20210170

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
SEPTEMBER 1, 2021
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

City of Jamestown, Plaintiff/Appellee, vs. Holden Kastet, Defendant/Appellant.	)))))))))	Supreme Court No. 20210170 Stutsman County District Court No. 47-2021-CR-00017 **Oral Argument Requested**

BRIEF OF PLAINTIFF/APPELLEE

ON APPEAL FROM CRIMINAL JUDGMENT ENTERED ON

JUNE 2, 2021 AND CORRECTED CRIMINAL JUDGEMENT ON

JUNE 4, 2021 FROM THE DISTRICT COURT,

FOR THE SOUTHEAST JUDICIAL DISTRICT, STUTSMAN COUNTY,

NORTH DAKOTA, THE HONORABLE TROY J. LEFEVRE, PRESIDING

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STATEMENT OF THE ISSUES

[¶1] Whether the District Court correctly determined that the defense of consent does not apply to the charge of simple assault when a defendant headbutts and repeatedly punches the victim in a public place because it would violate public policy.

[¶2] Whether the District Court correctly denied the requested jury instruction on self-defense when the defendant is unable to show that his beliefs were reasonable and when the defendant was the initial aggressor.

STATEMENT OF THE CASE

[¶3] The City of Jamestown adopts the Appellant's statement of the case except the City denies there was sufficient evidence at trial to support Appellant's requested instructions. Holden Kastet was charged with simple assault under City of Jamestown Municipal Code Sec. 22-1 which defines simple assault in pertinent part as follows: "A person is guilty of an offense if that person…willfully causes bodily injury to another human being". The City of Jamestown also adopted the North Dakota Century Code's definition of culpability found at Sec. 22-52.1(e) ("Willfully," if he engages in the conduct intentionally, knowingly or recklessly.) Defense of Consent is an issue of first impression in this Court, which will impact criminal prosecutions across the State. The opportunity to address the issues presented in greater detail to this Court, and to respond to inquiries from this Court, will assist the Court in its deliberations.

STATEMENT OF THE FACTS

[¶4] At trial the evidence showed Holden Kastet initiated contact with Nick Fuchs by Facebook message. City's Exhibit 3, Document Nos. 43-49. Kastet threatened Fuchs if

he continued to see Kastet's girlfriend. Fuchs was not aware Kastet was in a relationship with this girl. Tr. 105, lines 18-20; See City's Exhibit 3b, Document No. 44. On November 22, 2020, Kastet again messaged Fuchs that he found out Fuchs spent time with his girlfriend again. See City's Exhibit 3d-f, Document Nos. 47-49. Kastet messaged "You had a choice last night and I warned you once about it and now you are going to find out that I am not one to fuck with". Id.

[¶5] James Ova testified that on November 25, 2020 he was spending the evening with Kastet and a group of friends drinking. After having a drink or two, they went to IDK, a bar in Jamestown, to continue drinking after 7:00 p.m. but before 8:00 p.m. Tr. 45 lines 22-25; Tr. 46 lines 1-7 and lines 18-25; Tr. 47, lines 1-14. Ova indicated he and Kastet are childhood friends, they both work together at Lux Concrete and they spend time with each other outside of work. Tr. 44, line 25; 45 lines 1-11.

[¶6] Ova testified while he and Kastet were in a group standing in the entry of the bar, Fuchs came up to the group to address Kastet. Tr. 28, lines 1-4; Tr. 47, lines 21-25. Ova testified after Kastet and Fuchs spoke, they went outside and Ova followed them. Tr. 48, lines 20-21. Video from inside the bar shows Fuchs and Kastet speaking to each other and then leaving out the front door. See City's Exhibit 1, Document ID # 50 (consisting of three video clips).

[¶7] While outside, Kastet and Fuchs stood about five to ten yards from the front door arguing. Ova testified that during Kastet's and Fuchs' conversation, they were standing within touching distance, but were not "nose to nose". Tr. 53, lines 23-25; Tr. 54, lines 1-3.; Tr. 49, lines 1-2. Ova testified Fuchs did not make any movements towards Kastet.

Tr. 51, lines 21-24. Fuchs did not hit him, push him, make any physical contact, or make any movement towards Kastet like he was going to hit or push him. Ova did not see Fuchs at any point clench his hands into a fist. Tr. 52, lines 1-25. Notably, Officer Mittleider testified:

> I'm unaware of what was said, their conversation. The things that I did observe from [Fuchs], it did not appear that he was in an aggressive posture. Through the video I watched his hands in and out of his pockets. Right before the physical altercation happened, [Fuchs] had his hands in his pockets. His feet were neutral, side by side next to each other. They weren't in a bladed stance such as you would see in a fighting stance.

Tr. 78, lines 20-25; Tr. 79, lines 1-6.

[¶8] At this point, the video clearly shows Fuchs with his hands in his pockets. It shows Kastet turn his ballcap backwards. Kastet grabs Fuchs' jacket with both hands. Kastet forcefully hits his head into the face of Fuchs. Kastet punches Fuchs five times while Fuchs is on the ground. Tr. 53, lines 1-24; Tr. 54, lines 5-22; See video clip from outside the bar, City's Exhibit 1 as Document no. 50. In reviewing the video, at no time does Fuchs take any action towards Kastet, before, during, or after Kastet pummeled him. Ova then testified that he told Kastet, "He's done", as Kastet finished punching Fuchs on the ground. Tr. 55. Lines 4-11.

[¶9] Morgan Harr, who saw Fuchs after the altercation testified Fuchs' face looked "Mangled. His face was all messed up. Bleeding. He looked like he needed to get to the hospital". Tr. 90, lines 7-10. Officer Mittleider testified that when he arrived at the hospital, he observed Fuchs had blood on his lips, an abrasion on the left side of his face, and a bloody nose. Tr. 64, lines 12-17. Officer Mittleider noted that Fuchs appeared to be confused while talking to him. Officer Mittleider obtained photographs of the injuries

which were received by the Court. See City's Exhibit 2 Document Nos. 39-42. Fuchs testified that he felt pain from the incident. Tr. 100, lines 21-25. He required the placement of a metal bar to keep his teeth in place. Unfortunately, his teeth had died and, at the time of trial, was scheduled for three root canals as a result of Kastet's actions. Tr. 101, lines 9-15.

[¶10] During the Defendant's case in chief, testimony was presented by Kastet and Ova claiming Fuchs approached Kastet and made varying statements about going outside. Tr. 132, lines 1-4; Tr. 126, lines 22. Ova testified that it appeared to him the conversation was heated and they were yelling at each other. Tr. 127, lines 11-12. Kastet noted he felt Fuchs was "puffing his chest". Tr. 140, lines 18-20. Both Kastet and Ova acknowledged Fuchs did not take any action towards Kastet outside the bar prior to Kastet headbutting and punching him five times. Tr. 140, lines7-15; Tr. 52, lines 1-25. [1]

[¶11] At the conclusion of the case, the District Court Judge found that the instructions for self-defense and consent as a defense would not be given to the jury. The District Court Judge in denying consent as a defense noted "So again, 12.1-17-08 is the statute in question. Subsection (a) is kind of overly broad". Tr. 158, lines 21-22. The District Court noted there was no case law in North Dakota to provide guidance on when or how the defense applies. The District Court referenced W.E. Shipley, Consent as Defense to Charge of Criminal Assault and Battery, 58 A.L.R.3d 662 (1974 & Supp.2008), which is

[1] Kastet also clarified the "shrug" that Fuchs may have given him while inside the bar saying "he approached me from behind and might of [sic] nudged me to get my attention." Tr. 139, lines17-22. Kastet again clarified, "he did in some way touch me or tap me to get my attention". Tr. 140, lines 3-6.

listed as a collateral reference in the annotated century code. Tr. 159, lines 9-18. The District Court highlighted the general consensus in case law that consent is not a defense to assault and provided a listing of numerous cases from the treatise. Tr. 159, lines 19-24 Tr. 160, lines 1-12. The Court ultimately concluded "based on the overwhelming consensus throughout the country…in actual simple assault cases it would not be appropriate" to give the instruction. Tr. 160, lines 13-24.

[¶12] The Court then addressed Kastet's request for an instruction on self-defense. Tr. 160, line 25; Tr. 161, lines 1-25, Tr. 162, lines 1-24. The Court, in discussing the instruction, asked the defense attorney, "so words are enough? You don't have to have a flinch or a – I mean you're saying the best defense is a good offense type of thing? You have to get out ahead of it?" Tr. 161, 10-13. In response the defense attorney stated, "how long do you wait – do you have to wait to get hit before you punch someone all the time?" Tr. 161, lines 14-18. This goes back and forth again as highlighted by the Appellant in its Brief at ¶11. The Prosecution argued the defense of self-defense does not apply in situations where a victim does not first take some physical action towards the defendant. Tr. 162, lines 1-14. The District Court Judge ultimately denied the requested jury instructions stating "based on the evidence that's been presented to the Court or the testimony and exhibits, I don't find that the self-defense instructions are appropriate." Tr. 162, lines 19-22.[2]

[2] The Court's jury instructions did provide for the standard definition of simple assault and the definition of "willfully". TR. 165, lines 21-25; Tr. 166 and TR. 167, line 1.

STANDARD OF REVIEW

[¶13] "Jury Instructions must correctly and adequately inform the jury of the applicable law and must not mislead or confuse the jury." *State v. McIntyre*, 488 N.W.2d 612, 614 (N.D. 1992). "The Court, not the jury, has the responsibility to initially determine whether an issue has been adequately raised." Id. A defense is raised when there is evidence in the case, viewed in the light most favorable to the defendant "sufficient to raise a reasonable doubt on this issue." *State v. Thiel*, 411 N.W.2d 66, 67 (N.D. 1987); N.D.C.C. §12.1-01-03(b). However, "the district court may refuse to give an instruction to the jury if it is irrelevant or inapplicable. *State v. Starke*, 2011 ND 147, ¶12. In *Thiel*, at 71 footnote 1 (N.D. 1987), the Supreme Court has also recognized that while a defendant may request jury instructions based on conflicting theories of the evidence, there are limits to presenting an instruction to the jury that would "strain credulity to the breaking point… *Brooke v. United States* 385 F. 2d 279, 283 (D.C. Cir. 1967)".[3]

LAW AND ARGUMENT

I. The district court correctly determined the Consent as a Defense instruction under N.D.C.C. § 12.1-17-08 does not apply to the charge of simple assault presented in this case.

[3] The Court quoted *Brooke* in identifying certain factors relevant to this inquiry including: extensive picking and discarding of evidence, if the finding that there is sufficient evidence for an instruction requires fragmentation of testimony to the point that it distorts the evidence, and "whether facts not supported by proof must be supplied." [internal citations omitted]. Id.

[¶14] It is the general consensus of case law that consent is not a defense for crimes involving "a breach of the public peace as well as an invasion of the victim's physical security." 58 A.L.R. 3rd 662. "The great weight of authority disfavors the defense of consent in assault cases." *State v. Baxter*, 134 Wash. App. 587, 141 P.3d 92, ¶ 25 (Div. 2 2006). In *State v. Fransua*, 85 N.M. 173, 510 P.2d 106, 107 (App.1973), the New Mexico Appellate Court rejected consent as a defense where an argument in a bar led to the victim handing a gun to the defendant, to shoot the victim. Id. The defendant shot the victim severely wounding him. Id. In rejecting the defense of consent, the court stated:

> While we entertain little sympathy for either the victim's absurd actions or the defendant's equally unjustified act of pulling the trigger, we will not permit the defense of consent to be raised in such cases. Whether or not the victims of crimes have so little regard for their own safety as to request injury, the public has a stronger and overriding interest in preventing and prohibiting acts such as these.

Id. Similarly, in *State v. Brown*, 143 N.J.Super. 571, 364 A.2d 27 (L.Div.1976), the New Jersey Court rejected consent as a defense when the facts showed the defendant and the victim had an agreement the defendant could beat-up the victim if she consumed alcohol. Id. at 28. The New Jersey Court explained consent of the victim is irrelevant in a criminal prosecution because "the State has an interest in protecting those persons who invite, consent to and permit others to assault and batter them. Not to enforce these laws which are geared to protect such people would seriously threaten the dignity, peace, health and security of our society." Id. at 32.[4] Thus, as highlighted in 58 A.L.R. 3rd 662,

[4] These cases go on. See *People v. Lucky*, 45 Cal.3d 259, 247 Cal. Rptr. 1, 753 P.2d 1052, 1072 (1988) ('Voluntary mutual combat outside the rules of sport is a breach of the peace, mutual consent is no justification, and both participants are guilty of criminal assault.'); *Taylor v. State*, 214 Md. 156, 133 A.2d 414, 415 (1957) ("A criminal assault which tends to bring about a breach of the public peace is treated as a crime against the public

it is the general rule across the majority of state courts that consent is not a defense in criminal assault cases.

[¶15] This general rule is also upheld in states which have codified consent as a defense in their criminal code. *State v. George*, 937 S.W. 2d 251 (Mo. App. 1996). The State of Missouri has a very similar consent as a defense statute as North Dakota. The Missouri Court was tasked with analyzing consent based on a victim's occupation. Id. at 254. In *George,* the court also referenced 58 A.L.R. 3rd 662. The court in denying the defense found: "a state enacts criminal statutes making certain violent acts crimes for at least two reasons: One reason is to protect the persons of its citizens; the second, however, is to prevent a breach of the public peace." [internal citations omitted]. Id. at 255.

[¶16] The State of Montana also codified consent as a defense and limits its use. *State v. Mackrill*, 2008 MT 297, ¶32, 191 P.3D 451. In *Mackrill,* the Montana Supreme Court analyzed its consent as a defense statute to an assault case involving an altercation outside a bar. Id. The Court relied on case law in other jurisdictions, its consent as a defense statute, and general policy considerations within Montana's criminal statutory framework. Id. at ¶¶24-32. The court concluded it "is against public policy to permit a person purposely or knowingly to cause serious bodily injury to another even though the conduct and the resulting harm were consented to." Id. at ¶32. Although the Montana statute is slightly different than the Missouri and North Dakota statute as it specifically

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generally, and therefore the consent of the victim is no defense."); *Wright v. Starr*, 42 Nev. 441, 179 P. 877, 877-78 (1919) ("In a criminal prosecution for assault and battery, consent to a beating is no defense; the reason being that a wrong is committed against the public peace."); *State v. Roby*, 83 Vt. 121, 74 A. 638, 641 (1909).

creates an exception for public policy reasons, the Montana Supreme Court did not base its decision on the statute alone. Id. In its analysis the court cited to many other jurisdictions limiting the use of consent as a defense. Id. at ¶24 ("the great weight of authority disfavors the defense of consent in assault cases" (internal citations omitted)). The Montana Supreme Court also relied on policy considerations that "criminal statutes are generally intended to protect citizens and to prevent breaches of the public peace. Id. at ¶32. Namely, it would jeopardize the safety of the police, emergency personnel, and bystanders; and it would also consume "public resources and imposes on society various costs, such as medical expenses and the inability of individuals to feel safe and secure in their persons." Id.

[¶17] Further, rejecting the use of defense of consent is not limited to higher-level assaults. Many courts have extended this to include all assaults. See *State v. Hatfield*, 218 Neb. 470, 356 N.W. 2d 872, 874 (1984); See also, *People v. Reckers*, 623 N.E.2d 811, 251 Ill.App.3d 790, 814; (Ill. App. 1993) (noting consent is not applicable to injurious conduct and providing a list of other states that followed suit.); but see *Davis v. State*, 533 S.W.3d 498 (Tex. App. 2017). Thus, the general consensus that consent is not a defense in assault cases extends to all assaults.

[¶18] North Dakota, just like many other states, acknowledges that one of the purposes of its criminal laws is to keep the public peace and this Court should reject the application of consent as a defense under N.D.C.C. § 12.1-17-08 in assault cases which violate the public peace. See N.D.C.C. § 12.1-01-02. "The right to peace and tranquility is …one of the purposes for which our constitution was adopted, as evidenced by the preamble, 'to

insure domestic tranquility'" *State v. Woodworth*, 234 N.W.2d 243, 249 (N.D. 1975). This Court has also recognized that it will construe statutes in a manner consistent with the purposes of our criminal laws which includes punishing "those individuals who fail to abide by public norms." *State v. Martin*, 793 N.W.2d 188, 2011 ND 6, ¶¶ 7&11 (N.D. 2011). Allowing a victim's consent to nullify behavior constituting a crime goes against maintaining the public order and insuring domestic tranquility. Thus, North Dakota, which recognizes the same maxims as the majority of states, should also recognize limits to the use of consent as a defense in assaultive conduct.

[¶19] While Appellant asserts *State v. Schumaier*, 1999 ND 239 stands for the proposition that the Court cannot use public policy to limit the availability of a defense in a criminal matter, its holding was not that broad. See Appellant's brief at ¶28. It simply held that self-defense may be asserted in appropriate disorderly conduct cases. Id. at ¶ 15. *Schumaier* did not foreclose the use of public policy in analyzing all requested defense instructions, nor should it. Here, Kastet headbutted and then repeatedly punched Fuchs outside the front door of a bar. This was clearly in an area that would attract the attention of the public. Kastet's actions increased concerns for the safety for bar patrons and bystanders. Not enforcing simple assaults such as this, even if consented to, would have the effect of: increasing violent behavior in public places; jeopardizing the safety of the police, emergency personnel, and bystanders; consuming public resources; and imposing on society "the inability of individuals to feel safe and secure in their persons." *Mackrill* at ¶ 32. Therefore, based on North Dakota's policy considerations in maintaining the public peace, the majority of states as highlighted in 58 A.L.R. 3rd 662,

and the cases cited above, this Court should uphold the District Court's decision finding that consent as a defense is not applicable under the circumstances presented here—assaultive conduct that breaches the public peace.

II. The District Court correctly denied the requested jury instruction on self-defense.

[¶20] The Self-defense instruction is not available because Kastet's belief of "imminent unlawful bodily injury" is unreasonable when the victim was not proceeding in a violent or dangerous way and because he was the initial aggressor. Self-defense as set forth in N.D.C.C.§ 12.1-05-03 in relevant part states:

> A person is justified in using force upon another person to defend himself against danger of imminent unlawful bodily injury…except that…a person is not justified in using force if…he has entered into a mutual combat with another person or is the initial aggressor unless he is resisting force which is clearly excessive in the circumstances.

Id. Self-defense can either be justified or excused. *State v. Liedholm*, 334 N.W. 2d 811, 815 (N.D. 1983). In both contexts *Liedholm* explains there are two elements necessary in order for the conduct to be excused: 1) Sincere belief that the conditions exist which give rise to a claim of self-defense and 2) This belief must be reasonable. Id. The definition of an "excuse" under N.D.C.C. § 12.1-05-08 limits when a defense is available based on a defendant's subjective beliefs alone. It states in pertinent part:

> if his belief is negligently or recklessly held, it is not an excuse in a prosecution for an offense for which negligence or recklessness, as the case may be, suffices to establish culpability.

Id. Thus, self-defense as an "excuse" does not apply to situations where a defendant's beliefs are recklessly or negligently held when reckless is sufficient to establish guilt. Id.

Here, Kastet was charged with simple assault where the level of intent of willfully includes the culpability of acting recklessly. See N.D.C.C. § 12.1-02-02; City of Jamestown Municipal Code 22-1; 22-52.1(e). Therefore, for a self-defense instruction to be appropriate in a simple assault case, evidence viewed in a light most favorable to Kastet must show he had a reasonable basis for his actions to thwart "imminent unlawful bodily injury". N.D.C.C. § 12.1-05-08.

[¶21] Kastet's beliefs of imminent unlawful bodily injury are unreasonable because there is no evidence Fuchs was first proceeding in a violent or dangerous way. *State v. Schimetz*, 328 N.W. 2d 808, 812 (N.D. 1982); See also *State v. Thiel*, Id. at 68. The facts in *Schimetz* pointed to a victim who may have been trying to steal the defendant's car, but the court determined that there was not enough evidence for an instruction on excuse based on a mistaken belief when there were no facts that the victim "was proceeding in a violent or dangerous manner". Id. In contrast, the Court allowed an instruction on self-defense in *State v. Schumaier*, where there was testimony taken that the victim either shoved or pushed the defendant first prior to the defendant engaging in a fight. Id. at ¶ 17. In *Thiel*, the court indicated there were sufficient facts for a self-defense instruction when the defendant testified that came upon an ongoing fight where his friend was getting beat-up by three strangers. Id. at 68. As illustrated in these cases, there must be sufficient facts presented to indicate Fuchs was acting in a violent or dangerous manner prior to Kastet's actions for there to be a basis to include self-defense as part of the jury instructions.

[¶22] Kastet did not have a reasonable basis to headbutt and punch Fuchs five times because no evidence was presented Fuchs acted in a violent or dangerous manner. Tr. 140, lines 7-15; Tr. 52, lines 1-25; Tr. 78, lines 20-25; Tr. 79, lines 1-6; See also, video clip of outside the bar, City's Exhibit 1, Document ID #50. Instead, the evidence showed no physical contact outside the bar by Fuchs. Fuchs did not hit Kastet, push him, make any physical contact, or make any movement towards him like he was going to hit or push him. Ova did not see Fuchs at any point clench his hands into a fist. Tr. 52, lines 1-25. The video only showed that Fuchs and Kastet were exchanging words. Tr. 127, lines 21-25. Fuchs' feet were in a neutral stance, not in a bladed or fighting stance. Tr. 79, lines 1-6. The only actions Fuchs took was that he had his hands in his pockets. As the video shows, this exchange of words did not constitute a violent or dangerous situation. The only person in danger was Fuchs from being headbutted and punched five times. Kastet's claim of fear is not reasonable based on Fuchs' actions. Thus, Fuchs' behavior viewed in the light most favorable to Kastet, does not show Fuchs acted in a dangerous or violent manner as set forth in *Schimetz* and *Thiel* and Kastet is not entitled to an instruction on self-defense.

[¶23] Appellant is also not entitled to a self-defense instruction because he was the initial aggressor. In *State v. Falconer*, 2007 ND 89, the Supreme Court acknowledged that if an exception applies, the self-defense instruction should not be given to the jury. See Id. at ¶15. In *Falconer*, the Court recognized the defendant kicked in the bathroom door, making him the initial aggressor. Id. But the self-defense instruction was based on what the victim did after the defendant left the bathroom. Id. (the victim "grabbed a

metal rod, and hit him over the head with it, causing a laceration that bled profusely".) Id. While the Court determined that the self-defense instruction was required in this case, if the defendant was the initial aggressor, without anything more, the self-defense instruction did not apply. Id. Thus, in reviewing the facts in a light most favorable to a defendant, if he was engaged in mutual combat, or was the initial aggressor and was not resisting force clearly excessive under the circumstances, the instruction on self-defense is not applicable.

[¶24] Kastet was the initial aggressor because he was the only person to take any action. Fuchs did not did not make any movements towards Kastet. Tr. 51, lines 21-24. Fuchs did not hit Kastet, push him, make any physical contact, or make any movement towards him like he was going to hit or push him. Ova did not see Fuchs at any point clench his hands into a fist. Tr. 52, lines 1-25. Fuchs' feet were in a neutral stance, not in a bladed or fighting stance. Tr. 79, lines 1-6. In contrast to Fuchs' non-action, Kastet headbutted and punched Fuchs five times while he was on the ground. Therefore, Kastet was the initial aggressor and the instruction of self-defense does not apply.

[¶25] Kastet was not "resisting force which is clearly excessive in the circumstances". N.D.C.C. § 12.1-05-03. After Kastet headbutted Fuchs, no evidence was provided that Fuchs retaliated in any manner. Rather, the evidence reflects the opposite, where Fuchs was still lying on the ground when Kastet was told to stop punching him. Lastly, was there no evidence of mutual combat, and the only person to engage in aggressive fighting behavior was Kastet. The exception to self-defense does not apply here. N.D.C.C. § 12.1-05-03. Therefore, based on a review of the facts most favorable to Kastet, there is

insufficient evidence to present the jury instruction of self-defense because Kastet's belief of imminent bodily harm was unreasonable and he was the initial aggressor.

CONCLUSION

[¶26] The District Court correctly determined that the defense of consent does not apply to the situation presented in this case, namely an assault which took place outside of a bar because the general consensus of case law is that consent is not a defense to assault that breaches the public peace. The District Court correctly determined that a jury instruction on self-defense was not available to Kastet because he was the initial aggressor and his beliefs of imminent bodily harm were unreasonable when there was no evidence to show Fuchs acted in a violent or dangerous manner. Rather, Fuchs had his hands in pockets before Kastet headbutted and repeatedly punched Fuchs while he was on the ground.

Respectfully submitted this 2nd day of September, 2021.

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CERTIFICATE OF PAGE COMPLIANCE

[¶27] I, Abbagail C. Geroux, do hereby certify that the Brief of Petitioner/Appellee is in compliance with Rule 32(a)(8)(A) in that it does not exceed the page limit for a brief. The Brief is 20 pages long which is under the page limit.

/s/: Abbagail C. Geroux

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

City of Jamestown, Petitioner/Appellee, vs. Holden Kastet, Respondent/Appellant.	)))))))))	Supreme Court No. 20210170 Stutsman County District Court No. 47-2021-CR-00017

AFFIDAVIT OF SERVICE BY ELECTRONIC MAIL

STATE OF NORTH DAKOTA)
)
COUNTY OF STUTSMAN)

[¶1] On September 2, 2021, I, Nichole Domke, served the counsel for the Appellant with the document listed below by Electronic Mail at the counsel's last reasonably ascertainable e-mail address. I am of legal age and not a party to this action:

a. Brief of Plaintiff/Appellee

[¶2] That a copy of the above document was served via electronic mail on the following:

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Nichole Domke
NICHOLE DOMKE

State of North Dakota)
:
County of Stutsman)

[¶3] On September 2, 2021, before me personally appeared Nichole Domke, known to me to be the same person described in and who executed this instrument and acknowledged to me that she executed the same.

JOLENE MOOS
Notary Public
State of North Dakota
My Commission Expires September 9,2024

Jolene Moos
Notary Public
Stutsman County, North Dakota