

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20150250

State of North Dakota,

Plaintiff and Appellee

- vs -

Chili Carlene Musselman,

Defendant and Appellant

APPEAL FROM THE CRIMINAL JUDGMENT
EAST CENTRAL JUDICIAL DISTRICT
CASS COUNTY CR. NO. 09-2013-CR-03747
THE HONORABLE THOMAS R. OLSON, PRESIDING

PETITION FOR REHEARING

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STATEMENT OF THE ISSUE

[¶1] ISSUE I: Once North Dakota law enforcement officers have enough information on the criminal activities of Chili Musselman to question her are these officers allowed to create an alarming situation for Ms. Musselman at the questioning by bringing 5 to 7 additional police officers and narcotics agents with them when they question Ms. Musselman?

NATURE OF THE CASE

[¶2] This is a petition to rehear the opinion in the above entitled matter that was filed on June 7, 2016.

STATEMENT OF FACTS

[¶3] Appellant, Chili Carlene Musselman is petitioning for a rehearing of the North Dakota Supreme Court ruling affirming the decision of the District Court of Cass County East Central Judicial District the Honorable Thomas R. Olson, Judge.

[¶4] The facts in this case are that at least forty-eight hours before Chili Musselman would be arriving in Fargo, North Dakota on an Amtrak train, law enforcement was informed that Ms. Musselman when she arrived at the train depot in Fargo, North Dakota would have in her possession methamphetamine and cocaine. Therefore the question becomes when law enforcement officers believed they had such good information on criminal activity at least forty-eight hours before the individual arrives at the train station in Fargo, North Dakota shouldn't these officers present the information they had to a judge and get either a search warrant or an arrest warrant.

[¶5] In this case rather than getting a search warrant or an arrest warrant law enforcement officers decided it was better to get eight to ten law enforcement officers and drug agents to meet the Amtrak train Chili Musselman was riding on. The reason for the eight to ten law officers was to create a situation that would alarm Ms. Musselman. The fact that and the reason for sending all these policemen and drug agents was never addressed during Ms. Musselman's appeal.

ISSUE

[¶6] Once North Dakota law enforcement officers have enough information on

the criminal activities of Chili Musselman to question her are these officers allowed to create an alarming situation for Ms. Musselman at the questioning by bringing five to seven additional police officers and narcotics agents with them when they question Ms. Musselman?

ARGUMENT

[¶7] In this case the record of the Defendant-Appellant Chili Carlene Musselman did not contain any information that she was such a dangerous criminal that eight to ten law officers and narcotic agents would be necessary before Ms. Musselman could be safely questioned. If the Supreme Court decision in this case becomes case law in North Dakota, Law enforcement will be able to send in any criminal case at least ten police officers and narcotics agents to question any suspected individual about their criminal activity. There has got to be some number that is excessive when law enforcement questions an individual. There is no question that the more law enforcement officers that are present when an individual is questioned the more intimidated the individual will be and the better the chances of getting the individual to do something suspicious.

[¶8] In this case only three law enforcement officers actually ever talked to Chili Musselman. Therefore the question is why are the additional five to seven policemen and drug agents necessary? The obvious answer is for intimidation purposes and make Ms. Musselman believe she was not free to leave.

[¶9] If the Supreme Court decision in this case becomes law, police officers and narcotics agents in the future will always be allowed to have at least ten police officers and/or agents present when they question an individual as long as three of them have

information that the individual has been or is involved in a crime.

[¶10] In this case when law enforcement has information that would allow to questioning Ms. Musselman there is no good reason why eight to ten police officers and/or narcotics agents were needed to question Ms. Musselman. No doubt the State will disagree with this and will be able to come up with situations where eight to ten police officers and/or narcotics agents maybe necessary. However the writer of this brief believes none of the situations will have facts that apply to this case.

[¶11] The Fourth Amendment to the United States Constitution states:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probably cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[¶12] People won't be secure in the persons if ten policemen and narcotics agents can be present to intimidate a person when at the most only three of the police officers and/or narcotics agents are needed. Individuals that are involved in a situations where ten police officers and/or narcotics agents are used to stop that individual and question him or her will be alarmed by the number of law enforcement officers and much more likely to do suspicious things because he or she won't think that they are free to leave.

[¶13] The facts in the case now before the Court differs from a Terry vs Ohio, 392 US 1 (1968). In Terry a law officer saw an individual involved in a suspicious activity and because of what the law officer sees he was allowed to question and search that individual. In the case now before the court none of the police officers or narcotics agents ever saw Ms. Musselman do anything suspicious before they stopped her and three of these of the police officers and/or narcotics agents questioned her. The fact that Ms.

Musselman believed she was under arrest and was not free to leave is clearly established by the fact she asked the police officers and narcotics agents permission to talk to her boyfriend.

[¶14] In the case now before the Court the reason the why the actions of this eight to ten police officers and/or narcotics agents was allowed was because three of these individuals had such good information about Ms. Musselman criminal activity that these three officers could stop and question her. The quality of this information could have been tested forty-eight hours before the Amtrak train arrived in Fargo, North Dakota, if it had been presented to a judge with a request for a search and/or arrest warrants. No such test was ever taken. Instead the three officers with the information decides to take an additional five to seven police officer and narcotics agents to the questioning.

CONCLUSION

[¶15] In this case it must be remembered there would have been no arrest of Ms. Musselman if she hadn't of panicked at the scene of her questioning and tried to give drugs to her boyfriend.

[¶16] Ms. Musselman's petition for a Rehearing should be granted.

Dated this 10 day of June, 2016.

/s/ Benjamin C. Pulkrabek
Benjamin C. Pulkrabek, ID 02908

CERTIFICATE OF SERVICE BY MAIL

[¶17] 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 June 10, 2016, she served, by e-mail and mail a copy of the following:

APPELLANT'S PETITION FOR REHEARING

to: e-mail
Gary E. Euren
Cass County State's Attorney's Office
eureng@casscountynd.gov

Mailed to:
Chili C. Musselman
DWCC
440 McKenzie St.
New England, ND 58147

The undersigned further certifies that on June 10, 2016, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANT'S PETITION FOR REHEARING.

/s/ Sharon Renfrow
Sharon Renfrow, Admin. Legal Assistant to
Benjamin C. Pulkrabek