

IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota, Plaintiff and Appellee, v. Connor Bradshaw, Defendant and Appellant.	Supreme Court File No. 20210306 McHenry County District Court No. 25-2019-CR-00165 APPELLANT BRIEF
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BRIEF OF APPELLANT, CONNOR BRADSHAW

Appeal from the Criminal Judgment

Entered on the 5th day of October, 2022.

In District Court, McHenry County, State of North Dakota

The Honorable Michael P. Hurly

ORAL ARGUMENT REQUESTED

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STATEMENT OF THE ISSUE

[¶1] **ISSUE I: When redacted videos in this case should have been disclosed but were withheld did the trial judge err when he failed to use any of the remedies in the NDR CrimP 16(d)(1)**

NATURE OF THE CASE

[¶2] This is a criminal case that was charged out in McHenry County North Dakota by an information on 07/18/2019.

[¶3] The crime charged in that information was gross sexual imposition which is a class A felony.

[¶4] The preliminary hearing in this case was held on 10/20/2019 and it ended with defendant/appellant Connor Bradshaw. (Mr. Bradshaw) being bound to the district court for trial. After the bind over Mr. Bradshaw entered a not guilty plea.

[¶5] A notice of intent to admit Hearsay Testimony was filed on 08/06/2020.

[¶6] A pretrial conference was held on 03/23/2021

[¶7] There was a three-day jury trial and the days of trial were 04/06/2021, 04/07/2021, and 04/08/2021

[¶8] At the conclusion of the jury trial Mr. Bradshaw was found guilty of gross sexual imposition

[¶9] The sentencing of Mr. Bradshaw and the judgment were entered on 10/05/2021

[¶10] The notice of appeal and order for transcripts were filed on 10/28/2021

[¶11] Clerks certificates of appeal were filed in 11/22/2021 and 11/24/2021

[¶12] This case is now before the North Dakota Supreme court

STATEMENT OF FACTS

¶13] The prosecutor of McHenry County North Dakota charged defendant/appellant Connor Bradshaw. (Mr. Bradshaw) in a information with committing the crime of gross sexual imposition in the McHenry County, North Dakota between the 1st day of June and the 19 day of June 2019. That information alleged that Mr. Bradshaw committed gross sexual imposition when he engaged in a sexual act with another or when he caused another to engage in a sexual act and that person when the offense was committed was less than 15 years old

¶14] On June 8 2019 alleged victim AZ, her brother and parents were at Buffalo Lake in North Dakota. Her parents spent that night in their trailer. AZ and her brother spent the night in Uncle Donnie's cabin. Other People who spent that night in the cabin were Uncle Donnie, Parrish Bradshaw (who is the mother of Connor Bradshaw) Connor Bradshaw and a 13-year-old girl.

¶15] AZ and her brother on the night of June 8th 2019 were sleeping in bunk beds in one of the rooms in Uncle Donnie's cabin. AZ was sleeping in the top bunk and her brother was sleeping in the bottom bunk.

¶16] The next morning AZ told a story to Parrish Bradshaw and her parents. According to that story Mr. Bradshaw came into the room she and her brother were sleeping and woke her up. After Mr. Bradshaw woke AZ up, he unzipped her Wonder Woman Pajamas, put his boy part in her girl part, put his hand over her mouth so she couldn't scream, removed his boy part from her girl part, zipped up her pajamas and left the room.

¶17] AZ's brothers never woke up when any of the above things occurred.

[¶18] AZ first told her story just to Parrish Bradshaw. Parrish Bradshaw didn't believe AZ story but she checked it out by confronting her son Mr. Bradshaw with AZ's story. He denied AZ story. She also examined AZ and found no injuries.

At trial there was testimony that AZ made up stories. One of those stories was about a fire where people were killed.

[¶19] During the trial the state introduced into evidence and had accepted into evidence redacted videos about what occurred on the night of June 8, 2019 that included an AZ interview. The forensic interviewer was Shannon Hoffer. Also introduced and accepted into evidence during the states case were AZ's pajamas, DNA, 2 messages on Mr. Bradshaw's phone and panties found at Mr. Bradshaw's residence.

STANDARD OF REVIEW

[¶20] This Court reviews a court's evidentiary ruling for an abuse of discretion. *State v. Hirschhorn*, 2020 ND 268, ¶ 6, 952 N.W.2d 255. A district court abuses its discretion in evidentiary rulings when it acts arbitrarily, capriciously, or unreasonably, or it misinterprets or misapplies the law." *State v. Polk*, 2020 ND 248, ¶ 10, 950 N.W.2d 764.

[¶21] ARGUMENT

ISSUE I: When redacted videos in this case should have been disclosed but were withheld did the trial judge err when he failed to use any of the remedies in the NDR CrimP 16(d)(1)

[¶22] The trial in the case began on April 6, 2021. The first legal proceeding began when the trial judge said: (TR.1; P.7; L.24).

“And we will conduct a pretrial conference.”

[¶23] The Issue as to what the pretrial is about arises because of what appears in the (TR.1; P.23; L.9-14)

And the redacted video, I am objecting to because we have not had the opportunity to review it, to be able to say that, yes, we are satisfied with it. So based upon that, I am objecting to it.

“THE COURT: Okay. This should have been brought up at the final pretrial. But, let's move on. I'm going to...”

[¶24] The Register of Action in this case at index #29 which is dated 08/06/2020 is a Notice of Intent to Admit Hearsay Testimony. From the above language in TR1 P9 L7 it appears that the pretrial was a conference and the language that follows appears to make that conference about the admission of hearsay evidence.

[¶25] The rule of evidence that applies to hearsay evidence is Rule 803(24) of the NDR of Ev. (TR.1; P.8; L.6-15)

803(24) reads as follows: A statement by a child under the age of 12 years about sexual abuse of that child or witnessed by that child if:

(A) the trial court finds, after hearing on notice in advance of the trial of the sexual abuse issue, that the time, content, and circumstances of the statement provide sufficient guarantees of trustworthiness; and

(B) The child either: testifies at trial; or, is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement.

[¶26] At the start of the pretrial conference on April 6 2021 the state presented no evidence or testimony, instead the trial judge took over the state's case and set out the rule of evidence that applied to the facts in this case, went through the facts that related to the pretrial conference, the rules for admitting the facts and why the facts should be admitted.

[¶27] The defenses objection to the edited video appears at the (Tr.1 pg.16 L. 7-L. 11)

“MR. JONES: Item number one, Your Honor, is that we have not heard this muted or doctored video that the State proposes to show to the jury. So, based upon that, it is difficult, if not impossible, for us to agree that these -- this should be shown to the jury.”

[¶28] The defenses objection to the redacted video also appears at (TR1 P.21 L.4, L.17)

“MR. JONES: And based upon that, I think it deprives... At this late hour, we are objecting to it.”

[¶29] The following statements regarding the redacted videos appear at (TR1 P.71; L.6-19)

“THE COURT: Okay. I'm agreeing with you, Mr. Jones. I think that the issue -- the issue of the video is -- and I know both attorneys are -- are -- are men of character, so I'm going to ask this question. Mr. Frey, is Mr. Jones correct in saying that he hasn't seen the opportunity of the un -- the edited video?

MR. FREY: Correct, Your Honor.

THE COURT: Okay.

MR. FREY: He has not seen the redacted video. He has seen the full version. He understands the nature of the testimony that's provided, the evidence that's in there.

THE COURT: Okay. So, I think the one issue is that he doesn't know what has been muted or not muted, so I think that that would be one issue.”

[¶30] The states response to defendant’s request for discovery appears in the Register of Actions as index 12 and is dated 08/09/2019. The states first presentation of a redacted video to the defendant was at the start of the trial on April 6, 2021. This is

not a timely response to the defenses discovery motion and it gives the defense no time to prepare a defense at trial.

[¶31] In this Case Mr. Bradshaw made his objection (TR.1; P.23; L.9-12)

“And the redacted video, I am objecting to because we have not had the opportunity to review it, to be able to say that, yes, we are satisfied with it. So based upon that, I am objecting to it. So based upon that, I am objecting to it.”

According to State vs Miller 466 NW 2d 128(ND 1991). Pretrial discovery of evidence in criminal cases is controlled by NDRCrimP 16. When evidence should have been disclosed but is withheld, NDRCrimP 16(d)(2) authorizes the trial court to use one or more of various remedies. The trial court may order further disclosure, grant a continuance, prohibit the evidentiary use of undisclosed material, relieve a requesting party from making a disclosure, or enter any other order in the interests of justice. Here, Miller only objected to use of the undisclosed tape as rebuttal evidence. Miller sought no other remedy from the trial court for the discovery violation.

[¶32] The trial judge was aware that the defense had not heard the redacted video prior to the pretrial conference on April 6, 2021 (TR.1; P.19; L.6-19)

MR. FREY: Correct, Your Honor.

THE COURT: Okay.

MR. FREY: He was interviewed at the Heart of America correctional facility by Detective Juarez working with Special Agent Craig Zachmeier. And during that interview he admits to the allegations in this case, but also admits to other sex acts that occurred in Minot. That's intertwined -- there's no way to cut out just that portion from Minot. So, what we did is we muted it as indicated on that log. The defense has had an opportunity to review that entire video. He knows what was discussed about the Minot acts. That's simply the portion that was muted. If there are parts that are muted that he thinks are

[¶33] In this case the trial judge was aware of the fact the redacted video wasn't disclosed by the state until the day of the trial. However, the trial judge didn't even consider any of the various remedies in NDRCrimP 16(d)(2)

Instead, he made the following statement regarding the redacted video (TR.2;

P.11; L.11)

Number three, this video, in my opinion, is not necessary for a conviction of Mr. Bradshaw to be found guilty by proof beyond a reasonable doubt. Again, let me repeat, I don't think the video is necessary, because there could be an independent conviction based solely on the little girl's testimony.

[¶34] However Mr. Bradshaw doesn't believe the above statement by the trial judge cures his right to a timely discovery of evidence, the reacted video, that was material to prepare a defense. The only way to cure untimely discovery of the redacted video is to use one of the remedies in the NDRCrimP 16(d)(2).

ORAL ARGUMENT

[¶35] Oral argument has been requested to emphasize and clarify the appellant's written arguments on their merits.

CONCLUSION

[¶36] This case should be remanded to the district court with an order requesting the trial judge to give Mr. Bradshaw a new trial that doesn't include the redacted video.

Dated this 8th day of February, 2022.

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v.

Connor Bradshaw,
Defendant and Appellant.

Supreme Court File No. 20210306
McHenry County District Court No.
25-2019-CR-00165

**CERTIFICATE OF
COMPLIANCE**

[¶1] I certify that this appellant's brief and complies with the page limit of 38 for the brief set forth in N.D. R. App. P. 32(a)(8)(A). The brief in this matter consists of 10 pages.

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Connor Bradshaw,
Defendant and Appellant.

Supreme Court File No.
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McHenry County District Court No.
25-2019-CR-165
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