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SEPTEMBER 23, 2009
STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	
Plaintiff-Appellee,	)	Supreme Court No. 20090079
	)	
vs.	)	District Ct. No. 09-07-K-3316
	)	
Elijah Addai,	)	
	)	
Defendant-Appellant.	)	
_____	)	

Appeal from the Criminal Judgment and Commitment entered on February 18, 2009, in East Central District Court, in Fargo, Cass County, State of North Dakota, The Honorable Cynthia Rothe-Seeger, Presiding

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APPELLEE'S BRIEF

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[¶ 4] I. **Whether there was reasonable and articulable suspicion justifying the stop of the vehicle in which the Defendant was a passenger.**

[¶ 5] II. **Whether the on-site identification of the Defendant by Albertson and Bolgrean was reliable and was properly allowed.**

[¶ 6] III. **Whether the in-court identification of the Defendant was proper.**

[¶ 7] IV. **Whether the continuances which were granted cured any prejudice to the defense caused by late disclosure of discovery material by the State.**

[¶ 8] V. **Whether the trial court closed the courtroom for proper and lawful reasons.**

[¶ 9] VI. **Whether the evidence was sufficient to sustain the conviction.**

[¶ 10] STATEMENT OF CASE

[¶ 11] The Defendant appeals from a judgment of conviction from a guilty verdict of first degree murder. The trial before District Court Judge Cynthia Rothe-Seeger in the District Court of Cass County commenced December 1, 2008, and concluded December 11, 2008, with a jury verdict of guilty. (Transcript of Jury Trial ("T.") at 920.)

[¶ 12] The charge was contained in a one count Information, charging that on or about August 19, 2007, the Defendant murdered David Delonais by stabbing him with a knife, a class AA felony.

[¶ 13] The Defendant was sentenced to life in prison with the possibility of parole by District Court Judge Douglas Herman on February 17, 2009.

[¶ 14] A timely notice of appeal was filed and this appeal followed.

[¶ 15] STATEMENT OF FACTS

[¶ 16] On the night of August 18, 2007, and into the early morning hours of August 19, 2007, there was a small party in a south Fargo apartment, where the individuals attending the party were involved in drinking, smoking marijuana, and gambling. (T. at 390-91, 408, 464.) About a dozen people were in attendance, including the apartment renter Cassandra Columbus (hereinafter Columbus), her friends Sara Fick ("Fick") and Tiffany Londo ("Londo"), Columbus's 16 year old brother J.E. (dob 1991), the Defendant, Semereab Tesafaye, also known as 7-Up ("Tesafaye"), Mohamed Hossein also known as Little Mo, the Defendant's girlfriend

Allison Boutiette, and Eric Delonais ("Eric"), the cousin of the deceased. (T. at 499-500.)

[¶ 17] There was some tension at the party as a result of the attitude displayed by the Defendant. (T. at 393-94, 409.) Eric Delonais called his cousin, David Delonais ("David"), for backup and support because of the tension. (T. at 394.) David arrived between approximately 1:00 a.m. and 2:00 a.m. (T. at 397.)

[¶ 18] Burim Kryeziu ("Kryeziu") arrived with his friend Hamed Zuri and two other men at approximately 4:30 a.m. at the invitation of Columbus and Londo. (T. at 462.) Kryeziu did not stay at the party long and left with his friends to move to another location. (T. at 466-67.) Eric Delonais followed him outside and asked about obtaining a full-time job at Sungold Foods in Fargo, where Kryeziu was a supervisor. (T. at 469.)

[¶ 19] Kryeziu testified that as he and his friends were attempting to leave the party. Their car was blocked by the Defendant, Tesafaye, David, and Eric. (T. at 470.) Kryeziu's window was down and he could hear the Defendant screaming at David and saw the two exchange some pushes. (T. at 474.) Kryeziu then witnessed the Defendant pull a knife out from behind his back with a six to seven inch blade and stab at David. (T. at 475-76.) The parties moved around the car and Kryeziu heard the blade of the Defendant's knife slice into David. (T. at 476-77.) Once the Defendant, Tesafaye, and David were half way around the car, Kryeziu and his friends took off. (T. at 480.) Kryeziu did not see anymore after that.

[¶ 20] Eric testified that the Defendant and Tesafaye were in David's face and

a fight broke out. (T. at 401.) He believed Tesafaye pulled out a knife and David then stabbed Tesafaye. (T. at 401.) Eric stated that David started running and grabbed onto him and told him to run. (T. at 401.) He then saw the Defendant pull out a knife and swing towards David's back. (T. at 401, 404.) He heard David yell out in pain. (T. at 404.) David then yelled to Eric to start running and get out of the area. (T. at 401, 405.) Eric ran to Innovis Hospital. (T. at 406.)

[¶ 21] Two carriers for The Forum newspaper, Roz Bolgrean ("Bolgrean") and Mary Albertson ("Albertson"), were delivering their route nearby at which time they heard footsteps running toward them. (T. at 278, 307.) They both saw two males running, a black male chasing a lighter complected male. (T. at 278-79, 309-10.)

[¶ 22] The man being pursued, later identified as David Delonais, spotted Albertson and ran towards her screaming for help. (T. at 280.) Albertson indicated that she heard the man identified as the Defendant yell "I'm going to cut you, I'm going to kill you," at David. (T. at 297.) Albertson froze up when David and the Defendant ran over to her and she blanked out for a moment. (T. at 280, 311.) Bolgrean said she saw the black man, later identified as the Defendant, jump on David just an arm's length from Albertson. (T. at 310.) The Defendant ran off and Albertson then became aware of David jumping up and down, hopping around asking for her to help him and indicating that he had been stabbed and might die. (T. at 281, 286, 290, 309.) Albertson assisted David to the ground, observed a significant amount of blood squirting out of him, and went for help. (T. at 299.) Bolgrean described the altercation as the black man beating David up or hitting him. (T. at

311.) Albertson stated that the Defendant had his hand out in front of him and was swinging something back and forth at David. (T. at 279, 300.) The carriers got in their car together to call 911 from a cell phone. (T. at 283, 315.) Moments after calling 911 Albertson and Bolgrean saw and flagged down a passing squad car and directed police to where David lay dying. (T. at 315.)

[¶ 23] Police Sergeant Mike Bernier ("Bernier") was dispatched to a fight in progress in the 2700 block of 32nd Avenue South at approximately 5:45 a.m. (T. at 432.) Bernier was aware that there was a black male that had just left the scene of the incident. (T. at 433.) Bernier noticed a vehicle driving across the parking lot with a black male in the passenger seat "violently rocking back and forth as if he was under a great deal of stress." (T. at 435.) The parking lot was within a block of where the stabbing had occurred. (T. at 433.) Bernier initiated a traffic stop and asked the Defendant to step out of the car at which time Bernier observed what appeared to be blood on the Defendant's clothing. (T. at 438.) The Defendant was then placed in Bernier's squad car. (T. at 440.)

[¶ 24] Albertson and Bolgrean were told there was a person of interest detained down the block and were asked to go and see if they could make an identification. (T. at 317.) As they were pulling up to Bernier's squad car both women identified the Defendant as the individual they saw stab David. (T. at 284, 287, 318-19.) Albertson and Bolgrean told Bernier that he had the right person in the back of his squad car. (T. at 443-44.) Bernier then "asked them [the carriers] if they were comfortable identifying the individual in the back of his car if I were to get him

out of the car and have him face the other way." (T. at 319.) They agreed though they had already made a positive identification. Once they were able to see the Defendant standing up outside the squad car they were still completely sure he was the individual they saw stab David. (T. at 319.)

[¶ 25] The Defendant was taken into custody. (T. at 444.) His hands appeared to have blood on them and swabs of the substance were taken. (T. at 540.) The results of the DNA analysis established that the blood on the Defendant's hands belonged to David. (T. at 586-87.) A knife was located by the police in the parking lot near where the Defendant was arrested and was also analyzed for DNA and David's blood was found on it as well. (T. at 534, 585.)

[¶26] **JURISDICTIONAL STATEMENT**

[¶ 27] The district court had jurisdiction over this case pursuant to N.D. Const. art. VI, § 8, N.D.C.C. §§ 27-05-06 (4), and 40-18-19, and N.D.R.Crim.P. 37. This Court has jurisdiction over this appeal under N.D. Const. art. VI, § 6, N.D.C.C. §§ 29-28-06 (1), and 29-28-06 (2). This appeal is timely under N.D.R.App.P. 26.

[¶ 28] **LAW AND ARGUMENT**

[¶ 29] **I. There was reasonable and articulable suspicion justifying the stop of the vehicle in which the Defendant was a passenger.**

[¶ 30] In reviewing a trial court's disposition of a motion to suppress this Court defers to the trial court's findings of fact and resolves conflicts in testimony in favor of affirmance. City of Grand Forks v. Egley, 542 N.W.2d 104, 106 (N.D. 1996). The trial court's decision is affirmed "unless, after resolving conflicting evidence in favor of affirmance, we conclude there is insufficient competent evidence to support the decision, or unless we conclude the decision goes against the manifest weight of the evidence." State v. Hawley, 540 N.W.2d 390, 392 (N.D. 1995). "'Although the underlying factual disputes are findings of fact, whether the findings meet a legal standard, in this instance a reasonable and articulable suspicion, is a question of law.'" Egley, 542 N.W.2d at 106 (quoting State v. Ova, 539 N.W.2d 857, 858 (N.D. 1995)). Questions of law are fully reviewable. State v. Glaesman, 545 N.W.2d 178 (N.D. 1996); see also Ornelas v. United States, 517 U.S. 690, 691 (1996) (holding that the ultimate question of reasonable suspicion should be reviewed de novo).

[¶ 31] For a valid investigatory stop, an officer must have a reasonable and articulable suspicion that a law has been or is being violated. City of Grand Forks v. Zejdlik, 551 N.W.2d 772, 775 (N.D. 1996). Reasonable and articulable suspicion is a much less exacting standard than probable cause. State v. Ova, 539 N.W.2d 857, 859 (N.D. 1995). "[A]n actual violation is not required for an officer to have

reasonable and articulable suspicion to make an investigative stop[.]" Id. "The reasonable and articulable suspicion standard is an objective one and does not hinge upon the subjective beliefs of the arresting officer." State v. Leher, 2002 ND 171, ¶ 11, 653 N.W.2d 56. "An officer's subjective intent plays no role in ordinary probable cause Fourth Amendment analysis." Id. In order to determine whether an investigative stop is valid, the court considers the totality of the circumstances and examines the information known to the officer at the time of the stop. Gabel v. North Dakota Dep't of Transp., 2006 ND 178, ¶ 11, 720 N.W.2d 433.

[¶ 32] In the instant case, officers knew that there had been a stabbing in the immediate vicinity and the stabbing had occurred recently. Officers also knew that the suspect was a black male. The vehicle in which the Defendant was riding was roughly a half block from the crime scene. The crime had occurred within minutes prior to the vehicle being spotted. The vehicle containing the Defendant was driving in a strange manner. The male passenger was black and was behaving in a strange manner. All these things taken into consideration certainly gave law enforcement reasonable and articulable suspicion to stop the vehicle.

[¶ 33] The Defendant suggests that the only reason he was stopped is based on the fact that he is black. It is clear officers took into account multiple factors besides the race of the Defendant in making the determination to stop the vehicle. The Defendant has not offered any evidence in support of the fact that a "similarly-situated individual of another race" could have been stopped but was not. See United States v. Declerck, 135 Fed. Appx. 167, 169 (10th Cir. 2005). In fact, in this case

dispatch clearly indicated that the suspect was a black male; therefore, given the surrounding circumstances it was appropriate to pull over a vehicle containing a black male.

[¶ 34] Given the totality of the circumstances a reasonable person in the officers' position easily could have concluded that the passenger was involved in the incident being investigated. See State v. Washington, 2007 ND 138, ¶ 11, 737 N.W.2d, 382 (discussing State v. Westmiller, 2007 ND 52, ¶ 9, 730 N.W.2d 134).

[¶ 35] **II. The on-site identification of the Defendant by Albertson and Bolgrean was reliable and was properly allowed.**

[¶ 36] The standard of review of a trial court's denial of a suppression motion is as follows:

> The trial court's disposition of a motion to suppress will not be reversed if, after conflicts in the testimony are resolved in favor of affirmance, there is sufficient competent evidence fairly capable of supporting the trial court's findings, and the decision is not contrary to the manifest weight of the evidence. That standard of review recognizes the importance of the trial court's opportunity to observe the witnesses and assess their credibility, and we "accord great deference to its decision in suppression matters."

State v. Sabinash, 1998 ND 32 ¶ 8, 574 N.W.2d 827 (citations omitted).

[¶ 37] The determination of the admissibility of an identification involves a two-pronged analysis. State v. Norrid, 2000 ND 112, ¶ 10, 611 N.W.2d 866. First, the court must determine whether the identification procedure is impermissibly suggestive, and second, if the identification was impermissibly suggestive, whether the identification nevertheless is reliable under the totality of the circumstances. Id. The

defendant has the burden of proving the identification procedure is impermissibly suggestive. Id. The State must then show the identification is reliable under the totality of the circumstances. Id. The first prong considers whether the identification procedure is "unnecessarily or impermissibly suggestive." Id. When a suspect is shown singly, the inquiry turns to whether the showup is "unnecessarily or impermissibly" suggestive and looks at the factors surrounding the show up, such as whether emergency circumstances existed creating the need for the showup. Id.; see generally Wayne R. LaFave, et al., Criminal Procedures § 7.4(b) and (f) (2d edition 1999).

[¶ 38] In the instant case, Albertson and Bolgrean observed a black male wearing a blue shirt with white lettering stab another man in front of them. They had an opportunity to observe the build of the suspect, his sex, his race, and the manner in which he was dressed. The Defendant was pulled over a block or so from the crime scene within minutes of the crime having occurred. A short time later law enforcement had the Defendant step out of the car with his back to Albertson and Bolgrean so they could determine whether the Defendant appeared to be the same man they saw stab the victim moments before. They were able to positively identify him. The showup was conducted before the Defendant had an opportunity to alter his appearance. A showup before a suspect has an opportunity to alter his appearance and while the witness's memory is still fresh is one of the factors a court may consider when determining whether showup was unnecessarily suggestive. Norrid, 2000 ND 112, ¶ 10, 611 N.W.2d 866.

[¶ 39] Even if an identification is determined to be unnecessarily or impermissibly suggestive, there is no due process violation requiring exclusion of the evidence if the identification is reliable under the totality of the circumstances and the factors outlined in Biggers. Id. (citing Neil v. Biggers, 409 U.S. 188 (1972)). The Biggers factors are as follows:

1. The opportunity of the witness to view the criminal act at the time of the crime.
2. The witness' degree of attention.
3. The accuracy of the witness' prior description of the criminal.
4. The level of certainty demonstrated the witness at the confrontation.
5. The length of time between the crime and confrontation.

Id. at ¶ 13.

[¶ 40] In the instant case Albertson and Bolgrean were right on the street in close proximity to both David and the suspect when they observed the suspect stab the victim at least twice. This was an unusual and traumatic event they observed and clearly caused them to pay attention to what was going on. They were able to identify the sex, build, race, and type of clothes worn by the suspect. The description of the suspect given by Albertson and Bolgrean matched that of the Defendant when he was stopped within a block of the crime scene. When the Defendant stepped out the vehicle Albertson and Bolgrean were able to positively identify the Defendant by his general appearance including the clothes he was wearing, his race, and his build. Finally, Albertson and Bolgrean were able to make their identification almost

immediately following the crime.

[¶ 41] Based on all the factors, it is clear that the identification of the Defendant by Albertson and Bolgrean was reliable and was properly allowed.

[¶ 42] **III. The in-court identification of the Defendant was proper.**

[¶ 43] The jury has the ultimate responsibility to determine the reliability of eyewitness identifications. The reliability and admissibility should be established before the issue gets before the jury. See Watkins v. Sowders, 449 U.S. 341, 347 (1981) (determinations of reliability are usually entrusted to the jury); see also Abdur Raheem v. Kelly**,** 257 F.3d 122, 133 (2d Cir. 2001) (jury determines "reliability of properly admitted eyewitness identification").

[¶ 44] Here the pretrial identification procedure was proper and therefore did not taint the in-court identification of the Defendant.

[¶ 45] **IV. The continuances which were granted cured any prejudice to the defense caused by late disclosure of discovery material by the State.**

[¶ 46] The disclosure of evidentiary material is governed by Rule 16 of the North Dakota Rules of Criminal Procedure. "Rule 16 is not a constitutional mandate, and a violation of the rule results in a constitutionally unfair trial only when 'the barriers and safeguards are so relaxed or forgotten the proceeding is more of a spectacle or a trial by ordeal than a disciplined contest.'" State v. Roerick, 557 N.W.2d 55, 56 (N.D. 1996) (internal citation omitted). If the trial court's ruling does not result in an inherently unfair trial, the trial court's decision can only be reversed "on a showing, by the defendant, that some substantial rights have been denied." Id.

The trial court has broad discretion in determining which evidence will be admitted even though it was disclosed shortly before trial. Id.

[¶ 47] The Defendant argues that he was prejudiced by the delayed disclosure but has offered nothing to support his contention. Specifically, he argues that the photograph of the Tanto knife would have put the case in a different light. It is unclear what the Defendant means by that. He was aware of the existence of the knife from the beginning of the case. It was available to the Defendant to test at any point if he so chose. The Defendant's statement in his brief that the State did not test the knife is incorrect. The State did test the Tanto knife and that information was provided to the Defendant. It was after the picture of the Tanto knife was disclosed that the Defendant had his own expert test it.

[¶ 48] There is simply no evidence that the outcome would have been different if all the discovery had been made available to the Defendant at the beginning of the case. The continuances remedied any prejudice the Defendant may have suffered as a result of late disclosure.

[¶ 49] **V. The trial court closed the courtroom for proper and lawful reasons.**

[¶ 50] The Defendant claims his constitutional rights to a public trial were violated when the trial court temporarily terminated expanded media coverage and excluded the general public from the courtroom for attorney Jesse Lange's testimony.

[¶ 51] The Sixth Amendment to the United States Constitution guarantees a criminal defendant "the right to a speedy and public trial . . . ." See also N.D. Const.

art. I, § 12. Although the guarantee of a public trial was created for the benefit of criminal defendants, see In re Oliver, 333 U.S. 257, 270 n.25 (1948), the right is also shared with the public; the common concern is to assure fairness. Press-Enterprise Co. v. Superior Court of Cal., 478 U.S. 1, 7 (1986). "In addition to ensuring that judge and prosecutor carry out their duties responsibly, a public trial encourages witnesses to come forward and discourages perjury." Waller v. Georgia, 467 U.S. 39, 46, 81 L.Ed.2d 31 (1984).

[¶ 52] In Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 383 (1979), the Supreme Court explained "Openness in court proceedings may improve the quality of testimony, induce unknown witnesses to come forward with relevant testimony, cause all trial participants to perform their duties more conscientiously, and generally give the public an opportunity to observe the judicial system." The right to a public trial is not absolute however; precedents have established that in some instances that right must give way to other interests essential to the fair administration of justice.

[¶ 53] A criminal defendant's right to a public trial concerning the total closure of an entire pretrial suppression hearing as addressed by the Supreme Court in Waller. The Waller Court, 467 U.S. at 48, ruled that the defendant's public-trial guarantee had been violated, and explained:

> [T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure.

This decision makes clear that a trial court does have the authority to exclude the public from a criminal trial in some situations.

[¶ 54] This Court used the Waller standard to measure a trial court's temporary closure of a defendant's criminal trial on charges of gross sexual imposition during the testimony of the child victim, the adopted son of the defendant. State v. Klem, 438 N.W.2d 798 (N.D. 1989). Klem's first trial, which resulted in a hung jury, had been open to the public while the child victim testified. At the second trial, when the child witness was first seated to testify, the State's attorney requested closure of the trial for the child's testimony because the "'sensitive nature'" of the case "'may be very distracting and very embarrassing for him in front of all these people and the people in the Courtroom may inhibit the testimony.'" Id. at 799. After the defendant objected to the proposed closure, the court summarily ruled, "'I think I will clear the Courtroom,'" and did so. Id.

[¶55] This Court concluded that in closing the trial to all but court personnel, parties, attorneys, jurors, and a public media representative during the child's testimony the defendant was deprived of his right to a public trial. Id.

[¶56] This Court concluded the trial court had failed to satisfactorily comply with the Waller requirements because:

> There was no hearing, no weighing of competing interests, and no findings to support closure. While the trial court's allowance of the presence of a media representative may have satisfied the public's first amendment right, it did not address the defendant's sixth amendment right to a public trial.

Id. at 801. The Defendant argues that closing the courtroom in this case violated the Defendant's right to a speedy and public trial.

[¶ 57] This case differs from Klem in several major ways. Ordinarily, a motion to close a trial to the public should be made before trial to avoid unfair surprise and to give the trial court the benefit of research and arguments, but the reasons for closure could not have been reasonably anticipated in this case. In face it was the court on its own motion that closed the courtroom. The Defendant did not object to the closure and in fact indicated that he did not have a problem with it. (T. at 698.) The State objected and advised the court that the Defendant was entitled to a public trial. (T. at 690.) Mr. Lange was a defense witness and the Defendant clearly wanted him to testify about Mr. Lange's representation of another individual that was involved in the altercation the night of the murder. Unfortunately, the clerk of court had indicated that the file of Mr. Lange's client was restricted. It was later determined that the clerk's office had prematurely restricted the file. This was remedied by the trial court by making a transcript of the closed proceedings available to the public.

[¶ 58] The trial court's actions in this instance show a deference to the Defendant's interests. Although this trial court did not hold a formal evidentiary hearing regarding the issue of courtroom closure, an evidentiary hearing is not necessarily required unless requested. See United States v. Sherlock, 962 F.2d 1349, 1359 (9th Cir. 1989), cert. denied sub nom., Charley v. United States, 506 U.S. 958 (1992); United States v. Raffoul, 826 F.2d 218, 225 (3d Cir. 1987); Fayerweather v.

Moran, 749 F.Supp. 43, 44 (D.Ct.R.I. 1990). The Defendant did not request an evidentiary hearing and in fact indicated that he did not have a problem with the courtroom closure. The trial court's order for closure lasted only during Lange's testimony and only for the purpose to discuss what was believed to be a restricted file.

[¶59] A trial court must also consider reasonable alternatives to closure. In this case the trial court determined Lange's testimony was important to the Defendant and in order for Lange not to violate his ethical duty to his client full closure of the courtroom was required. This brief closure of the courtroom did not affect the Defendant's confrontation rights. See, e.g., Annot., Permissibility of testimony by telephone in state trial, 85 A.L.R.4th 476, § 3 (1991); Annot., Closed-circuit television witness examination, 61 A.L.R.4th 1156, § 4 (1988); Annot., Conditions interfering with accused's view of witness as violation of right of confrontation, 19 A.L.R.4th 1286 (1983). Once again, the Defendant did not object, it was his witness and it was in his interests that the witness testify.

[¶ 60] **VI. The evidence was sufficient to sustain the conviction.**

[¶ 61] In reviewing a claim to determine whether a conviction is supported by sufficient evidence the "Court does not weigh conflicting evidence, or judge the credibility of the witnesses; instead [the Court] look[s] only to the evidence most favorable to the verdict and the reasonable inferences to determine if substantial evidence exists to support a conviction." State v. Barth, 2005 ND 134, ¶ 7, 702 N.W.2d 1. In the instant case the evidence viewed in the light most favorable to the verdict

supports the conviction.

[¶ 62] In this instance the facts show that the Defendant got into an altercation with David. The Defendant had a knife in his hand. The Defendant was heard yelling at David that he was going to cut him and kill him. Bolgrean saw the Defendant jump on David's back just a foot or two from her friend Albertson. Albertson heard David say he had been stabbed and thought he might die. She also witnessed blood pouring out of him seconds after the Defendant had jumped on David's back and yelled that he was going to cut him. The Defendant had blood on his hands that was determined to be David's. A knife found in the same parking lot the Defendant was picked up in also tested positive for David's blood.

[¶ 63] It is more than reasonable that the jury could infer from the Defendant's statements that he committed the crime of murder.

[¶ 64] **CONCLUSION**

[¶ 65] Based on the foregoing reasons the State respectfully requests that the jury's conviction on December 11, 2008, be affirmed.

[¶ 66] Respectfully submitted this 23rd day of September, 2009.

_____

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[¶ 67] **CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing document was sent by e-mail on the 23rd day of September, 2009, to Ross Brandborg, Attorney at Law, at ross@redriverlaw.com.

_____

Leah J. Viste