

STATE OF NORTH DAKOTA

SUPREME COURT

STATE OF NORTH DAKOTA,)

Plaintiff/Appellee,)

vs.)

JOSHUA TROY COOK,)

Defendant/Appellant.)

BRIEF OF THE APPELLANT

Supreme Court No. 20140040

Civil No. 09-2013-CR-02203

Appeal from Order Denying Motion to Suppress entered December 9, 2013 and Criminal Judgment and Commitment of January 3, 2014 in Cass County District Court, East Central Judicial District, Honorable Judge John C. Irby.

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<i>Cases:</i>	Paragraph:
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STATEMENT OF ISSUES

I. Whether an officer must knock and announce before entering the hotel room of the Defendant to execute an arrest warrant.

STATEMENT OF THE CASE

1. Joshua Troy Cook (hereinafter referred to as Defendant), the Defendant and Appellant appeals from a criminal judgment convicting him of seven counts including Possession of Methamphetamine, Possession of Clonazepam, Possession of Alprazolam, Possession of Oxycodone, Possession of Hydrocodone Combination Product, Possession of Drug Paraphernalia and Possession of Marijuana on January 3, 2014. Defendant appeared from the Cass County District Court on July 1, 2013 for Arraignment and entered Not Guilty pleas at the Preliminary Hearing and Arraignment on Jul 31, 2013. Thereafter, Defendant through his attorney filed a Motion to Suppress Evidence on February 23, 2013. The State filed State's Response to Motion to Suppress Evidence on November 5, 2013. A hearing was heard on the motion to suppress on November 27, 2013. The Court issued an Order Denying Defendant's Motion to Suppress Evidence on December 9, 2013. The Defendant entered and the Court accepted a conditional guilty plea on Counts 1-7 on December 23, 2013. Filed on December 23, 2013 were Order Entering Conditional Plea of Guilty, and Notice and Consent to Enter Conditional Plea. Filed on January 3, 2014 was the Criminal Judgment. Defendant filed this Notice of Appeal on February 3, 2014.

STATEMENT OF THE FACTS

2. On 6/27/2013, Officer Giddings arrested Defendant/Appellant Joshua Cook at 4325 23rd Avenue S, #221, Fargo, ND. This was the Arbuckel Lodge Motel. Officer Giddings, with a key from hotel management, entered Cook's room without knocking or announcing and placed Cook under arrest on a bench warrant. The warrant contained no "no knock" provision. No other warrants existed.

3. At the time of arrest, Officers also found various drugs and drug paraphernalia in the hotel room.

4. Cook was the only occupant in the room. No one else was charged with possession of the drugs in the room.

LAW AND ARGUMENT

5. Appeals shall be allowed from decisions of lower courts to the Supreme Court as may be provided by law.

6. Pursuant to the constitutional provisions, the North Dakota legislature enacted §§ 29-28-03 and 29-28-06, North Dakota Century Code, which provide as follows:

§29-28-03. "Appeals are matter of right. An appeal to the supreme court provided for in this chapter may be taken as a matter of right."

§ 29-28-06. "From what defendant may appeal. An appeal may be taken by the defendant from:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for a new trial; or
5. An order made after judgment affecting any substantial right of the party."

State v. Lewis, 291 N.W.2d 735, 737-38 (N.D. 1980).

7. Defendant appeals from the District Court's judgment convicting him of seven counts. As a matter of law, Defendant's appeal from these convictions is permissible.

8. I. Whether an officer must knock and announce before entering the hotel room of the Defendant to execute an arrest warrant.

9. In Wilson v. Arkansas, 514 U.S. 927, 115 S. Ct. 1914, 131 L. Ed. 2d 976 (1995), the Court held that police must knock and announce their presence before executing a warrant, unless doing so would endanger them or lead to the destruction of evidence. The Court in Wilson applied the rule to both the officer's search and arrest warrants for the arrestee. An arrest warrant than is no exception to the knock and announce rule.

10. There is no evidence or testimony that officers were concerned regarding their safety or destruction of evidence. No search warrant was ever applied for and reports do not indicate any information regarding possible narcotics in the room prior to arrest.

11. There is a long history of treating hotel rooms like homes. This includes for the knock and announce rule. See Richards v. Wisconsin, 520 U.S. 385, 117 S.Ct. 1416, 137 L.Ed.2d 615 (1997).

12. All evidence obtained after entering the hotel room should be suppressed as fruits of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963).

CONCLUSION

13. Based upon the reasons set forth above, the Appellant respectfully requests that the underlying convictions be dismissed.

