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IN THE SUPREME COURT

20090257

STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20090257

FILED
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MAY 17 2010

State of North Dakota,

STATE OF NORTH DAKOTA

Plaintiff-Appellee,

- vs -

Michael Moe,

Defendant-Appellant.

APPEAL FROM THE CRIMINAL COURT JUDGMENT
NORTHWEST JUDICIAL DISTRICT
WILLIAMS COUNTY CRIMINAL NO. 08-K-404
THE HONORABLE DAVID W. NELSON, PRESIDING

PETITION FOR REHEARING

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TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

CASES

State v. Coppage

2008 ND 134, ¶17, 751 N.W.2d 254. 3

State v. Cole

542 N.W.2d 43, 50, (Minn. 1996) 3

STATUTES

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STATEMENT OF THE ISSUES

- I. Were the verdicts in this case inconsistent?

NATURE OF THE CASE

This is a petition to rehear the opinion filed in the above entitled matter on May 11, 2010.

STATEMENT OF FACTS

This Petition for Rehearing is based on the North Dakota Supreme Court's interpretation of legally inconsistent verdicts.

It is Defendant/Appellant Michael Moe's belief that because of the facts in this case there could not be any touching of Jane Doe's breast. This belief is based on its fact that the jury found him not guilty of corruption and solicitation of a minor and without solicitation the touching of Jane Doe's breast could never have occurred.

ARGUMENT

Paragraph ¶17 in Moe states:

¶17 Having determined the jury's verdicts are supported by the evidence, we next consider Moe's argument that the two verdicts are legally inconsistent.

"Verdicts are legally inconsistent when proof of the elements of one offense negates a necessary element of another offense." State v. Coppage, 2008 ND 134, ¶17, 751 N.W.2d 254 (quoting State v. Cole, 542 N.W.2d 43, 50 (Minn. 1996)).

Moe claims his acquittal on the solicitation charge proves he did not offer Jane Doe \$20 to touch her breasts, and the alleged breast-touching could not have occurred without a request, so his conviction for gross sexual imposition is legally inconsistent with his acquittal on the solicitation charge. However, the chronology of charged events does not affect the consistency of the jury's verdicts. The conduct required for gross sexual imposition is engaging in sexual contact, while the conduct required for corruption or solicitation of a minor is soliciting with the intent to engage in a sexual act. N.D.C.C. §§ 12.1-20-03(2)(a)

and 12.1-20-05(2). The conduct covered by each law can be different. As this case demonstrates, it is possible to engage in sexual contact without first soliciting a sexual act. Here, the jury's verdicts are legally consistent because the charged offenses prohibit and punish different conduct.

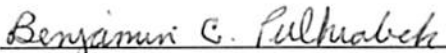
Mr. Moe realizes that it may in some cases be possible to engage in sexual contact without first soliciting a sexual act, in his case, however, because of the facts and testimony there had to be solicitation or there would not have been any sexual contact. Since the jury found Mr. Moe not guilty of solicitation a guilty verdict on gross sexual gross imposition is inconsistent.

CONCLUSION

The conviction on the charge of Gross Sexual Imposition should be dismissed because the verdicts are inconsistent.

Dated this 17 day of May, 2010.

Respectfully submitted:



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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the office of Pulkrabek Law Firm and is a person of such age and discretion as to be competent to serve papers.

That on May 17th, 2010, she served, by mail, a copy of the following:

PETITION FOR REHEARING

by placing a true and correct copy thereof in an envelope and depositing the same, with

Marlyce Wilder
Williams County State's Attorney
P.O. Box 2047
Williston, ND 58802-2047

The undersigned further certifies that on May 17th, 2010, she dispatched to the Clerk, North Dakota Supreme Court, an original and seven copies of the PETITION FOR REHEARING and emailed the same containing the full text of the Petition.


Sharon Renfrow