

**In the Supreme Court  
State of North Dakota**

Supreme Court No. 20200020  
Dickey County District Court No. 11-2019-CR-00068

State of North Dakota  
Plaintiff/Appellee,

vs.

Francisco Eugenio Bethancorth  
Defendant/Appellant

**Appeal from the Criminal Judgment of Dickey County District  
Court, Southeast Judicial District, Located in Ellendale, North  
Dakota Dated January 9, 2020, the Honorable Daniel D. Narum  
Presiding**

**APPELLEE'S BRIEF**  
*Oral Argument Requested*

Mary DePuydt; ND ID: #08267

511 Beaver Avenue

PO Box 215

Wishek, ND 58495

Telephone: 701-452-4340

Fax: 1-701-540-6439

Email: depuydt.m@gmail.com

E-Service: depuydt.m@gmail.com

**ATTORNEY FOR PLAINTIFF/APPELLEE**

**TABLE OF CONTENTS**

Table of Authorities.....pg. 3  
Statement of the Facts.....¶¶1-21  
Law and Argument .....¶¶22-29  
    I. The District Court Correctly Denied the Defendant’s Motion  
    for Acquittal Because the Evidence Supported A Reasonable  
    Inference of Guilt.....¶¶22-29  
Conclusion .....¶30  
Basis For Oral Argument .....¶31

**TABLE OF AUTHORITIES**

Cases

*Greywind v. State*, 2004 ND 213, 689 N.W.2d 390 .....¶22  
*State v. Bruce*, 2012 ND 140, 818 N.W.2d 747 .....¶22  
*State v. Delaney*, 1999 ND 89, 601 N.W.2d 573.....¶24  
*State v. Eldred*, 564 N.W.2d 283 (N.D. 1997).....¶22  
*State v. Tipler*, 316 N.W.2d 97 (N.D. 1982).....¶22

Statutes

N.D.C.C. 12.1-04-02 .....¶22

¶1] The Appellee incorporates the Appellant’s Statement of Facts, ¶¶10 - 16, except to the extent the below is inconsistent therewith, and supplements as follows:

¶2] Oakes Chief of Police Matt O’ Brien (“O’Brien”) and Oakes Police Officer Jeremy Sitzler (“Sitzler”) first noticed Bethancorth on the early morning June 8, 2019 at approximately 2:30am when they saw three people in line at the food court arguing. Trial Tr. Day 1, 42:22-43:14; Trial Tr. Day 2, 58:15-18, 59:14-16. Bethancorth was acting aggressively towards the other two individuals and Bethancorth was “in their face.” Trial Tr. Day 1, 43:6-10; Trial Tr. Day 2 59:19-25.

¶3] Sitzler and O’Brien approached Bethancorth. Initially, Bethancorth was aggressive towards law enforcement, including swearing and putting himself within close proximity to law enforcement in a way consistent with aggressive body language. *E.g.* Trial Tr. Day 1, 43:19-44:10; 59:16-19. It appeared to O’Brien that Bethancorth was under the influence of something, but it was unclear what. Trial Tr. Day 2, 58:23-59:1. Sitzler did not notice the odor of alcohol coming from Bethancorth’s breath. Trial Tr. Day 1, 59:34-60:6. Sitzler did notice that Bethancorth was slurring his speech but noted that he was still entirely understandable. *Id.* at 44:16-20. Both O’Brien’s and Sitzler’s impressions of the conversation were that Bethancorth could understand the exchange of words, Bethancorth’s responses matched the flow of the conversation, and that Bethancorth understood the implication of his decisions. Trial Tr. Day 1, 44:21 - 45:11(Sitzler); Trial Tr. Day 2, 71:25-72:12 (O’Brien).

¶4] Dickey County Sherriff Christopher Estes (“Estes”) was radioed for assistance, and intervened. Trial Tr. Day 1, 46:2-5. Dickey County Deputy Sherriff Steven Horner (“Horner”) was approximately a block and a half away and monitored the scene in case Estes needed backup. *Id.* at 100: 12-21.

¶5] Bethancorth was much more amenable to interacting with Estes. Trial Tr. Day 1,

46:6 – 9. An explanation forwarded by both counsel for Bethancorth and the State during questioning was that Estes had rapport with Bethancorth that the other officers did not have. *E.g.* Trial Tr. Day 1, 72:9-11; 81:71-20; 82:20-25; 87:6-10; 103:14-17. The reason O’Brien called Estes is because of this rapport. Trial Tr. Day 2, 60:13-18. Estes ultimately convinced Bethancorth to allow Estes to escort him home. Trial Tr. Day 1, 46: 11-18. Bethancorth demonstrated a minor amount of staggering when he was walking with Estes, but Bethancorth did not stumble or fall, Trial Tr. Day 1, 46:19-23; Trial Tr. Day 1, 45:12-20, was able to walk without issue including walking backwards and was able to effectively judge distance as evidenced by the fact that he would get “right in the face” of officers without making physical contact with the officer or falling, Trial Tr. Day 2, 72: 13-20, and knew where his home was and did not require being led or corrected. *St. Ex.* 1 (Horner body cam video).

¶[6] When Estes and Bethancorth arrived at Bethancorth’s doorway, Bethancorth told Estes “good night,” told Estes that he was “good to go,” shook Estes’ hand, and affirmed that he was going to spend the rest of the night at home. Trial Tr. Day 1, 73:3-7. Bethancorth turned on the lights upon entering the home. *Id.* at 73:12-15. Estes believed that Bethancorth was able to understand the conversation throughout the interaction. *Id.* at 72:17-18.

¶[7] Throughout this first interaction, Bethancorth did not demonstrate any signs of being inebriated to the point of being unaware of his actions, unable to manifest a decision, being unable to purposely engage in activity, or unknowing of what he was doing (hereinafter in aggregate referred to as “Blackout Drunk”). Trial Tr. Day 1, 51:25-52:10 (Sitzler); 77:9-78:2 (Estes); 97:22-98:4; 98:15-24 (Horner); Trial Tr. Day 2, 70:17-71:3 (O’Brien).

¶[8] Approximately two minutes after Bethancorth returned home, Bethancorth was discovered back on the street attempting to enter a bar on Main Street called “Last Shot.” *Id.* at 47:3-7. To law enforcement’s knowledge, Bethancorth went directly to Last Shot and

did not attempt to enter any other building on Main Street. Trial Tr. Day 1, 47:11-16. Estes and Horner were asked to return and try to talk to Bethancorth. *Id.* at 18:22. Bethancorth stopped trying to enter the Last Shot when he saw Estes approaching. *Id.* at 83:9-12.

¶[9] Estes was again able to convince Bethancorth to return home, and Estes escorted him. Trial Tr. Day 1, 48:9-10. Bethancorth had turned off the lights when he left and again turned them on upon returning home. Trial Tr. Day 1, 75:6-10. Bethancorth did not demonstrate any signs of being Blackout Drunk. *Id.* at 51:25-52:10 (Sitzler); 77:9-78:2 (Estes). Estes believed that Bethancorth was able to understand the entirety of the second conversation as well. *Id.* at 75:11-14.

¶[10] Bethancorth reemerged a few minutes later and returned to Main Street. *Id.* at 48:11-12 and 63:19-21. This time, Bethancorth went to the Angry Beaver, an alcohol establishment and restaurant. Trial Tr. Day 1, 75:19-22 and 84:9-11. Horner approached Bethancorth, and Estes followed shortly thereafter. *Id.* at 48:18-20 and 84:20-22. Estes was able to smooth tensions between Bethancorth and Horner, and ultimately Bethancorth shook Horner's hand with normal dexterity. *Id.* at 76:17-25. Throughout, Bethancorth was able to converse with Estes in a fluid fashion. *Id.* at 76:13-15.

¶[11] Bethancorth was walked home by Estes a third time. Trial Tr. Day 1, 49:12-15. Bethancorth was able walk entirely without assistance and without stumbling or tripping, including being able to walk backwards without issue. *Id.* at 98:1-4. Bethancorth did not demonstrate any signs of being Blackout Drunk. *Id.* at 51:25-52:10 (Sitzler), 77:9-78:2 (Estes), and 97:22-98:24 (Horner)<sup>1</sup>.

---

<sup>1</sup> While Horner testified that Bethancorth appeared intoxicated, *E.g.* Trial Tr. Day 1, 106:19-20, he clarified that his understanding of the word intoxicated did not mean that a person lacked decision making capability, *Id.* at 108:20-109:6.

¶12] At this point, law enforcement, namely Horner, Estes and O'Brien, decided that they needed to "have a plan of action" if Bethancorth reemerged, namely, that Bethancorth would be taken into custody. *Id.* at 49:16-20. This discussion was due to an escalation in Bethancorth's attitude to the point where law enforcement was worried that he would not return home when asked, *Id.* at 78:6-10, and that further accommodations would be an inefficient allocation of police man-hours. Trial Tr. Day 2, 63:24-64:1.

¶13] Shortly thereafter, while law enforcement has having the above discussion, Bethancorth again left his home. *E.g.* Trial Tr. Day 1, 49:12-15; 78:11-19. Bethancorth exited towards the back of his apartment complex which is adjacent to an alley, looked up the alley and saw Estes and O'Brien, and turned and went the opposite direction down the alley. *Id.* at 78:15-19 and 99:2-7. O'Brien, Horner, and Estes pursued Bethancorth but lost him in the dark. *Id.* at 78:20-22.

¶14] Bethancorth then proceeded to enter the home resided at by Don Jones ("Don") (redacted name), J. Jones ("J.") (transcript redaction) and their three minor children, Kim Jones ("Kim"), (transcript redaction), Minor2 (name used in this brief for clarity) and a third non-witness child. The approximate time of entry was between 3:00am and 4:00am. Trial Tr. Day 2, 5:5-7. The door was not damaged, nor were there any marks indicating an atypical amount of force was used to open the door. Trial Tr. Day 2, 16:7-9; 29: 2-11.

¶15] Upon entry, Bethancorth first went to the kitchen to turn on the light and removed his hat. *Id.* at 33:5-6. Bethancorth then entered the kitchen, set down his hat, then immediately walked towards Kim, who was laying on a loveseat in the living room. *Id.* at 34:6-34. There was also a couch in the living room which was fully visible from the kitchen. *Id.* at 37:15-21. Though occupied by Minor2, the couch would have appeared to have been unoccupied because Minor2 was fully covered by blankets. *Id.* at 9:5-14 and 33:11-34:5.

¶[16] Bethancorth bent over and stared into Kim' face for a few seconds, pushed her legs back towards the backrest of the loveseat, sat/laid so that his body is resting on top of her legs, and pulled some of the blanket Kim was using onto himself. *Id.* at 34:17-35:15. After a short while, Kim heard Bethancorth snoring and assumed he was asleep. *Id.* at 35:15-21. Once Kim believed Bethancorth was asleep, she attempted to remove herself from the situation, however, when she did so Bethancorth began to stroke/rub/scratch/massage the middle of her lower back so she stopped moving. *Id.* at 35:19-36:7. This continued for 30 seconds and was categorized by Kim as contact she would not be comfortable having a stranger do. *Id.* at 36:8-17. Both Bethancorth and Jones were fully clothed, and Bethancorth did not attempt to remove any of Kim' clothes. *Id.* at 41:3-7. Some time after, Bethancorth fell back asleep. *Id.* at 21:7-11.

¶[17] J. went to investigate when, from where they were sleeping in the basement, they heard the door to their house slam and footsteps walking on the first floor. *Id.* at 5:9-12. J. initially walked around the kitchen then proceeded to the bathroom. *Id.* at 5:13-23. On J.'s way to the bathroom, they observed a cowboy hat, which they noted but did not immediately react to. *Id.* J. could not initially see into the living room due to the difference in lighting, *Id.* at 8:6-10, 16-23, however, when J. then left the bathroom, J. looked into the living room and saw Kim waiving her arms and crying, and that a man was passed out on top of Kim. *Id.* at 5:13-23.

¶[18] J. ran downstairs to get Don who was also sleeping in the basement. *Id.* at 10:17-19. Don immediately came upstairs to the living room. *Id.* at 23:2-5. When he entered the living room, Don screamed at Bethancorth then ran towards the couch. *Id.* at 24:9-13. Bethancorth appeared awake by the time Don reached the couch. *Id.* at 24:20-25:2. Don picked up Bethancorth and pushed him out of the house. *Id.* at 24:18-19. Bethancorth

attempted to resist the escort. *Id.* at 25: 3-7. Once outside, Bethancorth tried going back into the Jones' house. *Id.* at 12: 6-17 and 25:20-26:2. Bethancorth twice told Don that he would be back. *Id.* at 26:1-7. In Don's estimation, Bethancorth's words were clear and unslurred, and Don did not believe that Bethancorth was highly inebriated. *Id.* at 26:17-24.

¶[19] Bethancorth attempted to leave the scene when he saw law enforcement coming and was able to walk and run of his own accord while attempting to flee and did not stumble. *Id.* at 25:8-14, 26:7-15, and 26:21-25.

¶[20] Bethancourt was discovered by law enforcement on account of Don (redacted name) yelling. Trial Tr. Day 1, 50:3. Don described what had occurred to law enforcement. *Id.* at 50:17. Bethancorth was taken into custody. *Id.* at 52:11-15. During the period of time which Bethancorth was in custody, he did not demonstrate any signs of being Blackout Drunk. *Id.* at 51:25-52:10 (Sitzler), 80:16-19 and 92:12-92:15 (Estes).

¶[21] The determination to bring someone to detox instead of jail is made by law enforcement on the basis of how the person is acting including: the safety of the arrestee, officers, and the public. Trial Tr. Day 2, 51:22-52:11. At the time of arrest, there was no concern held by the officers that Bethancorth was inebriated to the point of it being a medical condition, and the general consensus of the officers was that detox was not warranted. *Id.* at 71:10-24. The fundamental concern throughout law enforcement's interactions with Bethancorth was his aggressive behavior rather than his level of inebriation. *Id.* at 72:21-23.

## **LAW AND ARGUMENT**

### **I. THE DISTRICT COURT CORRECTLY DENIED THE DEFENDANT'S MOTION FOR ACQUITTAL BECAUSE THE EVIDENCE SUPPORTED A REASONABLE INFERENCE OF GUILT.**

¶[22] "Intoxication is not a defense to a criminal charge [...] Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged."



N.D.C.C. 12.1-04-02. Evidence of intoxication is not considered for the purpose of justifying or excusing the crime, but for the sole purpose of determining whether, in fact, a crime has been committed. *State v. Tipler*, 316 N.W.2d 97, 101 (N.D. 1982). (citation omitted). Evidence of intoxication, in and of itself, is not conclusive evidence of lack of knowledge or intent and does not de facto entitle a defendant to a judgment of acquittal. *See, generally, State v. Bruce*, 2012 ND 140, 818 N.W.2d 747 (Concrete evidence of Bruce’s intoxication did not preclude a finding of sufficiency of the evidence supporting a conclude that Bruce knowingly make terroristic threats); *Greywind v. State*, 2004 ND 213, 689 N.W.2d 390(Greywind’s statement that they were too drunk and high to understand or remember what transpired did not supplant testimony of law enforcement to the contrary and videotape evidence); *State v. Eldred*, 564 N.W.2d 283 (N.D. 1997) (Evidence that speaker was lucid enough to understand what they were saying and did not need assistance in standing supported a finding of no “total intoxication” which would classify the statement involuntary).

[¶23] Bethancorth’s sole argument on appeal is that the evidence is inarguably conclusive that Bethancorth “was so intoxicated at the time that the trespass occurred he could not knowingly trespass.” Otherwise stated, Bethancorth argued that an essential element of trespass could not be supported by the evidence, i.e. that Bethancorth did not at the time of entry of the Jones’ residence that he was not licensed to be there.

[¶24] Bethancorth points to *State v. Delaney*, 1999 ND 89, 601 N.W.2d 573, as providing guidance for evaluation of the immediate case. While *Delaney* involved an inebriated defendant, the issues in *Delaney* are substantially different from the immediate case. The *Delaney* Court was asked to consider whether a person who was friends with the victim and had been a guest at the victim’s home would know that they were not licensed to enter the home under substantially different conditions (2 a.m. while intoxicated to brandish

a knife and make life-threatening gestures or remarks); and whether walking towards the victim, and brandishing a pocket knife at the victim while making statements that the Delany was going to kill that person could constitute terrorizing. The issue of the effect of inebriation was a tangential fact not fundamentally at the heart of the appeal. The only applicable takeaway from Delany is the fact that the inebriation of a person is insufficient in and of itself to establish a legal inability to act knowingly.

[¶25] The sole evidence presented by the Defendant in support that the Defendant was inebriated to the point that he could not have known what he was doing is the PBT by Stutsman County Correctional Center during Bethancorth's processing which found a BAC of .123. App. 17. During testimony, Bethancorth's counsel asked officers whether they would expect Bethancorth's BAC to have been higher at the time of arrest, to which officers agreed that would most likely be the case. Trial Trans. Day 1, 55:12-17, 67:6-13. However, these officers also testified that they lacked any expertise that would allow them to calculate how much higher. *Id.* at 55:12-15, 67:15-17. Bethancorth presented no expert testimony on point, and the jury was left with no evidence with which the jury could deduce Bethancorth's estimated BAC at the time of arrest.

[¶26] In addition, Bethancorth's BAC alone is not a definitive indicator of whether he was inebriated to the level required to negate culpability. When the State asked Estes, who has been the Dickey County Sherriff for five years and was a deputy since 2004, whether, in his training or experience, any conclusion could be reached as to a person's ability to understand their surroundings and words could be deduced looking solely at a person's BAC, Estes testified that it could not because there are a number of factors that impact a persons demeanor when drinking such as size, weight, and a number of other variables. *Id.* at 80:5-15. Consequentially, the jury was informed, through reliable testimony, that simply

looking at the Stutsman County Correctional Center PBT would not give them sufficient information to deduce Bethancorth's mental state.

¶[27] Inversely, as outlined above in the Statement of Facts, all four law enforcement officers who provided testimony stated that Bethancorth did not show any of the signs they would expect from someone who was Blackout Drunk, at all times Bethancorth could competently follow and participate in the conversation, and appeared to understand what he was doing. The victims also ubiquitously testified to having a similar perception of Bethancorth's behavior.

¶[28] When looking at the established facts in isolation, Bethancorth's abilities and actions are consistent with what would be expected from someone who had the mental capacity to understand what was happening, to deliberately act, and to knowingly make decisions. Bethancorth: (a) could walk without stumbling, falling, or needing assistance; (b) knew where his own house was and was able to walk there without assistance or guidance; (c) acted in a way that indicated to law enforcement that he intended to stay home, i.e. wishing Estes good night and turning on and off lights; and (d) realized the difference between the Oakes Police Department and Dickey County Sherriff's, Department, recalled his preexisting rapport and history with Estes, and treated the members of law enforcement differently in a manner consistent therewith. Furthermore, Bethancorth clearly knew that he was not at his home when discovered by Don; when forced from the home Bethancorth showed no iota of confusion or indication of belief that he was at his own home. Indeed, conversely, he threatened Don and told him that he would be back.

¶[29] The District Court had all of the above to consider when adjudicating the Defendant's Motion for Judgment of Acquittal. It is abundantly clear that there is a plethora of competent information from which a jury could reasonably inference that Bethancorth

had the capacity to and did in fact act knowingly act despite the fact that there was some alcohol in his system. When adjudicating the motion, the judge must give all favorable inference to the state, and accordingly, the only proper ruling on Bethancorth's motion was to deny the motion.

#### **CONCLUSION**

¶[30] For the reasons stated herein, the Appellee respectfully requests that this Court find that the District Court correctly found that the evidence and reasonable conclusions derived therefrom were sufficient and properly denied Bethancorth's Motion for Acquittal, and accordingly affirm the ruling of the District Court.

#### **BASIS FOR ORAL ARGUMENT**

¶[31] Oral argument is being requested so that the Appellee may provide supplemental emphasis as to the factual and legal basis of the Appellee's argument and to provide clarification as to the Appellee's argument to the extent that clarification would be helpful to the Court in its adjudication.

Dated April 30<sup>th</sup>, 2020.

/s/ Mary DePuydt  
Mary DePuydt; ND ID: #08267  
Attorney for the Appellee/Plaintiff  
511 Beaver Ave  
P.O. Box 215  
Wishek, ND 58495  
(701) 452 - 4340  
depuydt.m@gmail.com

**CERTIFICATE OF SERVICE**

I, the undersigned attorney, hereby certify pursuant to rule 5(f) of the North Dakota Rules of Civil Procedure that my office served the foregoing Brief of Appellantee via the North Dakota Supreme Court's E-File and Serve Portal and also by email upon the following:

Benjamin C. Pulkrabek  
pulkrabek@lawyer.com  
Attorney for Defendant/Appellant

/s/ Mary DePuydt  
Mary DePuydt; ND ID: #08267

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing Appellant's Brief complies with the page limitations imposed by Rule 32 of the North Dakota Rules of Appellate Procedure in that it does not exceed 12 pages.

/s/ Mary DePuydt  
Mary DePuydt; ND ID: #08267