

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

State of North Dakota,)	
)	
Plaintiff/Appellee,)	Supreme Court No.
)	20150042
vs.)	
)	Stutsman County District No.
Adrian Williams,)	47-2013-CR-00206
)	
Defendant/Appellant.)	

ON APPEAL FROM A FINDING OF GUILTY AND SENTENCE
FROM THE DISTRICT COURT
FOR THE SOUTHEAST JUDICIAL DISTRICT
STUTSMAN COUNTY, NORTH DAKOTA
THE HONORABLE JOHN E. GREENWOOD, PRESIDING

SUPPLEMENTAL BRIEF OF APPELLANT

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[¶ 1] STATEMENT OF THE ISSUES

[¶ 2] I. The search of the defendant's hotel room without a warrant was unreasonable and did not fall within a well-recognized exception to the warrant requirement.

[¶ 3] II. The search warrant was not supported by probable cause after removing evidence found as a result of the officers' unconstitutional activity.

[¶ 4] III. The trial court abused its discretion when it denied the defendant's order for transcripts of evidentiary hearings.

[¶ 5] ARGUMENT

[¶ 6] This appeal was previously brought to this Court in State v. Williams, 2015 ND 297, 873 N.W.2d 13. In that case, Williams argued the district court erred in denying his motion to suppress evidence and his request for a complete transcript of the suppression hearing. This Court held the district court abused its discretion in denying his transcript request and reversed and remanded:

...with instructions for the district court to provide a complete transcript of the suppression hearing so Williams may properly pursue an appeal from the criminal judgment and order denying his motion to suppress evidence. We retain jurisdiction under N.D.R.App.P. 35(a)(3). Either party may file a supplemental brief with this Court based on the district court's findings and decision on the suppression motion within 30 days after delivery of the transcript.

[¶ 7] Id. | ¶ 16|. Pursuant to the Court's invitation, Williams respectfully submits this Supplemental Brief to draw this Court's attention to matters relating to the district court's findings and decision on the suppression motion. The complete transcript was provided to this Court and to counsel. Appendix, Clerk's Supplemental Certificate of Appeal, filed on March 16, 2016. Williams' supplemental brief is due on April 9, 2016. Appendix, Letter from Penny Miller, Clerk, North Dakota Supreme Court, to Adrian Williams, dated March 11, 2016. Pursuant to a motion for extension of time by

the State, the Chief Justice granted an extension within which to file a responsive supplemental brief on May 9, 2016. Appendix, Letter from Penny Miller, Clerk, North Dakota Supreme Court, to Frederick Russell Fremgen, dated March 18, 2016.

[¶ 8] With the exception of Issue III, above, (which has been addressed with the provision of the complete transcript), the Statement of Issues, Statement of Case, Statement of the Facts, Jurisdiction, Standard of Review, and Argument in this case remain the same. Accordingly, these will not be restated and only matters contained within the complete transcript of the Suppression Hearing which may bear upon the district court's findings and decision on the suppression motion will be brought to the Court's attention.

[¶ 9] A supplemental brief is an additional brief on appeal filed by consent of court or pursuant to rules of court. Generally, rules do not permit the filing of supplemental briefs without leave of court, but there are some occasions, particularly after a case is orally argued or submitted on the summary calendar, where the court will call for supplemental briefs on particular issues. On occasion, courts may permit or order the parties to file supplemental briefs which call attention to new cases, new legislation, or other intervening matter unavailable at the time of the party's last filing.

[¶ 10] The scope of a supplemental brief is limited. Only two rules of appellate procedure address limitations upon submitting supplemental information to this Court. Rule 28(k), NDRAppP, allows a party a limited right to submit supplemental citations to authorities “[i]f pertinent and significant authorities come to a party’s attention after the party’s brief has been filed—or after oral argument but before decision”. Rule 24, NDRAppP, allows an indigent defendant to file a statement of additional ground for

review to identify and discuss matters that the indigent defendant believes were not adequately addressed in the brief filed by counsel.

[¶ 11] Generally, an issue or claim may not be asserted for the first time in a supplemental brief. A supplemental brief is not the place to raise additional demands for relief. Appellate courts disapprove of the practice of asserting new issues in reply or supplemental briefs. *See e.g. Colorado Off-Highway Vehicle Coalition v. United States Forest Service*, 357 F.3d 1130 (10th Cir. Colo. 2004)]. However courts possess authority to require supplemental briefs from counsel on any issue where confusion or doubt remains. *In re Order of First District Court of Appeal in Forrester v. State*, 556 So. 2d 1114 (Fla. 1990).

[¶ 12] The original Appellant's Brief fully discussed the relevant facts and legal issues regarding the two remaining issues in this case; namely whether the search of the defendant's hotel room without a warrant was unreasonable and did not fall within a well-recognized exception to the warrant requirement; and whether the search warrant was not supported by probable cause after removing evidence found as a result of the officers' unconstitutional activity. Accordingly, this Supplemental Brief will only direct the Court to matters which were either not fully discussed in the transcripts of the trial or were omitted. These include any and all grounds which might arguably support the underlying appeal.

[¶ 13] An examination of the full transcript of the suppression hearing generally accords with the testimony which was presented at trial. However, the testimony of Sergeant Leroy Gross, Jamestown Police Department, does reveal a time discrepancy of approximately forty-two (2) minutes between the termination of the initial warrantless

search and the time stamp on the second pipe, which was illegal drug paraphernalia. Supp. Hearing Tr. pp. 136-139. *See also* testimony of Jamestown Officer Michael Lucht. Supp. Hearing Tr. pp. 175-176. One plausible explanation for this time discrepancy which was suggested by trial counsel is that this search was improper, which may bear upon Issue II.

[¶ 14] Another matter which was not included in the trial transcripts is the argument made by Williams at the end of the suppression hearing on associated matters which trial counsel did not “feel comfortable signing off on as attorney of record and I know he had some pro se filings with the court.” Supp. Hearing Tr. pp. 200-231. These statements are not testimony, but do represent matters which Williams wished to address to the trial court. These arguments may bear upon both of the remaining issues.

[¶ 15] The Appellant respectfully prays that the Court grant the relief requested in the original Appellant’s Brief filed herein.

Dated this 8th day of April, 2016.

Respectfully submitted,

/s/ Russell J. Myhre

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)	
-vs-)	District Court Case No.
)	47-2013-CR-00206
)	
)	CERTIFICATE OF SERVICE
Adrian Scott Williams,)	
)	
Defendant-Appellant.)	
)	

I, Russell J. Myhre, do hereby certify that on April 8, 2016, I served the following documents:

1. Supplemental Brief of Appellant
2. Supplemental Appendix of Appellant

On:

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Supreme Clerk of Court
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State Capitol
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by Electronic Filing, pursuant to N.D. Sup. Ct. Admin. Order 16.

Dated this 8th day of April, 2016.

I, Lee M. Grossman, hereby certify that pursuant to Rules 5(b) and 5(f), NDR CivP, that on the 8th day of April, 2016, I deposited, with postage prepaid by first class mail, in the United States post office at Valley City, North Dakota, a true and correct copy of the following document(s):

1. Supplemental Brief of Appellant
2. Supplemental Appendix of Appellant

The copies of the foregoing were securely enclosed in an envelope and addressed as follows:

Adrian Scott Williams
DOC# 091229 MSDF
P.O. BOX 05911
Milwaukee, WI 53205

To the best of my knowledge, information, and belief, such address was the last known post office address of the party intended to be so served. These above-referenced documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure, Rule 5.

/s/ Russell J. Myhre
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)	
Adrian Scott Williams,)	CERTIFICATE OF SERVICE
)	
Defendant-Appellant.)	
)	

I, Russell J. Myhre, do hereby certify that on April 12, 2016, I served the following documents:

1. Supplemental Brief of Appellant (Corrections to Paragraph numbers)

On:

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by Electronic Filing, pursuant to N.D. Sup. Ct. Admin. Order 16.

Dated this 12th day of April, 2016.

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