

IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota,

Plaintiff and Appellee,

v.

Eddie Lee Coleman,

Defendant and Appellant.

Supreme Court File No.

20210040

Ward County File No.

51-2018-CR-02303

APPELLANT BRIEF

Appeal from the Verdicts entered on February 2, 2021

And the Order Deferring Imposition of Sentence entered on February 2, 2021 in
Ward County District Court, North Central Judicial District, Minot, North Dakota

The Honorable Todd L. Cresap Presiding

ORAL ARGUMENT REQUESTED

Benjamin C. Pulkrabek
ND Bar No. 02908
Pulkrabek Law Office
402 First Street NW
Mandan, ND 58554
Office: 701-663-1929
Pulkrabek@lawyer.com
Attorney for the Appellant

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ISSUE I:
After considering all of the testimony and evidence did
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Oral Argument:

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

Abbreviations:

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Transcript of proceedings Tr.

STATEMENT OF THE ISSUE

[¶1] **ISSUE I.** After considering all of the testimony and evidence did Exhibit #1 - the video pictures on police officer Josh Noyes camcorder establish and prove that Eddie Lee Coleman didn't interfere with officer Noyes performing his duties and did not prevent Mr. Coleman's arrest?

NATURE OF THE CASE

[¶2] Five citations were filed charging the Defendant/Appellant Eddie Lee Coleman (Mr. Coleman) with the following offenses (1) endangering a child or vulnerable adult, (2) fleeing a peace officer – vehicle – felony, (3) preventing arrest, (4) simple assault peace officer, and (5) driving while license privilege is suspended or revoked on 11/26/2018.

[¶3] A Rule 16 discovery request was filed on 11/30/2018.

[¶4] A motion to dismiss was filed on 01/28/2019 and an order dismissing count 1 was entered on 02/05/2019.

[¶5] On 02/06/2019 a complaint and affidavit were filed.

[¶6] An Information was filed and counts 2 and 5 were dismissed on 03/15/2019.

[¶7] The jury trial in this matter took place on 02/02/2021 and the jury found Mr. Coleman guilty of Count 3 preventing arrest, and not guilty of count 4, simple assault – peace officer.

[¶8] Judgment of acquittal on Count 4 was entered on 02/02/2021 and an order deferring sentence on Count 3 was entered on 02/02/2021.

[¶9] On 03/03/2021 a notice of appeal, order for transcript, and notice of filing the notice of appeal were filed.

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

STATEMENT OF FACTS

[¶11] The Defendant/Appellant Eddie Lee Coleman (Mr. Coleman) was originally charged with five citations on 11/26/2018. Citation 1, 2, & 5 were dismissed before trial. The two citations that were reduced to formal charges were 3. Preventing arrest, and 4. Simple assault of a peace officer.

[¶12] The facts in this case occurred in the late evening hours of November 23, 2018. At that time and date in the city of Minot, North Dakota, Minot police officer Josh Noyes was on routine patrol when he saw a vehicle on West University Avenue going 37 miles per hour in a 25 mile per hour zone. That vehicle turned right on 8th Street Northeast and went through a red light.

[¶13] Officer Noyes decided to and did catch up to the vehicle and do a registration check. Officer Noyes checked out the license plate numbers on his computer and also had dispatch check them. Both checks came back that the vehicle wasn't on file. Because of what he saw the vehicle do and the fact the vehicle wasn't on file he turned on his red and blue emergency lights and initiated a traffic stop.

[¶14] About the same time officer Noyes' emergency lights came on the vehicle pulled into a driveway in the 800 block of 8th Avenue Northeast and the driver got out of the vehicle. Officer Noyes then stopped his vehicle, exited it, and ordered the driver to stay put, stand next to his vehicle, and place his hands on the vehicle. The driver complied. Officer Noyes then ordered the driver to put his hands behind his back. The driver didn't comply. Officer Noyes described the driver's failure to comply as passively non-compliant.

[¶15] Even though this was just a traffic stop, officer Noyes decided to grab one of the driver's hands and tried to bring it behind the driver's back. The driver responded by flexing his arms.

[¶16] After that officer Noyes gave two descriptions of what happened. The first was made in his police report and affidavit which said the driver pushed himself away from the vehicle and he hurt officer Noyes with his elbow. Then officer Noyes looked at his camcorder recording and that recording showed him what actually happened. According to officer Noyes that recording shows that the driver turned and punched him in the center of his chest. The state during officer Noyes' testimony had that recording admitted into evidence as State's Exhibit #1 and then play it for the jury. In chambers the trial judge said after viewing the recording said at Tr. p. 34 L. 24 to Tr. p. 35 L. 10 that he couldn't see the punch to officer Noyes chest:

“THE COURT: Okay. I just want to make sure you understand why I'm making the ruling that I'm going to make which is I'm going to deny the Rule 29 motion because I believe, arguably, the officer has a basis, you know, you interfered with his official duties. If not an arrest, his official duties, and I do believe I can't tell that -- I can't tell if anything happened on that video. I mean, I certainly don't necessarily see a punch, but that's just my view of the video. Others may have a different view. And certainly there was evidence that something happened and the officer went down. So that's what I'm required to do in that situation. So that's my ruling.”

[¶17] On the night all of this occurred the driveway where the vehicle was parked was very slippery because of ice. Defendant's exhibit A showed that officer Noyes slipped on the ice and fell to the ground a second time.

[¶18] The state rested its case at the end of Officer Noyes testimony. The defense then made a Rule 29 motion at Tr. p. 30 L. 17 to Tr. p. 31 L 23 (see paragraph 24).

[¶19] A long discussion with the judge and counsel followed at Tr. p. 31 L. 24 to p. 35 L. 10. The trial judge denied the defense's Rule 29 motion.

[¶20] The defense then rested without calling any witnesses or putting in any evidence.

[¶21] No Rule 29 motion was made at that point. The reason why none was made is found in the Tr. p. 60 L. 7 to Tr. p. If another Rule 29 had been made the reason why the trial judge would have denied the Rule 29 motion is found in the Tr. p. 60 L. 7 to L. 14:

“MR. CRAIG: I already made a Rule 29 motion for acquittal. I don't believe
--
THE COURT: You have a right to do it again at the close of the case.
MR. CRAIG: No additional evidence has been presented, so I won't make
another one. I anticipate the ruling is not going to change.
THE COURT: And the Court will make the same ruling.”

[¶22] The trial ended with the jury finding Defendant/Appellant Coleman guilty of preventing an arrest and not guilty of simple assault on a peace officer.

ARGUMENT

ISSUE I: After considering all of the testimony and evidence did Exhibit #1 - the video pictures on police officer Josh Noyes camcorder establish and prove that Eddie Lee Coleman didn't interfere with officer Noyes performing his duties and did not prevent Mr. Coleman's arrest?

STANDARD OF REVIEW

[¶23] According State v. Kinsella, 2011 ND 88 ¶7, 796 N.W.2d 678 (N.D. 2011) the standard of review for challenging the sufficiency of the evidence is:

“When the sufficiency of evidence to support a criminal conviction is challenged, this Court merely reviews the record to determine if there is competent evidence allowing the jury to draw an inference reasonably tending to prove guilt and fairly warranting a 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 jury may find a

defendant guilty even though evidence exists which, if believed, could lead to a verdict of not guilty.”

[¶24] In the case now before the Court Defendant/Appellant Eddie Lee Coleman (Mr. Coleman) at the conclusion of the state’s case made his motion for acquittal at Tr. p. 30 L. 17 to p. 31 L. 23:

“MR. CRAIG:

Yes, Your Honor. I'll make a Rule 29 motion for judgment of acquittal on both counts. I'll start with preventing arrest or discharge of other duties, and I'm looking at what the State needed to present evidence on. And I'm fully acknowledging the benefit of the doubt that's given to them at this point in the proceeding. The first element is that they have to establish Mr. Coleman intended to prevent a public servant from effecting arrest of the defendant for a misdemeanor from discharging any official duty. We haven't heard anything that he was, one, placed under 1 arrest or, two, that there was some other charge that he needed to be placed under arrest for. So they've actually failed to establish that particular point. They've also failed to establish that there were means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. What we saw here was there was a little bit of a spat, someone fell down, effectively, but there was no offense that he was being arrested for at that time. It was – we heard speeding and we heard running a red light, I think, was the other thing as well. So there isn't anything to justify that particular charge going to the jury. Now, as it pertains to the assault on a police officer, usually the way I explain these types of motions, these Rule 29 motions, is we have to give every possible inference and benefit of the doubt to the State's evidence and unless it's on video, there's nothing that's really going to contradict that. What we have here, and the evidence that the Court should consider, is the video that was presented. There was testimony that there was a strike in the chest, that he got punched in the chest. That's clearly not visible on the video, and as such I don't believe that there is sufficient evidence for that charge to go in front of the jury as well.”

[¶25] The North Dakota Rules of Criminal Procedure that applies to this case is Rule 29 Motion for Judgment of acquittal: “(a) **Before Submission to the Jury.** After

the prosecution closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.”

[¶26] After Mr. Coleman’s Rule 29 motion for acquittal, the trial judge, counsel for the state, and Defendant’s counsel had a discussion found at Tr. p. 31 L. 24 - p. 35 L. 10:

“THE COURT: Mr. Gonzalez?

MR. GONZALEZ: Your Honor, just to clarify some matters, there was also not just the speeding and the running of the red light, but the officer checking his wants, warrants, and his license, coming back nothing. Originally, there was a DUS charge that ultimately got dismissed, but at the time of the incident, that was also a factor at play here. Going back to the --

THE COURT: Was there any testimony of that today?

MR. GONZALEZ: There was testimony to the speeding, there was testimony to the running of the red light, there was testimony to the checking of the wants, warrants, and his license and it coming back nothing.

THE COURT: So, once again, so you get back to Mr. Craig's point, what was the misdemeanor infraction that he was discharging official duty that he was preventing the arrest from?

MR. GONZALEZ: There was the speeding, there was the going through the red light --

THE COURT: Those aren't even infractions, those are traffic offenses.

MR. GONZALEZ: -- there was also the DUS that, again, ultimately got dismissed. But at the time of the incident, officer did testify that it came back nothing there -- it came back that that was one of the issues. And in DUS matters, they do get arrested. Going to the arrest itself, and the simple assault, and the resisting of the arrest, we're just going to argue, me and Mr. Craig, until we're blue 1 in the face on whether that person got hit or not. Now, I'm looking at the video and I'm like, yes, Mr. Coleman struck that officer. Mr. Craig says no. All

right. That's a factual dispute that I believe that a jury can make up their minds by looking at the video as many times as they want to to decide if, indeed, Officer Noyes got struck in the chest where he testified to where he got struck at. So as far as the State's concerned, I believe that this is a matter that is fully in the purview of the jury to decide.

THE COURT: I'll give you a little rebuttal.

MR. CRAIG: There wasn't any testimony about any arrest taking place whether it be for driving under suspension or that there was a lack of license whatsoever. So there isn't that actual arrest which is needed for one of the essential elements here. It is, I think, the Court's obligation under this set of facts to dismiss that particular charge as there hasn't been enough to justify that at this point.

THE COURT: Wasn't there evidence of it being he ran the plates, it's not coming back to anybody? I mean, so then you have, potentially, an unregistered vehicle which is a B misdemeanor.

MR. CRAIG: There wasn't any testimony in that regard that that was a suspicion, or that he was being placed under arrest. The --

THE COURT: Well, but does he really need to say the magic words of, I believe there may be a registered vehicle violation? What he testified up there was that they were coming back with no registration on that license plate, if my memory of the testimony is accurate.

MR. CRAIG: Your Honor, what the testimony was was that the officer said that he was being detained because it was late at night and there was no one around. It wasn't because he was being placed under arrest for anything. And what the video clearly shows is, I am detaining you, I am not arresting you.

THE COURT: Well, but that happens a lot when people are being investigated for committing a crime. I don't -- let me see the essential elements, or the definition. "...or from discharging any other official duty." Isn't his duty to investigate that potential crime? It doesn't necessarily have to be an arrest, but he prevents him from discharging his official duty as an officer. This is the dilemma I'm left with, Mr. Coleman, is I do have to take this evidence in the light most favorable to

the government. When it goes in front of the jury, it's a whole different deal.

THE DEFENDANT: I know. I know, Your Honor.

THE COURT: Okay. I just want to make sure you understand why I'm making the ruling that I'm going to make which is I'm going to deny the Rule 29 motion because I believe, arguably, the officer has a basis, you know, you interfered with his official duties. If not an arrest, his official duties, and I do believe I can't tell that -- I can't tell if anything happened on that video. I mean, I certainly don't necessarily see a punch, but that's just my view of the video. Others may have a different view. And certainly there was evidence that something happened and the officer went down. So that's what I'm required to do in that situation. So that's my ruling."

[¶27] From what the trial judge said above the only reason he didn't grant Mr. Coleman's Rule 29 motion was that he believed that Mr. Coleman could have done something that interfered with officer Noyes' performance of his duties. From the testimony and evidence in this case the only thing that Mr. Coleman could have done to interfere with Office Noyes' duties would have been if Mr. Coleman had punched officer Noyes in the chest and Exhibit #1, according to the district judge, doesn't show Mr. Coleman punched officer Noyes.

[¶28] This case is not one where the police officer said he was punched in the chest and the Defendant denied punching him. This case involves state's Exhibit #1 which is a CD entitled Noyes 1 Body Cam Car Cam No. 18. Exhibit #1 and it was admitted into evidence and played in Court in front of the jury. As to what is on Exhibit #1 officer Noyes at Tr. P. 27 L. 21 - p. 28 L. 6 states:

"Q. You're now insisting today that there is a punch that's visible on that video?
A. Yes. Whether it's an open-hand strike or a punch, yes, there absolutely is.
Q. Okay. So, if we watch that video, we absolutely will be able to see what occurred there?"

A. You will see some sort of motion with his left arm or hand making contact with my chest. Whether that's a punch with the thumb out or thumb in, or open hand, or something -- his hand, appendage of his body, struck the center of my chest causing me to fall to the ground.”

[¶29] Therefore the question is what does a person see when he or she views Exhibit #1?

[¶30] The transcript shows that the trial judge after viewing Exhibit #1 made the following statement regarding Exhibit #1 at Tr. P. 35 L. 4 through 7: “I do believe I can’t tell that – I can’t tell if anything happened on that video. I mean, I certainly don’t necessarily see a punch, but that’s just my view of the video.”

[¶31] Therefore in the case now before the Court the trial judge states he can’t see a punch on Exhibit #1. A punch is the only thing that officer Noyes testified Mr. Coleman did to him that could have interfered with his duties. If the trial judge could see no punch, there is no reason to believe anyone else can see a punch. However, to see if what the judge saw is correct a person has to view Exhibit #1.

[¶32] This Court should view Exhibit #1. If the members of this court agree that they can’t see a punch they aren’t considering new evidence, they are agreeing with the trial judge’s statement that he couldn’t see a punch. If no one can see Mr. Coleman punch officer Noyes on Exhibit #1 Mr. Coleman’s Rule 29 motion must be granted.

CONCLUSION

[¶33] Mr. Coleman’s Rule 29 motion should have been granted. This case should be remanded to the trial court with an order to grant Mr. Coleman’s Rule 29 motion and dismiss the guilty verdict of preventing an arrest.

Dated this 30th day of March, 2021.

/S/ Benjamin C. Pulkrabek
Benjamin C. Pulkrabek
ND Bar No. 02908
Pulkrabek Law Office
402 First Street NW
Mandan, ND 58554
(701) 663-1929
pulkrabek@lawyer.com
Attorney for Appellant, Eddie Lee Coleman

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**CERTIFICATE OF
COMPLIANCE**

[¶1] This appellant’s brief and appendix complies with the page 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. The brief in this matter consists of 13 pages and appendix consists of 49 pages.

Dated this 30th day of March, 2021.

/S/ Benjamin C. Pulkrabek
Benjamin C. Pulkrabek
ND Bar No. 02908
Pulkrabek Law Office
402 First Street NW
Mandan, ND 58554
(701) 663-1929
pulkrabek@lawyer.com
Attorney for the Appellant

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CERTIFICATE OF SERVICE

[¶1] I certify that a true and correct copy of the following, specifically:

1. Appellant Appendix
2. Appellant Brief
3. Certificate of Compliance
4. Certificate of Service

by electronically serving the same through the North Dakota Supreme Court e-filing system and that North Dakota Supreme Court e-filing portal will provide service to the following:

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supclerkofcourt@ndcourts.gov

John M. Gonzalez
Ward County Assist. States Attorney
51wardsa@wardnd.com

and by U.S. postal service with proper postage affixed to:

Eddie Coleman
1015 – 27th Street SE
Minot, ND 58701

Dated this 30th day of March, 2021.

/S/ Benjamin C. Pulkrabek
Benjamin C. Pulkrabek
ND Bar No. 02908
Pulkrabek Law Office
402 First Street NW, Mandan, ND 58554
(701) 663-1929
pulkrabek@lawyer.com
Attorney for the Petitioner/Appellant