20080286

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
MAY 22, 2009
STATE OF NORTH DAKOTA

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| State of North Dakota, | ) | |
| | ) | |
| Plaintiff-Appellee, | ) | |
| | ) | |
| -vs- | ) | Supreme Court Case No. 20080286 |
| | ) | |
| Antonio Phillip Stridiron, | ) | District Court Case No. 51-07-K-1803 |
| | ) | |
| Defendant-Appellant. | ) | |

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# BRIEF OF APPELLANT ANTONIO PHILLIP STRIDIRON

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Appeal from the Criminal Judgment of Conviction of November 4, 2008 and the

Amended Criminal Judgment of Conviction of November 6, 2008

In and for the County of Ward, State of North Dakota

Northwest Judicial District

Honorable Douglas L. Mattson, Judge of the District Court, Presiding

Robert W. Martin, ND Bar ID #04636
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## STATEMENT OF THE ISSUE

[¶1] Whether there was insufficient evidence adduced at the trial below to sustain the verdict finding Antonio Phillip Stridiron guilty of the crime of robbery?

## STATEMENT OF THE CASE

[¶2] This matter comes before the Court on direct appeal of the Appellant's Criminal Judgment of Conviction of November 4, 2008 and the Amended Criminal Judgment of Conviction of November 6, 2008, (ROA #348, App. p. 7 and ROA #358, App. p. 11, respectively), from two (2) separate jury trials held before the Honorable Douglas Leif Mattson, Judge of the District Court in and for Ward County, North Dakota, during the weeks of June 23, 2008 through July 11, 2008 in Minot, North Dakota and October 13, 2008 through October 16, 2008 in Grand Forks, North Dakota.

[¶3] While the Appellant's two (2) jury trials were on separate charges and conducted in different jurisdictions, the first trial in Minot, North Dakota, occurred with Bradley Antoine Davis appearing on a separate charge of aggravated assault as a result of forced joinder sought and obtained by motion of the State, (ROA #28 and ROA #46), and not as a co-defendant or co-conspirator.

[¶4] Timely Orders for Transcripts and Notices of Appeal, dated November 4, 2008, were filed with the Clerk of the District Court in and for Ward County on November 4, 2008 (ROA # 92 & 93, App. p. 3).

[¶5] A variety of scheduling, medical and weather-related problems necessitated the filing of Motions for Enlargement of Time, dated April 9 and April 27, 2009, which were submitted by Robert W. Martin, ND Bar ID #04636, to the Clerk of the Supreme Court and docketed on the forgoing dates at entries 23 and 29, respectively

## STATEMENT OF FACTS

[¶6] Appellant Antonio Phillip Stridiron accepts and adopts the Statement of Facts as is set forth in Appellant Bradley Antoine Davis' Brief in Case No. 20080331.

## ARGUMENT AND AUTHORITIES

[¶7] Insufficient evidence was adduced at the trial below to sustain the verdict finding Antonio Phillip Stridiron guilty of the crime of robbery.

[¶8] In State v. Vance, 537 N.W.2d 545, 549 (ND1995), the Court stated that:

[¶9] In reviewing the sufficiency of the evidence to convict, we look only to the evidence most favorable to the verdict and the reasonable inferences therefrom to see if there is substantial evidence to warrant a conviction**. A conviction rests upon insufficient evidence only when no rational fact finder could have found the defendant guilty beyond a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor**. (State v. Schill, 406 N.W.2d 660, 660 (N.D.1987). (Emphasis added).

[¶10] A criminal conviction will be reversed if, "after reviewing the evidence and all reasonable evidentiary inferences in the light most favorable to the verdict, no rational fact finder could have found the defendant guilty beyond a reasonable doubt." State v. Ebach, 1999 ND 5, ¶ 24, 589 N.W.2d 566. The Court does not resolve conflicts in the evidence, determine the credibility of witnesses, or re-weigh the evidence. State v. Trosen, 547 N.W.2d 735, 737 (N.D. 1996).

[¶11] A conviction rests on insufficient evidence when, even after viewing the evidence in the light most favorable to the prosecution and giving the prosecution the benefit of all inferences **reasonably to be drawn in its favor, no rational fact finder could have found the defendant guilty beyond a reasonable doubt**. State v. Kringstad, 353 N.W.2d 302 (N.D. 1984). (Emphasis added).

[¶12] "It is a well-settled rule of statutory construction that criminal statutes are strictly construed in favor of the defendant and against the government." State v. Plentychief, 464 N.W.2d 373, 375 (N.D. 1990). The state must prove each element of the offense beyond a reasonable doubt**. Id**. **at** 376.

[¶13] The Statement of Facts reflects that seven (7) different witnesses were called by the State in this matter—five (5) lay witnesses, and two (2) forensic experts. The standard on appeal when the issue raised is the sufficiency of the evidence is a step one, indeed. Essentially, the Appellant has to convince this Court that the jury impaneled below was irrational in reaching the determination of guilt. This burden has to be met under the further glaring light of viewing the evidence most favorably to the State's position—in other words—that which sustains the conviction of guilt.

[¶14] This Herculean task is not accomplished by asking the Court to reassess the credibility of the witnesses called, asking for the re-weighing of their testimony, or even in asking for the resolution of conflicts in the testimony itself—but, by the same token—if conflicts in the testimony of the lay witnesses are so pervasive and widespread, and further coupled with forensic evidence that does not support the underlying determination made by the jury with respect to the essential elements of the statute under which the Appellant is charged, are we not at a point where the rationality of the jury is put in question?

[¶15] When five (5) lay witnesses whom all claim to have been present at the events surrounding this crime with which the Appellant has been charged and convicted cannot even form a consistent story within their discrete and individual testimony, let alone the testimony of the other lay witnesses, counsel submits that the use of such evidence to sustain a finding of guilt approaches insufficiency. Moreover, when the forensic evidence presented by the two (2) expert witnesses does not support the underlying lay testimony necessary to support the basic factual determinations that go to the essential elements of the statute—we have reached the

point of irrationality.

[¶16] This completely contradictory lay testimony, beyond all internal reconciliation or cohesion amongst the five (5) witnesses, and despite the State's attempt to characterize the inconsistencies as only being on trivial matters—the "green socks, brown socks" gambit—ignores the cumulative effect of inconsistency piled upon inconsistency, to outright conflict with the assertions of other witnesses. When the "neutral" scientific evidence of the two 92) expert witnesses is also considered, there was no sufficient evidence adduced to support the essential elements of the statue. This moves the matter from the burden of the Appellant back to the burden of the State to prove each essential element beyond a reasonable doubt, and to do so with a statue read strictly construed "…in favor of the defendant and against the government." State v. Plentychief, ***supra.***

## CONCLUSION

[¶17] The standard of review in the instant case, though a difficult one to reach, is not beyond the realm of possibility in that we still require a jury to have competent evidence from which to draw a reasonable inference to fairly warrant a conviction. The State did not present such competent evidence, since the testimony of the five (5) lay witnesses was not only internally contradictory, but externally in conflict among those who took the stand. This situation was exacerbated by the forensic evidence which also did not support the facts that were needed to satisfy the essential elements of the statue, which is to by strictly construed in favor of the defendant and against the government.

[¶18] Under theses standards, and with the facts presented, insufficient evidence was adduced.

Respectfully submitted this 22nd day of May, 2009.

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## ATTORNEY'S CERTIFICATE OF SERVICE

[¶18] The undersigned hereby certifies that a true and correct copy of the foregoing document was on the 28th day of day of May, 2009, electronically filed with and served upon:

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