

IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota,)	Supreme Court File No.
)	20190329
Plaintiff and Appellee,)	
)	Morton County No.
v.)	30-2019-CR-00561
)	
Tara Lynn Soucy,)	APPELLANT’S BRIEF
)	
Defendant and Appellant.)	

Appeal from the Criminal Judgment in Morton County District

Court, South Central Judicial District, Mandan, North Dakota,

October 22, 2019, the Honorable Gail Hagerty presiding

ORAL ARGUMENT REQUESTED

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Oral Argument:

Oral argument has been requested to emphasize and clarify the Appellant’s written arguments on their merits.

Transcript References:

The Jury Trial for this matter was conducted on October 22, 2019. The transcript of the jury trial is referred to as [Tr.] in this Brief.

STATEMENT OF THE ISSUE

[¶1] **ISSUE I:** Was it reversible error for the trial judge to refuse to take judicial notice of the father of the twins' conviction for Contributing to a Deprivation of a Child?

NATURE OF THE CASE

[¶2] In this case both charges are Child Neglect and Abuse and they are both charged against the child's mother, Tara Lynn Soucy (Soucy).

[¶3] The charge of Child Neglect and Abuse in the first case involves two of Soucy's children who are twins, year of birth 2016.

[¶4] The charge of Child Neglect and Abuse in the second case involves only one twin.

[¶5] The Complaint in this case was issued on 06/14/2019 along with an affidavit of probably cause and warrant of arrest.

[¶6] The preliminary hearing in this case occurred on 07/15/2019. When that hearing concluded Soucy was arraigned, information was filed, and Soucy plead not guilty.

[¶7] The jury trial took place on 10/22/2019. The jury found Soucy not guilty of count I and guilty of count II.

[¶8] The criminal judgment was entered on 10/23/2019. Soucy's notice of appeal and order for transcript was filed on 10/30/2019.

[¶9] The clerk's certificate of appeal was filed on 11/25/2019.

[¶10] This case is now before the North Dakota Supreme Court.

STATEMENT OF FACTS

[¶11] The Defendant/Appellant Tara Soucy (Soucy) has four children. The two involved in this case are her two youngest and they are twins.

[¶12] Each charged in this case is the same child neglect or abuse.

[¶13] The first charge occurred on May 28, 2019 and involved both of the twins.

[¶14] On the first charge both twins got out of the house that they lived in and had no adult taking care of them when they were found. On the second charge only one child got out and had no adult supervision when that child was found.

[¶15] Soucy's Defense Attorney Yancy Cottrill asked the Court to take judicial notice of Avalino Lopez' judgment of conviction. The Court refused. Avalino Lopez was convicted of that offense which was Contributing to the Deprivation of a minor and it occurred on May 29, 2019.

[¶16] The jury found Soucy not guilty of the first charge and guilty of the second.

[¶17] Soucy appealed the guilty verdict.

- I. **ISSUE I.** Was it reversible error for the trial judge to refuse to take judicial notice of the father of the twins' conviction for Contributing to a Deprivation of a Child?

ARGUMENT

[¶18] From what has been said above the issue involved in this case involves a trial judge evidentiary ruling. The standard of review of a trial judge evidentiary ruling is set out in Alvarado:

“We review a trial court's evidentiary ruling under an abuse-of-discretion standard.” State v. Hatlewick, 2005 ND 125, ¶9, 700 N.W.2d 717. “A trial court abuses its discretion in evidentiary rulings when it acts arbitrarily, capriciously, or unreasonably or if it misinterprets or misapplies the law.” Id. (quoting State v. Ramsey, 2005 ND 42, ¶ 8, 692 N.W.2d498). “We apply this deferential standard

of review to provide the trial courts with greater control in the admissibility of evidence.” State v. Christensen, 1997 ND 57, ¶ 5,561N.W.2d 631 (citing Knudson v. Director, North Dakota Dep’t. of Transp.,530 N.W.2d 313, 316 (N.D. 1995)).

[¶19] In this case Defendant Soucy’s Attorney requested the Court take judicial notice of Avalino Lopez, the father of the children, criminal conviction on May 29, 2019 of a charge that was related to the count II charge against Soucy of Child Neglect and Abuse.

[¶20] The following appears in the T. page 47 line 5-8:

“ MR. COTTRILL: Can you take judicial notice?

THE COURT: Not at this point. You may present that evidence in some way that you figure out later but not at this point, no.”

[¶21] The document Plaintiff’s Attorney Yancy Cottrill wanted the Court to take judicial notice of was the judgment of conviction for Avalino Lopez. See Appellant Appendix documents: Stipulation to Evidence, (p.30-31), Motion to Modify Court Record (p.32), and Order Granting Motion to Modify Court Record (p.33).

[¶22] Judicial notice is found in Rule 201 of the North Dakota Rules of Evidence:

“(a) **Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) **Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court's territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) **Taking Notice.** The court:

- (1) may take judicial notice on its own; or
- (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) **Timing.** The court may take judicial notice at any stage of the proceeding.

(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) Instructing Jury. The court must instruct the jury to accept as conclusive any fact judicially noticed.”

[¶23] According to North Dakota Rules of Evidence 201 (d) the Court may take judicial notice at any stage of the proceeding. The judicial notice requested in this case was during the trial. The trial judge in her ruling in this case ignores North Dakota Rules of Evidence 201 (d) in that she won't except judicial notice at this point. Then the trial judge ruling told Soucy she should present the evidence in some other way at a later time in trial.

[¶24] The language in Rule 201 (c)(2) is the Court must take judicial notice. In this case the District Judge refused to take judicial notice of the criminal judgement that related to a crime that the father of the twins, Avalino Lopez committed on May 29, 2019.

[¶25] Had the District Court taken judicial notice of Mr. Lopez's judgment Defendant Soucy could have argued that the crime she was charged with committing on May 29, 2019 was all Mr. Lopez' fault.

[¶26] In this case the language in North Dakota Rules of Evidence 201 is clear. The Court should have taken judicial notice of the twins' father, Avalino Lopez's, conviction. This conviction would have been beneficial to Soucy's case and would have informed the jury that the father, Avalino Lopez, had not taken proper care of the his child on May 29, 2019.

CONCLUSION

[¶27] The Court should have taken judicial notice of Avalino Lopez' judgment. Failure to do so requires this case to be remanded to the District Court for a new trial.

Dated this 14th day of January, 2020

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Tara Lynn Soucy,)	CERTIFICATE OF COMPLIANCE
)	
Defendant and Appellant.)	

[¶1] This Appellant’s Brief and Appendix complies with the pages limit of 38 for the Brief and 100 pages for the Appendix set forth in Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, as the Brief consists of 9 pages and Appendix consists of 33 pages.

Dated this 14th day of January, 2020

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Tara Lynn Soucy,)	CERTIFICATE OF SERVICE
)	
Defendant and Appellant.)	

[¶1] The undersigned, being of legal age, being first duly sworn deposes and says that she served true copies of the following documents:

Appellant's Appendix
Appellant's Brief

By email at the below address upon:

Chase Lingle
Morton County Assistant States Attorney
mortonsa@mortonnd.org

By efilng at the below address upon:

North Dakota Supreme Court
supclerkofcourt@ndcourts.gov

And by placing a true and correct copy of said items in a sealed envelope with USPS mail

to:

Tara Lynn Soucy
511 – 4th Avenue NW
Mandan, ND 58554

Dated this 14th day of January, 2020

/S/ Cassy Larson
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