

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20100002

State of North Dakota,

Plaintiff-Appellee,

- vs -

Troy Lehman,

Defendant-Appellant.

APPEAL FROM THE CRIMINAL COURT JUDGMENT
EAST CENTRAL JUDICIAL DISTRICT
CASS COUNTY CRIMINAL NO. 09-08-K-04778
THE HONORABLE STEVEN L. MARQUART, PRESIDING

PETITION FOR REHEARING

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I. DID THE TRIAL COURT ERR WHEN IT DENIED DEFENDANT/APPELLANT, TROY LEHMAN’S MOTION FOR JUDGMENT OF ACQUITTAL ON THE CHARGE OF KIDNAPING?	¶8
II. DID THE TRIAL COURT ERR WHEN IT FAILED TO INSTRUCT THE JURY ON A PRIVATE PERSON’S AUTHORITY TO MAKE AN ARREST.	¶15
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TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

CASES

Tatum v. United States

190 F.2d 612, 615 (D.C. Cir. 1951)

356 U.S. 942, 78 S.Ct. 788.21 Ed. 2d 818 (1958). ¶17

Kreiner v. United States

11 F2d 722,731 (2d Cir. 1962) ¶17

STATUTES

N.D.C.C. 12.1-18-01(1) ¶10

N.D.C.C. 12.1-18-02 ¶12

FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 52(B) ¶17

STATEMENT OF THE ISSUES

- [¶1] I. Did the trial court err when it denied Defendant/Appellant, Troy Lehman's motion for judgment of acquittal on the charge of kidnaping?

- [¶2] II. Did the trial court err when it failed to instruct the jury on a private person's authority to make an arrest?

NATURE OF THE CASE

[¶] This is a petition for rehearing the opinion filed in the above matter on July 15, 2010.

STATEMENT OF FACTS

[¶4] On November 7, 2008, Defendant/Appellant, Troy Lehman was a bounty hunter for A-Affordable Bail Bonds. Mr. Lehman had been hired by the bondsman for A-Affordable Bail Bonds Kurt Schienbien to apprehend a bond jumper named Daniel Flying-hawk.

[¶5] Bounty hunter Lehman apprehended Mr. Flyinghawk at his aunt's house in Fargo, North Dakota . When bounty hunter Lehman apprehended Mr. Flyinghawk he had no handcuffs, so he secured Mr. Flyinghawk's hands by tying them with a string from Mr. Flyinghawk's hoodie.

[¶6] The problems developed in this case after bounty hunter Lehman's lawful apprehension of Mr. Flyinghawk because Mr. Lehman didn't take Mr. Flyinghawk directly to jail.

[¶7] Even if Mr. Lehman hadn't been a bounty hunter he could have apprehended Mr. Flyinghawk as a private citizen.

ARGUMENT

[¶8] ISSUE I. Did the trial court err when it denied Defendant/Appellant, Troy Lehman's motion for judgment of acquittal on the charge of kidnaping?

[¶9] In the Supreme Court's decision of the above case:

[¶10] [¶8] Section 12.1-18-01(1), N.D.C.C., provides the elements of kidnaping: "A person is guilty of kidnaping if he abducts another or, having abducted another, continues to restrain him with the intent to do the following:

- a. Hold him for ransom or reward. . . ."

[¶11] The above language makes it clear that all kidnaping in North Dakota began with an abduction. The facts in Lehman case won't allow an abduction to occur because when Mr. Lehman apprehended Mr. Flyinghawk he could legally do so either as a bounty hunter or as a private citizen.

[¶12] If Mr. Lehman committed any crime the crime began because he unlawfully retained Mr. Flyinghawk by not taking him directly to jail. During this time of restraint circumstances arose that could have terrorized Mr. Flyinghawk and could have exposed Mr. Flyinghawk to serious bodily injury. Therefore a charge of Felonious Restraint under NDCC 12.1-18-02 would have been proper.

[¶13] The trial judge in the following comment during the trial said there was no abduction if Mr. Lehman was a bounty hunter and there was no crime if Mr. Lehman had taken Mr. Flyinghawk to the jail right after Mr. Lehman apprehended Mr. Flyinghawk.

[¶14] "An unlicensed bail recovery agent, or bounty hunter, has the power to lawfully make an arrest if the agent is acting on a bail bond surety's behalf where the person arrested personally and expressly authorized his apprehension by the surety." Tr. 3, P.396, L.15-21.

[¶15] ISSUE II. Did the trial court err when it failed to instruct the jury on a private person's authority to make an arrest?

[¶16] The following quote makes it clear that a trial court in a criminal case must instruct on all essential questions of law whether requested or not and failure to do so effects the Defendant's substantial rights:

[¶17] “In Tatum v. United States, 190 F.2d 612, 615 (D.C. Cir.1951), cert. Denied, 356 U.S. 942, 78 S.Ct. 788.21. Ed. 2d 818 (1958), quoting Kreiner v. United States, 11 F2d 722, 731 (2d Cir. 1926), the District of Columbia Court of Appeals stated that the “[f]ailure on the part of a trial court in a criminal case to “instruct on all essential questions of law involved in the case, whether requested or not” would clearly affect substantial rights within the meaning of Rule 52(B) of the Federal Rules of Criminal Procedure”.

[¶18] Mr. Lehman had a right as a citizen as a citizen to apprehend bond jumper Flyinghawk. The jury could have determined Mr. Lehman wasn’t a bounty hunter and didn’t have authority to apprehend Mr. Flyinghawk. Mr. Lehman is a citizen, therefore the jury would only have to decide whether or not Mr. Lehman’s apprehension of Mr. Flyinghawk at Mr. Flyinghawk’s aunts house was lawful.

CONCLUSION

[¶19] Mr. Lehman’s Petition for Rehearing should be granted.

Dated this _____ day of July, 2010.

Respectfully submitted:

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[¶20] **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 July 23, 2010, she served, by electronic filing and e-mail, a copy of the following:

PETITION FOR REHEARING

by e-mailing a true and correct copy to:

Ryan Younggren
Assistant State's Attorney
P.O. Box 2806
Fargo, ND 58103-1830
younggrenr@casscountynd.gov

The undersigned further certifies that on July 23, 2010, she electronically filed with the Clerk, North Dakota Supreme Court, an original PETITION FOR REHEARING and emailed the same containing the full text of the Petition.

Sharon Renfrow