 1992), citing State v. Marinucci, 321 N.W.2d 462 (N.D. 1982), and State v. Tipler, 316 N.W.2d 97 (N.D. 1982).

In citing State v Eldred 1997 ND 112, 564 N.W.2d 283 -- the sole case relied upon by the State in their "last minute" request that the Court reject affirmative defenses of necessity, justification or excuse - the State, and the Court misconstrued and misapplied Eldred. The issue presented in Eldred was whether "mistake of law" [as to Eldred's legal status in regard to whether he could carry a firearm] could be utilized as a defense. At paragraphs 29 and 30, the Court ruled that such a defense would be seldom available:

> [¶29] The "mistake of law" defense is ordinarily not applicable when the governing statute does not contain a culpability requirement. State v. Fridley, 335 N.W.2d 785, 789 (N.D. 1983).
>
> [¶30] Strict liability does not always preclude affirmative defenses. E.g., State v. Rasmussen, 524 N.W.2d 843, 845 (N.D. 1994) (public policy factors support affirmative defense to driving under suspension in life-threatening circumstances). However, a mistaken belief as to the law is seldom available as a defense. E.g., State v. Nygaard, 447 N.W.2d 267, 271 (N.D. 1989) (excuse based on a "mistaken belief" is not available for strict-liability offense of failing to stop after an accident).

State v Eldred 1997 ND 112

While ¶29 addressed the narrow issue of a "mistake of law" defense, ¶30, broadens the discussion to affirmative defenses in general. Any reliance by the Court on Eldred for authority to bar affirmative defenses of excuse or

justification in a self defense context was misplaced, as these latter issues were not before the court in Eldred and were only referenced tangentially.

Significantly, Haugen was not requesting a "mistaken belief as to the law" instruction. The holding in Eldred, tangentially, but expressly, recites that ***Strict liability does not always preclude affirmative defenses,*** citing State v. Rasmussen, 524 N.W.2d 843, 845 (N.D. 1994)

Under the Court's thorough analysis in Rasmussen, it would appear to be unequivocal that the state of the law in ND, since at least 1989, as set out in the opinion, is that affirmative defenses are available in what may appear as strict liability offenses: Under the holding that:

> ***We conclude public policy factors would support an affirmative defense to driving under suspension in life-threatening circumstances.***

It would be certainly follow that a defendant who is, literally, in fear of his life – as Haugen testified he was – could invoke an affirmative defense for arming himself with a small, rusty handgun, before he left the security of his shop in a remote and unpatrolled area.

If it is permissible to assert an affirmative defense on a charge of driving under suspension in a life threatening situation, it would certainly seem to

follow that it is permissible to affirmatively defend the decision by a 60 year old man, with physical disabilities, to bring a small, rusty handgun with him in his car in what was reasonably believed by him to be a life threatening situation – where if you had not brought the gun, you well could have been beaten to death by someone you believed to be a violent, second tier, drug trafficker and his friend.

Initially, it is submitted that the court erred in considering what was literally a "last minute" request by the state for an instruction that, in effect, barred defenses of excuse, justification and/or necessity. The effect of this action, particularly when coupled with the Court's denial of the request for a brief opportunity for defendant to research this issue, resulted in a denial of due process of law for defendant. Since the court ***expressly*** recognized Mr. Haugen's fear of Hulst and Mutcher, [App p. 21, LL 9- 11], the denial of the affirmative defense instructions seems particularly troubling. Appellant does not here contend that there is authority requiring that the Court permit a research opportunity on an objected to instruction - the Appellant's multiple objections preserved the error for appeal – but it is also evident that a brief recess would have provided the Court, and counsel,

with an opportunity to review decisions beyond Eldred before making what was effectively an erroneous, dispositive ruling, on the weapons charge.

2. That the jury instructions, as read by the Court, failed to correctly and adequately inform the jury of the applicable law.

Beyond the procedural disadvantage, set out above, the Court's ruling on the unavailability of the affirmative defenses of necessity, excuse or justification was, under the facts and circumstances of this case, erroneous as a matter of law.

In State v Rasmussen 524 NW2d 843 (N.D. 1994): the Supreme Court provided definitive guidance regarding the availability of affirmative defenses in Strict Liability situations:

> The State argues affirmative defenses are unavailable because driving under suspension is a strict liability offense. In City of Mandan v. Willman, 439 N.W.2d 92, 93 (N.D. 1989), this Court said:
>
> > "We have recently recognized the availability of an affirmative defense to a strict liability offense. See State v. Michlitsch, 438 N.W.2d 175 (N.D.1989). However, we need not address the City's legal argument that there are no affirmative defenses to the strict liability offense of driving under revocation because if there are, we find the defenses inapplicable under the facts of this case. For a thorough analysis of the legal issue, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982) [defense of legal justification is

applicable to speeding violation]; see also Annot., 34 A.L.R.4th 1167 [applicability of the affirmative defense of entrapment to strict liability traffic offenses]."

While recognizing strict liability does not always preclude affirmative defenses, the case left open the question of the availability of affirmative defenses to the strict liability offense of driving under suspension or revocation. Willman. In State v. Nygaard, 447 N.W.2d 267, 271 (N.D. 1989), this Court differentiated Michlitsch to hold the particular "affirmative defense of excuse based on a mistaken belief" is not available for "the strict liability offense of failing to stop after an accident." In Brown at 376, the Wisconsin Supreme Court discussed policy considerations in determining if particular defenses should be permitted for a particular strict liability offense:

> "[W]hen determining whether we should recognize any defenses to a strict liability traffic offense, we must determine whether the public interest in efficient enforcement of the traffic law is outweighed by other public interests which are protected by the defenses claimed.
> "There are several public interests protected by the defenses claimed. The privilege of self-defense rests upon the need to allow a person to protect himself or herself or another from real or perceived harm when there is no time to resort to the law for protection. The rationale of the defenses of coercion and necessity is that for reasons of social policy it is better to allow the defendant to violate the criminal law (a lesser evil) to avoid death or great bodily harm (a greater evil). Hall, General Principles of Criminal Law 425-26 (2d ed. 1960); La Fave & Scott, Criminal Law secs. 49, 50 (1972). The public policy for recognizing entrapment as a defense is not to avoid some other harm to the defendant but to deter reprehensible police conduct. 'The applicable principle is that courts must be closed to the trial of a crime instigated by the government's own agents.' Sorrells v. United States, 287 U.S. 435, 459, 53 S.Ct. 210, 219, 77 L.Ed. 413 (1932)."
>
> We conclude public policy factors would support an affirmative defense to driving under suspension in life-threatening circumstances.

In the subsequent case of State v. Buchholz, 2006 ND 227, 723 N.W.2d 534 – involving the narrow issue of "mistake of law" defense -- the court further addressed the issue of defenses available on a strict liability offense:

> [¶ 12] A mistaken belief of the law is rarely available as a defense, and when the offense is a strict liability offense, a mistake of law defense is generally precluded because the offense does not contain a culpability requirement. *State v. Eldred*, **1997 ND 112, ¶¶ 29-31, 564 N.W.2d 283**. The offense of felon in possession of a firearm is a strict liability offense and therefore a mistake of law defense is generally precluded. *Id.* at ¶ 31. Only in very rare cases have we said that an affirmative defense may be applied when the offense is a strict liability offense. *See State v. Rasmussen*, **524 N.W.2d 843, 846** (N.D. 1994) (affirmative defense may be applied when there are life-threatening circumstances that compelled the offense). We conclude this case is not one of the rare cases when an affirmative defense should be applied.

[Emphasis added]

The detailed analysis in Rasmussen has not been revisited, modified, or reversed, and would appear to constitute the state of the law in North Dakota as of Feb 2007, regarding the availability of affirmative defenses.

In the fleshed out, but virtually unchanged holdings of this court from Michlitsch [1989] through Buchholz [2006], it would seem clear that the factual situation in Haugen expressly brought into play the "life threatening circumstances" referenced in Buchholz as a case "***when an affirmative***

defense should be applied". The essential holding in Rasmussen was that the facts of that case produced a situation where the trial court erred in denying the affirmative defense, "...***Because we hold justification or excuse could apply, we reverse and remand for a new trial".***

Rasmussen, Id. [Emphasis added].

As further recited in Rasmussen:

> N.D.C.C. 12.1-05-10 provides:
>
> "1. In a prosecution for any offense, it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or to another. In a prosecution for an offense which does not constitute a felony, it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force. Compulsion within the meaning to this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.
>
> "2. The defense defined in this section is not available to a person who, by voluntarily entering into a criminal enterprise, or otherwise, willfully placed himself in a situation in which it was foreseeable that he would be subject to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged."
>
> The Comments to the Proposed Federal Criminal Code 618 reflect that the compulsion may be from any source. Final Report at 54. See also "A Hornbook to the North Dakota Criminal Code," 50 N.D. L.Rev. at 680 (1974).

> An affirmative defense under N.D.C.C. 12.1-05-10 is available for driving under suspension when the compulsion is from life-threatening forces of nature.[1]

Rasmussen, Id.

Under the facts adduced at trial in Haugen – where justification, excuse, and self defense instructions requested by defense were found to be required to correctly state the law for the serious felony charges – the jury should have been instructed that: "***it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force. Compulsion within the meaning to this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure***". Clearly, in the context of this case, the Jury could have found that Mr. Haugen's action in bringing the firearm with him in his car when he left his shop was compelled by threat of force, as set out in N.D.C.C. 12.1-05-10.

Under the facts and context of this case, it was error for the Judge to rule that no affirmative defense, justification, or excuse, would be permitted to the B Misdemeanor charge of loaded weapon in a vehicle.

Particularly, when the Court *expressly* recognized that the facts – i.e.

testimony – adduced in the case supported the requested affirmative defense instructions in regard to the charges of Aggravated Assault and Terrorizing [2 counts] – and it was error to not permit the same affirmative defenses: excuse, necessity and justification – for the charge of carrying a firearm in a motor vehicle. Under the circumstances, defendant is entitled to a new trial, or in the alternative, to have the criminal judgment vacated.

3. That the Court erred in denying the motion for new trial or, in the alternative, to vacate the conviction for carrying loaded firearm in vehicle.

The Court's memorandum opinion, and the arguments of the State in their response to the motion, make a determined effort to ignore Mr Haugen's reactions and testimony. Almost half of the Court's memorandum opinion denying Appellant's motion is devoted to the proposition that Mr Haugen's actions, beliefs, etc, were unreasonable: that he ***"should've, would've, could've"*** done <u>something</u> else.

In the first place, the Court's decision selectively parses the information and fails to recite the "rest of the story". For example, where the Court recites that "..defendant did not answer the door of his shop when law enforcement knocked on his door..." what is ***not*** included are the facts that there is no window in the shop, and that Mr Haugen testified that he

believed that the knock on the door and the announcement of "law enforcement" was a ruse by Rodney Hulst to trick him into opening the door so he could attack Haugen. Again, the Judge acknowledges that Mr Haugen was afraid [App p. 21, ll 9-12, but decides that his fears are unreasonable, effectively preempting the role of the jury. The Court further faults Mr Haugen for not "driving to the police or sheriff's office" when he left the shop, disregarding the ***police*** testimony that Mr Haugen had no opportunity to go anywhere, since he was stopped by the police while still on the gravel road leading away from his shop.

More significantly, such "findings" not only ignore or misstate the evidence produced at trial, but entirely sidestep the fact that Mr Haugen had elected his constitutionally protected right to have the <u>facts</u> in the case found by a jury of his peers, rather than by the Court. Mr Haugen was ***alleged*** to have "terrorized" William Mutcher and Rodney Hulst; he was ***alleged*** to have committed "aggravated assault" on Rodney Hulst - by supposedly "dragging" him beside the car – but the jury listened, and utilizing the instructions permitting them to consider the credibility of the witnesses, and the affirmative defenses of justification, necessity and excuse directed by the Court for these charges, unanimously, and

expeditiously, arrived at their "***not guilty***" verdict. It is not, in this case, the Court's prerogative to decide what the jury should - or even might - have decided in regard to the facts of the case. The court's action in preempting the province was not only erroneous, but improper. See State v. Leidholm, 334 N.W.2d 811 (N.D. 1983):

> ***The first sentence of Section 12.1-05-08, N.D.C.C., in combination with Section 12.1-05-03, N.D.C.C., which contains the kernel statement of self-defense, yields the following expanded proposition: A person's conduct is excused if he believes that the use of force upon another person is necessary and appropriate to defend himself against danger of imminent unlawful harm, even though his belief is mistaken***

[Emphasis added].

What the Court did, in its memorandum, was to attempt to justify its act of barring affirmative defenses that had effectively invaded – and short circuited -- the jury process on the charge of loaded firearm in a vehicle. The Court's ruling, initially on the issue of affirmative defenses, and subsequently on the motion for new trial, operated to effectively deny Mr. Haugen both due process of law and his constitutional right to a trial by jury on the weapons charge.

CONCLUSION

This case was improvidently brought by the State, in part, because of an inadequate investigation: the investigating officer admitted in his testimony that he had never gone back to the scene of the supposed crime; had never talked to witnesses at the scene; had taken no photographs, had never even taken statements from the so called victims –telling them to just write something down and bring it to him. The State is also charged with the knowledge that their principal witness – Rodney Hulst – was a 2nd level drug trafficker - i.e. a supplier to drug dealers – who was being protected from the consequences of his actions by the Drug Task Force. The State, had they checked out the facts, would have likely come to view the case the as the Jurors did: that it was not Dennis Haugen who should be standing trial.

Dennis Haugen's life has been a hell worthy of Kafka for the past year and a half: a sixty year old man terrorized and intimidated by a thuggish, loutish, police informant who thought he was above the law – who was charged with serious criminal offenses based on glib lies that were not challenged or adequately investigated by the authorities. The Court in this case did not provide the "level playing field" – due process of law -- that

Dennis Haugen was entitled to receive as an American Citizen, as revealed in attempts to stack the deck against him in the jury trial, and even in the opinion denying the motion for a new trial: seemingly determined that he should, in the end, be convicted of ***something***. Clearly, here, it was error for the trial court to hold that justification or excuse could ***not*** be argued in the weapons case.

It is submitted that Mr Haugen was entitled to the requested instructions on excuse and justification – an entitlement that was recognized in the Felony cases of Terrorizing and Aggravated Assault. When read as a whole, the jury instructions given by the Court– including the "Non-Excuse instruction" at Appendix 33 and the refusal to give defendants requested instructions on Justification and Excuse at Appendix 25 were erroneous, did not accurately state the law, related to a subject central to the case, and affected the substantial rights of the accused - by effectively directing a verdict of guilty on the weapons charge. It is submitted that, under the relevant standard of review, there are adequate grounds for reversal.

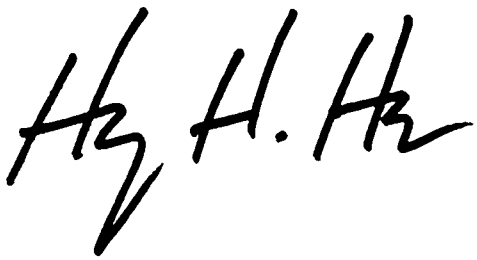
Paraphrasing the holding in Rasmussen it is urged that the Court hold that:

> ***The defendant was convicted [of carrying a loaded firearm in a vehicle], after the trial court concluded justification or excuse was***

unavailable as a matter of law. Because we hold justification or excuse could apply, we reverse and remand for a new trial.

Alternatively, it is urged that this Court vacate the criminal conviction, bring this sorry fiasco to a conclusion, and permit Dennis Haugen to go forward with his life from this point.

Respectfully Submitted this 02 August 2007



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ATTORNEY STATEMENT OF SERVICE

State of ND v Haugen –
NDSC 20070141

The Undersigned, a licensed attorney, affirms that a copy of:

1. Appellant's Brief

Was served upon:

Nancy Yon Assistant State's Attorney 124 S 4th St POB 5607 Grand Forks ND 58206-5607 Fax: 701 780 8402	

All in accordance with the Rules of Civil Procedure [check one]:

xx by mailing the same, with postage affixed, to the address listed above, in Grand Forks ND on 02 August 2007.

❑ by faxing the same to the fax number, above, listed for said person in the current attorney directory, or published on the Attorney's office stationery, on 02 August 2007.

Henry H. Howe, NDID 3090