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JUL 28 2014

IN THE Supreme Court
State of North Dakota

STATE OF NORTH DAKOTA

State of North Dakota	)	Supreme Court NO.
	)	20130332
Plaintiff/Appellee,	)	District Court NO.
vs.	)	18-2012-CR-01099
Allen Joseph Ratliff)	
)	
Defendent/Appellant.)	

State of North Dakota	)	Supreme Court NO.
	)	20130341
Plaintiff/Appellee	)	District Court NO.
vs.	)	18-2012-CR-01101
Cody Joe Boulduc)	
)	
Defendent/Appellant.)	

State of North Dakota	)	Supreme Court NO.
	)	20130346
Plaintiff/Appellee.	)	District Court NO.
vs.	)	18-2012-CR-01100
Nathan Lawrence Ratliff)	
)	
Defendent/Appellant)	

Notice of Petition For Rehearing.

I am writing to you in regards to Requesting a rehearing to the Ruling of my Initial appeal, please take note that I want you to take care of this before my time is up on the deadline. I have read over the Justices opinion and came up with this brief.

At paragraphs # 31-33 (P 31-33), this courts opinion says that the convictions of Assault are valid because:

(A)

"Carmen's testimony suggests she was beaten by one of the men and heard the other two men hitting her husband." P. 31. But now Sherman particularly and specifically testified he was struck by one individual, while the other individual helped him down. And saying that Carmen's testimony "suggests" she heard the other two men hitting her husband certainly is not proof, much less proof beyond a reasonable doubt that two men hit Sherman, and more so in the light of Sherman's specific and particular testimony that it was only one person who hit him, not two. Carmen's "suggestion" does not over rule beyond reasonable doubt, Sherman's particular and specific and definite testimony that it was only one. Finally this courts "Finding" in P. 31. works.

against the conclusion that all three defendants struck Carmen and Sherman.

(B)

The Facts listed in "IP# 33" that three men entered there home armed, that they were man handled, ~~man~~ bound with tape, battered and Kicked, disabled and had surgeries and medical problems, that she was tied behind the back and Forced to her knees and her head was put into a chair, and that they were dressed and disguised, are all facts, other than the facts of being battered and Kicked, which are not material to the Assault charge, to being injured seriously for purposes of the Class C Felony assault charge. And they certanitly do not prove that all three defendents struck both carmen and sherman, are not material to this point, as the issue is if all three struck them, not that they were in fact struck.

In fact some of the above facts show that the victims could not identify and testify that they were each struck by all three defendents.

1.) "A jury could have inferred she was not able to view the full extent of the assaults givin her positioning and her medical and vision problems and that in the chaos of the Robbery she was assaulted by all three defendents." IP# 33.

This is saying that because carmen could not testify to the desired conclusion of fact that all three defendents assaulted her, that therefore the jury can "testify" for her and thereby find that all three defendents assaulted her, hither. This is, the jury can "make up" testimony.

This is using an absence of testimony that all three defendents struck carmen to find and prove that all three defendents struck carmen.

2.) "similarly, a jury could have inferred sherman was attacked by all three defendents when his face was in the carpet or after he lost consciousness.

The men were dressed in a similar fashion and it could be difficult to discern who was who." IP#33.

Like wise this court is saying, that because sherman could not testify to the desired conclusion of fact that all three defendants assaulted him, that therefore the jury can "testify" for him and thereby find that all three defendants assaulted him, struck him. "That is the jury can make up testimony".

This court is using an absence of testimony that all three assaulted, or struck sherman to find and prove that all three assaulted him.

3.) " Evidence was also admitted showing the victims multiple injuries, which the jury could have reasonably inferred were inflicted by more than one assailant." IP#33.

This does not prove that all three defendants each struck both carmen and sherman, and more so in light of the victims particular and specific testimony that they were each struck by only one person.

Further, what testimony was given that the injuries show that more than one assailant inflicted the injuries? Wasn't the testimony about the injuries to show the extent or seriousness of the injury, so as to show and prove that the class C Felony assault charge was justified due to the seriousness of the injury, as opposed to the charge being only a class B or class A mis. assault charge.

Again, this court here is saying that because no testimony was given that all three defendants each hit both Sherman and Carmen, that therefore the jury can make-up testimony and thus find that all three defendants each inflicted the injuries on each of the victims, and so all three are guilty.

(C)

As a summary or final conclusion in paragraph #33 this court concluded or summarized that:

1.) "Here, notwithstanding the Jones's testimony indicating they were each assaulted by only one assailant, looking at the record, there is competent evidence from which the jury could draw an inference reasonably tending to prove guilt as to both charges for all three defendants." IP #33. That is, that all three defendants each struck both Carmen and Sherman. "Notwithstanding the Jones's testimony indicating they were each assaulted by only one assailant...."

Their testimony did not "indicate" they each specifically and particularly stated only one person assaulted each of them.

"There is competent evidence...." The Evidence cited by this court is either not material as to the fact they were not hit and how many hit them, but some of the Evidence cited in this opinion works against the conclusion that all three defendants struck both Carmen and Sherman.

"The jury could draw inference...." yes, the jury could draw inference if

the jury testifies for the witnessess, and ignores the testimony given by the witnesses.

2.) "viewing the Evidence in the light most Favorable to the verdict, we conclude the jury could have found the Defendants guilty of both counts of aggravated assaults beyond a reasonable doubt." IP#33. That is, that each defendant inflicted the injury on both carmen and sherman.

Of course, as discussed above, no testimony was introduced that all three suspects each inflicted or struck both victims. And this court has to "make-up" testimony or have the jury "make-up" testimony to reach the desired conclusion. In fact, the testimony specifically and pointedly was that only one defendant struck carmen and one struck sherman.

The jury can not add to the facts testified to and can not ignore that testimony which particularly said the victims were struck by only one person, not that all three suspects struck each one of them.

(D)

The fault here is not in the proof, but it is the Attempting to stuff the proof into a mis placed (and unnecessary) charge, the assault charge. The crime here is not the assault, it is the Robbery.

Robbery is the crime here, the two necessary Elements for robbery is the use of the threat of force, a menacing, and the theft, the taking

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of property. Robbery is made up of these two crimes. And of course many times a robbery also involves the actual use of Force, an assault, a felonious restraint, and a burglary, an entering.

It is not necessary to charge the underlying criminal elements used to accomplish the robbery, in order to punish for the robbery. Robbery is simply an aggravation of the criminal elements if each criminal element were charged and the robbery itself was not charged. That is, charging the robbery allows the lesser crimes or conduct to be aggravated. To prove the robbery, it is not necessarily to prove who hit whom, as all participated equally, albeit in different roles, in the taking of the property via force. All that needs to be proven to prove robbery is that the threat of force and often times actual force was used to accomplish the taking of the property. It is not necessary to prove that all the defendants actually used force. All are guilty of Robbery even though one or some of the actors did not inflict force, or did not hit victims.

Finally, the "viewing the Evidence in the light most favorable to the verdict" does not give this court license to exercise zeal in favor of the false verdict and so make up evidence or have the jury "make up" testimony and ignore evidence so as to uphold the unfounded verdict.

And, upholding the assault verdict is not even necessary to punish the defendants for their conduct.

Conclusion

(A)

In essence, this court is saying that because the victims testified that they were each struck by only one person, and because no witness (or expert witness) testified that the victims were each struck by three different assailants, that therefore the victims were each struck by each of the three defendants. Since guilt was not proven, therefore you are guilty.

(B)

The conviction for assault must be overturned for lack of proof. And shouldn't they be overturned simply because they are unnecessary to punish the Defendants. Doesn't superfluousness obviate them, Aren't they surplusage, that is, extraneous impertinent, unnecessary. Aren't allegations of matter or issues beyond the circumstances necessary to constitute the cause of action, (the robbery), to be struck because they are impertinent to the cause of action. Surplusage is any allegation without which the pleading would yet be adequate, (the robbery). Quoting and paraphrasing from the definition of surplusage in Black's Law Dictionary, Fourth Edition. If in a civil cause of Action, see Rule n, N.D.R.C.I.V.P., surplusage can be struck out, why then shouldn't these superfluous charges be struck out in a criminal case. Shouldn't the charges and convictions for burglary, Felonious restraint, theft, and assault^{x2} all be removed. This is a matter of law.

(c)

wherefore we all three defendents pray this court to annul this case and the assault charge. And we also ask this court to annul or remove, or strike all the underlying conduct charges of: Assaults^{1,2}, theft, burglary, and Felonious restraint as they are impertinent redundant immaterial, and even scandalous matter for being False, unfounded charges and convictions.

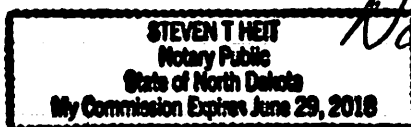
Even the prosecutors, in there opening say to the jury they had no proof that all three of the Defendents struck both cormen and sherman. We do not have this transcript but, if it is necessary we ask this court to order this transcript for us to prove this admission. Our attorneys did point this admission out to the trial judge.

Dated this 28th day of July 2014.

signed: allen Rathoff
Cory Rathoff

duly sworn before me
in the County of: Burleigh

Steven T. Heit
7-25-2014



Nathan Rathoff 7-25-14



CERTIFICATE OF SERVICE BY MAIL
 DEPARTMENT OF CORRECTIONS & REHABILITATION
 PRISONS DIVISION
 SFN 50247 (Rev. 04-2001)

RECEIVED BY CLERK
 SUPREME COURT
 JUL 29 2014

STATE OF NORTH DAKOTA)
) SS.
 COUNTY OF BURLEIGH)

The undersigned, being duly sworn under penalty of perjury, deposes and says: I'm over the age of eighteen years and on the 27th Day of July, 20 14, 9:16 A M, I mailed the following:

Petition For Rehearing

by placing it/them in a prepaid enveloped, and addressed as follows:

*David T. Jones, Carmell Mattison
 Grand Forks, States Attorney office
 P.O. Box 5607
 Grand Forks, ND 58201*

*we also sent a copy
 to each Attorney that we
 had on Appeal. PulKrebak, Thornton
 Blumer*

and depositing said envelope in the Mail, at the NDSP, P.O. Box 5521, Bismarck, North Dakota 58506-5521.

BARBARA J. BAILEY
 Notary Public
 State of North Dakota
 My Commission Expires June 19, 2020

AFFIANT *allen Rathiff*
Nathan Rathiff
 P.O. Box 5521
 Bismarck, North Dakota 58506-5521

Subscribed and sworn to before me this 27th day of July, 20 14.

Notary Public

Barbara J. Bailey

My Commission Expires On

June 19 2020