

IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota,

Plaintiff and Appellee,

v.

Sean Taylor Spillum,

Defendant and Appellant.

Supreme Court File No.
20200156
Ward County File No.
51-2019-CR-00671

APPELLANT BRIEF

Appeal from the Criminal Judgment in Ward County

District Court, North Central Judicial District, Minot, North Dakota

February 12, 2020 & February 13, 2020 the Honorable Douglas L. Mattson 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 transcript of the jury trial conducted on 02/12/2020 through 02/13/2020 is referred to as [Tr.] in this Brief.

STATEMENT OF THE ISSUE

- [¶1] **I. Did the state in its case fail to prove an essential subject matter jurisdictional requirement?**
- II. Did the trial judge err by denying Mr. Spillum’s Motion to Suppress the third interview with Investigator Asham and Special Agent Halseth.**

NATURE OF THE CASE

[¶2] In this case Defendant/Appellant Sean Taylor Spillum (Mr. Spillum) was charged with possession of certain materials prohibited.

[¶3] The complaint, affidavit, and warrant of arrest issued were filed on 04/09/2019.

[¶4] Mr. Spillum made his initial appearance on the above charge and the warrant was served on 04/11/2019.

[¶5] The preliminary hearing on the above charge was held on 05/16/2019. When that hearing ended probable cause in the crime charged was found and Mr. Spillum was bound over to the district court where he was arraigned and plead not guilty.

[¶6] Prior to trial Mr. Spillum made a motion to suppress evidence on 07/17/2019. The state responded to Mr. Spillum’s suppression motion on 08/12/2019.

[¶7] A hearing was held on Mr. Spillum’s suppression motion on 08/26/2019. The order denying the suppression motion was entered on 09/25/2019.

[¶8] Mr. Spillum’s jury trial began on 02/12/2020 and ended on 02/13/2020 with a verdict of guilty.

[¶9] Mr. Spillum was sentenced on 05/27/2020.

[¶10] Mr. Spillum filed a notice of appeal and an order for transcripts on 06/05/2020.

[¶11] The notice of filing the notice of appeal was filed on 06/05/2020.

[¶12] The clerk’s certificate of appeal was filed on 06/30/2020.

[¶13] This matter is now before the North Dakota Supreme Court.

STATEMENT OF FACTS

[¶14] This case began when Carmen Asham, investigator with the Minot Police Department, received a cyber tip that had been sent to the National Center for Missing and Exploited children from Dropbox. That cyber tip said that a user with the username Sean Spillum with a unique user ID and specific IP address had uploaded suspected child pornography.

[¶15] The above information was used by Investigator Asham to get a search warrant for Mr. Spillum's residence for electronic devices that would contain storage. When the search pursuant to the search warrant was executed Mr. Spillum wasn't at his residence. He was at his place of employment.

[¶16] After the search of Mr. Spillum's residence Investigator Asham went to Mr. Spillum's place of employment and met and interviewed Mr. Spillum. During that interview Investigator Asham told Mr. Spillum about the search warrant, the search of his residence, and she seized Mr. Spillum's cell phone. During that interview Mr. Spillum made a number of admissions about the video involved in this case and the ages of some of the females that were on that video.

[¶17] Investigator Asham, during her investigation of Mr. Spillum's case, had three interviews with Mr. Spillum. At the third interview another law enforcement officer, Cassidy Halseth was present. Officer Halseth is a Special Agent with the Bureau of Criminal Investigation. He has had training in child pornography and how it is stored. He is also a member of the North Dakota Internet Crimes Against Children Task Force (ICAC). ICAC is a national organization that spearheads crimes against children.

[¶18] Special Agent Halseth got involved in Mr. Spillum's case when Investigator Asham contacted him and asked him to inspect items she had taken pursuant to a search warrant that she executed on Mr. Spillum's residence. These items were a Motorola Droid phone, two DPs, an Experian 15 laptop and an Experian 13 laptop. Special Agent Halseth did a forensic work up on these items and located information about Mr. Spillum's case on Dropbox.

[¶19] On April 9, 2019 Investigator Asham got a warrant for the arrest of Mr. Spillum on the charge of possession of certain materials prohibited. That arrest warrant was signed by Richard L. Hager, district judge, and directed the officers to forthwith arrest Mr. Spillum.

[¶20] Special Agent Halseth and Investigator Asham were both present on April 10, 2019 when Mr. Spillum was interviewed at the Minot Police Station. Although both officers were aware of the arrest warrant neither officer told Mr. Spillum about the arrest warrant before or during the interview. During that interview Mr. Spillum made several admissions about the video involved in this case. These admissions included the ages of some of the females on the video and the fact the video was so long he had to delete things from Dropbox to have room for all that was on this video.

[¶21] Mr. Spillum's defense to the charge of possession of certain materials prohibited begins with an explanation of how he exchanged videos with another individual and his belief the video he got contained only legal pornography.

[¶22] The video he got from the above exchange contained many hours of material. It wasn't until the fourth time he looked at some of that video that he learned it contained child pornography that involved an adult having sex with a child. This part of the video

upset him and he immediately deleted it from his phone. However, he didn't delete it from Dropbox. At a later date he tried to get into Dropbox to delete that part of the video but wasn't able to access that account.

[¶23] That during the investigation of this case there were three interviews with Investigator Asham. At the third interview there was another law enforcement officer, Special Agent Halseth was also present. This third interview became hostile when both officers pressured Mr. Spillum to admit things, cut off his answers, and wouldn't allow him to explain what had happened.

I. Did the state in its case fail to prove an essential subject matter jurisdictional requirement?

STANDARD OF REVIEW

[¶24] According to State v. Winegar, 2017 ND 106, 893 N.W.2d 741:

“It is well settled under North Dakota law that challenges to a district court's subject matter jurisdiction are reviewed de novo when the jurisdictional facts are not in dispute. Harshberger v. Harshberger, 2006 ND 245, ¶ 16, 724 N.W.2d 148. When jurisdictional facts are disputed, the district court's decision on subject matter jurisdiction necessarily involves findings of fact and conclusions of law. Therefore, when disputed facts surround a challenge to the district court's subject matter jurisdiction, we are presented with a mixed question of law and fact. See Escobar v. Reisinger, 133 N.M. 487, 64 P.3d 514, 516 (Ct. App. 2003) (holding jurisdictional challenges under the Uniform Child Custody Jurisdictional Act (“UCCJA”) is mixed question of law and fact). Under this standard, we review the “questions of law subject to the de novo standard of review and the findings of fact subject to the clearly erroneous standard of review.” *745 Wigginton v. Wigginton, 2005 ND 31, ¶ 13, 692 N.W.2d 108. 2010 ND 136, ¶ 7, 785 N.W.2d 235.”

ARGUMENT

[¶25] Defendant/Appellant Sean Taylor Spillum's case was tried to a jury of 12 persons.

[¶26] That jury during the trial heard sworn testimony from two witnesses for the state and Mr. Spillum’s sworn testimony for the defense. During that trial exhibits were received into evidence and the jury was allowed to see and examine these exhibits. After all the witnesses testified and exhibits were received the trial judge instructed the jury on the law they had to apply to this case.

[¶27] The law that is involved in this appeal is an essential jurisdictional requirement. That requirement is found on the Tr. Volume 2, p. 249 L. 7 - 9 and states:

“1. On or about October 14, 2018, in Ward County, State of North Dakota, the Defendant, Sean Taylor Spillum;” (emphasis added)

[¶28] The writer of this brief could find no trial testimony or exhibits that established that Defendant/Appellant Spillum committed the crime of possession of certain materials prohibited in Ward County, State of North Dakota.

[¶29] The jury in this case gave its verdict on February 13, 2020 and was discharged. It is now September 1, 2020. It is too late to recall the jury and allow testimony to cure the jurisdictional error about the crime occurring in Ward County.

[¶30] The state can argue that the jurisdictional issue raised in this brief was never raised before the trial court and therefore can’t be raised now on appeal. If the state raises this issue Defendant/Appellant Spillum will bring up N.D. R. Crim. P. 52 (b) which states:

“(b) **Obvious Error.** An obvious error or defect that affects substantial rights may be considered even though it was not brought to the court's attention.”

[¶31] This case is not like State v. Kraft, 413 N.W.2d 303 (N.D. 1987) where the trial judge failed to properly instruct the jury. In this case the trial judge did properly instruct the jury. The instruction required the jury make a jurisdictional finding before the jury

determined whether Mr. Spillum was guilty or not guilty. The jury couldn't have made such a jurisdictional finding because there was no evidence or testimony submitted during the trial to establish that Mr. Spillum committed the crime of possession of certain materials prohibited in Ward County.

[¶32] A jury verdict that isn't supported by a subject matter jurisdictional requirement can't be allowed to stand. The question of jurisdiction can be raised at any time.

[¶33] Mr. Spillum believes he is entitled to a remand of his case to the district court with an order requiring the district judge to dismiss his case.

II. Did the trial judge err by denying Mr. Spillum's Motion to Suppress the third interview with Investigator Asham and Special Agent Halseth.

STANDARD OF REVIEW

[¶34] Whether a person is in custody is a mixed question of law and fact and is fully reviewable on appeal. State v. Helmenstein, 2000 ND 223, ¶ 2, 620 N.W.2d 581. "When analyzing whether the accused was in custody, all circumstances surrounding the interrogation must be considered, but the ultimate inquiry is whether there was a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest." State v. Sabinash, 1998 ND 32, ¶ 14, 574 N.W.2d 827. The test for custody is objective and does not depend on the arresting officer's subjective motive or thoughts. *Helmenstein*, at ¶ 13. When evaluating whether a person is in custody, the only relevant inquiry is how a reasonable person in the suspect's position would have understood the situation. State v. Huether, 2010 ND 233 ¶ 14, 790 N.W.2d 901, 906.

ARGUMENT

[¶35] On April 9, 2019 Investigator Asham decided Mr. Spillum had committed the crime and obtained an arrest warrant for Mr. Spillum that alleged he had in his possession child pornography. That arrest warrant appears at Appendix page 12.

[¶36] On April 10, 2019 Mr. Spillum voluntarily came to the Minot Police Station to be interviewed by Investigator Asham and Special Agent Halseth. Neither before nor during the interview neither Investigator Asham nor Special Agent Halseth told Mr. Spillum about the arrest warrant. At Appendix page 12 the following language appears in the arrest warrant:

“2. YOU ARE HEREBY COMMANDED To arrest the above-named Defendant and bring him/her forthwith before the nearest available judge, to answer a complaint charging him/her with the offense(s) of **Possession of certain materials prohibited** in violation of Section(s) **12.1-27.2-04.1, 12.1-32-01(4)** of the North Dakota Century Code. Probable cause having been found, let a warrant issue herein. Dated this 9th day of April, 2019.” (emphasis added)

[¶37] Forthwith is defined in Black’s Law Dictionary, 5th Edition, as

“Immediately; without delay; directly; within a reasonable time under the circumstances of the case; promptly and with reasonable dispatch. U.S. ex rel. Carter v. Jennings, D.C.Pa., 333 F. Supp. 1392, 1397. Within such time as to permit that which is to be done, to be done lawfully and according to the practical and ordinary course of things to be performed or accomplished. The first opportunity offered.”

[¶38] The arrest warrant language clearly states what investigator Asham and/or Special Agent Halseth were to do when they found Mr. Spillum. However, neither officers follow the directions in the warrant of arrest because they knew the admissions that Mr. Spillum would make during the interview would be greatly reduced if they told him he was under arrest at the start of the interview.

[¶39] What the state wants the courts to do in this case is to disregard the arrest warrant and not consider it in the totality of the circumstances in the court's determining whether the third interrogation of Mr. Spillum was a custodial interrogation.

[¶40] The state is well aware that State v. Fields, 294 N.W.2d 404 (N.D. 1980) says a custodial interrogation occurs when a suspect is questioned by law enforcement after being taken into custody or deprived of his freedom of action in a specific way. Therefore, if only Fields is applied to the facts in the case now before the Court Mr. Spillum can't be in custody because when he was interviewed, he hadn't been taken into custody, deprived of his freedom of action in a specific way, and had no reason to believe he was in police custody.

[¶41] State v. Conley, 1998 ND 5, 574 N.W.2d 569 requires the court consider the totality of the circumstances in determining whether a custodial interrogation occurred. In the case now before the Court if the arrest warrant isn't considered because Mr. Spillum didn't know about it at the third interview, the third interview can't be custodial.

[¶42] According to State v. Golden, 2009 ND 108, 766 N.W.2d 473 (2009)

“Custodial interrogation” under Miranda does not require an arrest, but includes circumstances in which a reasonable *476 person would not feel free to leave and thus would feel the “restraint on freedom of movement of the degree associated with a formal arrest.”

[¶43] The above quote would also eliminate the third interview from being custodial interview because Mr. Spillum didn't know about the arrest warrant.

[¶44] The arrest warrant contained directions as to what all peace officers must do after they receive it. They were to be done forthwith whenever the law officers come in contact with Mr. Spillum. What peace officers must do according to the warrant of arrest is arrest Mr. Spillum and bring him forthwith to the nearest available judge (emphasis added).

[¶45] The arrest warrant doesn't give peace officers any other option. However, because of what occurred at the Minot Police Station on April 10, 2019 it is obvious Investigator Asham and Special Agent Halseth both decided they were exempt from the direction of the arrest warrant.

[¶46] The arrest warrant in this case is signed by S. Perez (#451). Therefore, neither Investigator Asham or Special Agent Halseth ever thought that the arrest warrant commanded them to do anything.

[¶47] The arrest warrant in this case now before the Court is part of the totality of the circumstances. Because of the language in the arrest warrant Mr. Spillum should have been told he was under arrest before any interrogation began on April 10, 2019.

CONCLUSION

[¶48] The arrest warrant and the language contained therein must be considered a part of the totality of the circumstances in this case. When that language is considered Mr. Spillum should have been arrested as soon as he appeared before Investigator Asham or Special Agent Halseth on April 10, 2019.

[¶49] After that arrest he should have, but was not, given by either Investigator Asham or Special Agent Halseth all of his Miranda Rights.

[¶50] Because Mr. Spillum wasn't arrested and given all of the Miranda Rights, all of the third interview must be suppressed.

[¶51] This case should be remanded to the district court with an order to suppress the DVD of the third interview and granting Mr. Spillum a new trial and at that trial nothing can even be mentioned about what went on during that third interview.

Dated this 1st day of September, 2020

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CERTIFICATE OF COMPLIANCE

¶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 N.D. R. App. P. 32 and N.D. R. App. P. 25, as the Brief consists of 14 pages and Appendix consists of 74 pages.

Dated this 1st day of September, 2020

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CERTIFICATE OF SERVICE

[¶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:

Todd Schwarz
Ward County States Attorney
51wardsa@wardnd.com

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:

Sean Taylor Spillum
C/O Ward County Detention Center
315 SE Third St
Minot, ND 58702

Dated this 1st day of September, 2020

/S/ Cassy Larson

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