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OCTOBER 1, 2020
STATE OF NORTH DAKOTA

IN THE SUPREME COURT

OF THE STATE OF NORTH DAKOTA

State of North Dakota,	)	
	)	**Supreme Court No. 20200156**
Plaintiff and Appellee,	)	
	)	
	)	
vs.	)	
	)	**Criminal No. 51-2019-CR-00671**
	)	
Sean Taylor Spillum,	)	
	)	
Defendant and Appellant.	)	

APPELLEE'S BRIEF

APPEAL FROM 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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STATEMENT OF THE ISSUES

[¶1] **I. The evidence at trial was sufficient to prove venue beyond a reasonable doubt.**

[¶2] II. The trial court did not err denying Appellant's Motion to Suppress the third interview with Investigator Asham and Special Agent Halseth.

STATEMENT OF THE FACTS

[¶3] The State is satisfied with Appellant's Statement of the Facts, ¶¶ 14-20.

I. The Evidence at Trial was Sufficient to Prove Venue Beyond a Reasonable Doubt.

STANDARD OF REVIEW

[¶4] This Court should apply a sufficiency-of-the-evidence standard of review. Appellant incorrectly asserts the matter is a jurisdictional issue, however jurisdiction and venue are different concepts. "Jurisdiction is the power and authority of a court to act, while venue is the place where an action may or should be tried." Hayden v. North Dakota Workers Compensation Bureau, 447 N.W.2d 489, 500 (N.D. 1989) (internal citations omitted).

> "When the sufficiency of the evidence to support a criminal conviction is challenged, this Court merely reviews the record to determine if there is competent evidence allowing the [trier of fact] to draw an inference reasonably tending to prove guilt and fairly warranting conviction. The defendant bears the burden of showing the evidence reveals no reasonable inference of guilt when viewed in the light most favorable to the verdict. When considering insufficiency of the evidence, we will not reweigh conflicting evidence or judge the credibility of witnesses. . . . A [trier of fact] may find a defendant guilty even though evidence exists which, if believed could lead to a verdict of not guilty."

State v. Bruce, 2012 ND 140, ¶16, 818 N.W.2d 747 (citations omitted).

ARGUMENT

[¶5] "It is well-settled law that venue need not be proven by direct and positive evidence. If such facts and circumstances are proven, as the reasonable and rational inference arises

that the offense was committed at the place charged, the verdict of the jury will not be disturbed." State v. Riordan, 161 N.W. 606 (N.D. 1917).

[¶6] The record contains competent evidence that allowed the jury to draw inferences reasonably tending to prove the matter at hand took place in Ward County. The jury heard from Detective Carmen Asham. She testified she was an investigator for the Minot Police Department. Tr. 100, ll. 14-15. She testified that she received a tip from the National Center for Missing and Exploited Children from Dropbox, identifying Appellant as having uploaded suspected child pornography. Tr. 101, ll. 2-6. She testified she executed a search warrant at his home and subsequently made contact with Appellant at his place of employment. Tr. 101, ll. 12-18.

[¶7] The jury also heard from Special Agent Cassidy Halseth, Bureau of Criminal Investigations (BCI). He testified his assistance was requested by Detective Asham to examine items that were seized upon executing the search warrant as the Minot Police Department lost their forensic examiner. Tr. 122, ll. 18-21. He testified that BCI is mostly an assisting agency, and when BCI gets involved, it's usually because a case has gone to a jurisdiction and [that jurisdiction] will ask for assistance. Tr. 122, ll. 22-25; Tr. 123, ll. 1-2. He testified that Detective Asham brought to him items that had been seized that were to be examined, including a cellphone that obviously belonged to Appellant. Tr. 123, ll. 4-20. He testified the cyber tip provided an IP address that belonged to Appellant's address had placed the illegal files into Dropbox. Tr. 131, ll. 18-23. The Dropbox account was confirmed as belonging to Appellant. Tr. 131, ll. 23-24. Special Agent Halseth reiterated the IP address belonged to Appellant explained how the files were connected to the IP address and Appellant's account. Tr. 133, ll. 8-13.

[¶8] Although no witness expressly stated the crime occurred in Ward County, based on

the testimony presented, the only reasonable inference to be drawn from the evidence is the offense occurred in Minot, Ward County. Detective Asham testified she is an officer with the Minot Police Department, and that she had executed a search warrant at Appellant's residence. Special Agent Halseth testified he was with the BCI, which is predominately an assisting agency that usually gets involved when a matter has gone to a jurisdiction, and that jurisdiction will seek out BCI's assistance. Special Agent Halseth provided testimony that identified the IP address associated with the cyber tip was connected to Appellant's address. Based on these facts alone, it is reasonable to infer from the circumstantial evidence that the criminal act took place in Minot. See State v. Bahri, 514 N.W.2d 580, 583 (Minn. App. 1994) (holding "an appellate court may find that venue was proven where the state places the offense in a particular city in the state.")

[¶9] Appellant has failed to meet his burden of showing the evidence reveals no reasonable inference of guilt when viewed in the light most favorable to the verdict. Appellant has also failed to show why this Court should consider this matter an exceptional circumstance to exercise its power to notice obvious error, pursuant to N.D.R.Crim.P. 52(b); State v. Kraft, 413 N.W.2d 303, 307 (N.D. 1987). The jury was instructed that the State needed to prove the crime took place in Ward County, and their verdict shows they followed the instruction. This Court should find that based upon all reasonable inferences from the testimony presented, a jury could have found beyond a reasonable doubt that the crime took place in Ward County, and the State presented sufficient evidence.

[¶10] Finally, the jury found Spillum guilty therefore finding that this occurred in Ward County North Dakota. As this finding is based on the circumstantial evidence provided at trial it cannot be overturned by this court substituting its judgement for that of the jury when they concluded this crime occurred in Ward County. See. State v. Rasmussen, 365

N.W.2d 481 (N.D. 1985), citing State v Ohnstad, 359 N.W.2d 827, 835-6 (N.D. 1984).

II. The Trial Court Did Not Err by Denying Appellant's Motion to Suppress the Third Interview with Investigator Asham and Special Agent Halseth.

ARGUMENT

[¶11] Appellant was not in custody at the time of the interview. The totality of the circumstances supports a finding that a reasonable person would have felt free to leave. "[T]he prosecution may not use statements made during the 'custodial interrogation' of a defendant unless it demonstrates the use of procedural safeguards, now generally referred to as Miranda warnings, to secure the privilege against self-incrimination." City of Fargo v. Egeberg, 2000 ND 159, ¶ 12, 615 N.W.2d 542 (citing Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)). 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 any significant way." State v. Fields, 294 N.W.2d 404, 407 (N.D. 1980). The totality of the circumstances determines whether a custodial interrogation occurred. State v. Conley, 1998 ND 5, 574 N.W.2d 569. Circumstances that indicate a custodial interrogation include "circumstances in which a reasonable 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.'" State v. Golden, 2009 ND 108, ¶11, 766 N.W.2d 473 citing Thompson v. Keohane, 516 U.S. 99, 112 (1995). Through an examination of the surrounding circumstances of the interrogation, the focus is whether a reasonable person would have thought he was "sitting in the interview room as a matter of choice, free to change his mind and go home . . .." Golden, ¶ 11 (quoting Kaupp v. Texas, 538 U.S. 626, 632, 123 S.Ct. 1843, 155 L.Ed.2d 814 (2003)); Keohane, 516 U.S. at 112. The only relevant inquiry is how a reasonable person in the suspect's situation would have

understood the situation. State v. Huether, 2010 ND 233, ¶ 14, 790 N.W.2d 901, 906.

[¶12] In this case, Appellant was not ordered, threatened, or required to come to the Minot Police Department, but went there voluntarily. Mot. Hr'g Tr. 8, ll. 5-7. He proceeded to the interview voluntarily. Mot. Hr'g Tr. 8, ll. 8-10. He had been previously interviewed twice in this matter: once at his place of employment and once at the Minot Police Department. Mot. Hr'g Tr. 8, ll. 15-19. The setting had not changed from the previous time he met with law enforcement at the Minot Police Department to the interview in question. Mot. Hr'g Tr. 8, ll. 21-24. Appellant had met with law enforcement voluntarily in both previous occasions. Mot. Hr'g Tr. 8, ll. 25; Tr. 9, ll. 1-2. Appellant voluntarily set the appointment time and date for the interview in question at the Minot Police Department. Mot. Hr'g Tr. 9, ll. 3-8. Appellant was told when they arrived at the interview room 1) he did not have to talk to law enforcement; 2) he did not have to answer any questions if he did not want to; and 3) if wanted assistance to obtain an attorney, law enforcement would assist. Mot. Hr'g Tr. 9, ll. 14-17. Appellant never requested to speak to an attorney. Mot. Hr'g Tr. 9, ll. 18-19. Appellant continued with the interview, answering questions voluntarily. Mot. Hr'g Tr. 9, ll. 20-22.

[¶13] In Golden, the defendant met with law enforcement at the police station after being asked to come down for questioning. Id., ¶ 2. The officer met Golden in the lobby upon his arrival, and escorted him to the interview room. Id. Golden was advised he was not under arrest, did not have to answer any questions, and was free to leave at any time. Id. Golden made incriminating statements, confessing to his involvement in a shooting that was being investigated. Id. This Court found Golden was not in custody when he made the statements. Id., at ¶ 16.

[¶14] As in Golden, Appellant voluntarily proceeded to the police department with the

understanding questions would be asked. Appellant was told he did not have to answer questions and was told he was not under arrest. Although Appellant was never told he was free leave, he had been previously questioned by Detective Asham in a similar manner at the police department where he was free to leave at the conclusion. Detective Asham reminded him of the previous interview at the outset, "[m]uch like before when you came in . . ." App. 31, ¶ 12; Index # 43. By prefacing her statement, it would be reasonable that Appellant understood the interview in question would conclude as the previous with him being free to leave.

[¶15] There is ample support for a finding that a reasonable person would have felt free to leave, and therefore Appellant was not subject to a custodial interrogation for Miranda purposes. In fact, Appellant concedes that Fields, Conley, and Golden, all provide support for a finding of Appellant not being subjected to a custodial interview due to the fact he was not taken into custody and his unawareness of the arrest warrant. Appellant's Br. ¶¶ 40-43. However, Appellant tries to shift this Court's attention from determining custody based on an analysis of what a reasonable person would have believe by focusing on the arrest warrant, claiming it must be included in the totality of the circumstances due to law enforcement failing to execute it immediately. Appellant has failed to provide any authority in support of his argument.

[¶16] "There is no constitutional right to be arrested." Hoffa v. United States, 385 U.S. 293, 310, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966). "A policeman's unarticulated plan has no bearing on the question whether a suspect was 'in custody' at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood the situation." Berkemer v. McCarty, 468 U.S. 420, 442, 104 S.Ct. 3138, 3151, 82 L.Ed.2d 317, 336 (1984); see also United States v. Boucher, 909 F.2d 1170, 1174 (8th Cir. 1990)

(rejecting argument that questioning was a deliberate attempt to elicit incriminating statements through a "backdoor interrogation" because defendant was unaware of officer's intentions to arrest him at the time); United States v. Knowles, 2 F. Supp. 2d 1135, 1146 (E.D. Wis. 1998) (agent's delay in executing arrest warrant not impermissible). In addition, this Court has held, "law enforcement officers are under no constitutional duty to halt the questioning of a suspect and place that person under arrest the moment they have the minimum evidence necessary to establish probable cause." State v. Connery, 441 N.W.2d 651, 655 (N.D. 1989) (citations omitted).

[¶17] Law enforcement was not required to inform Appellant of the existence of the arrest warrant. Precedent provides no constitutional right was violated by law enforcement failing to execute the arrest warrant prior to the interview, nor has Appellant provided authority to the contrary. No authority exists to include the arrest warrant's existence as part of the totality of the circumstances analysis. The trial court did not err denying Appellant's Motion to Suppress.

CONCLUSION

[¶18] Based upon the foregoing, the State respectfully requests this Court affirm the verdict, finding sufficient evidence was presented to the jury that the criminal acts took place in Ward County. Additionally, the State respectfully requests that this Court affirm the trial court's Order Denying Motion to Suppress.

Dated this 1st day of October, 2020.

/s/Todd A. Schwarz
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IN THE SUPREME COURT

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State of North Dakota,	)	
	)	**Supreme Court No. 20200156**
Plaintiff and Appellee,	)	
	)	**Criminal No. 51-2019-CR-00671**
	)	
vs.	)	
	)	
	)	
Sean Taylor Spillum,	)	
	)	
Defendant and Appellant.	)	

REQUEST FOR ORAL ARGUMENT

[1] The State requests oral argument to clarify arguments and address questions regarding facts that may not be apparent from the record.

Dated this 1st day of October, 2020.

/s/Todd A. Schwarz
Todd A. Schwarz #04708

IN THE SUPREME COURT

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State of North Dakota,	)	
	)	**Supreme Court No. 20200156**
Plaintiff and Appellee,	)	
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	)	
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	)	**Criminal No. 51-2019-CR-00671**
	)	
Sean Taylor Spillum,	)	
	)	
Defendant and Appellant.	)	

CERTIFICATE OF COMPLIANCE

[1] The undersigned hereby certifies that the Brief of Plaintiff and Appellee, is in compliance with Rule 32 of North Dakota Rules of Appellate Procedure and the brief contains 11 pages.

Dated this 1st day of October, 2020.

/s/Todd A. Schwarz
Todd A. Schwarz #04708

IN THE SUPREME COURT

OF THE STATE OF NORTH DAKOTA

State of North Dakota, Plaintiff/Appellee, vs. Sean Taylor Spillum, Defendant/Appellant.	)	Supreme Court No. 20200156 Criminal No.. 51-2019-CR-00671

AFFIDAVIT OF SERVICE

LeAnn Westereng, being first duly sworn, deposes and says:

That she is a citizen of the United States of America, over the age of twenty-one years, and is not a party to nor interested in the above entitled action; that on the 1st day of October, 2020, this Affiant provided a true and correct copy of the following documents in the above entitled action:

APPELLEE'S BRIEF with REQUEST FOR ORAL ARGUMENT AND CERTIFICATE OF COMPLIANCE

By electronic service to the following:

BENJAMIN C. PULKRABEK
pulkrabek@lawyer.com

LeAnn Westereng

Subscribed and sworn to before me this 1st day of October, 2020, by LeAnn Westereng

Notary Public

LYNNAE RUDLAND
Notary Public
State of North Dakota
My Commission Expires April 26, 2022