

STATE OF NORTH DAKOTA
SUPREME COURT

State of North Dakota,
Plaintiff/Appellee,

vs.

Susan Scheel Coons,
Defendant/Appellant.


)
) Supreme Court No. 20220289
) Ward Co. Criminal No. 51-2021-CR-00725
)

) **STATE'S RESPONSE TO DEFENDANT'S**
) **MOTION FOR REMAND**
)
)
)

1. Comes now the Plaintiff/Appellee, by and through undersigned counsel, and responds to Defendant's Motion for Remand.
2. Defendant was found guilty follow a jury trial on May 12, 2022. She was sentenced on August 30, 2022.
3. Defendant timely filed a Notice of Appeal on September 28, 2022. Defendant's brief was served upon the State on December 27, 2023. State's brief is due January 27, 2023. The matter is still pending before the North Dakota Supreme Court unresolved.
4. Defendant herein seeks to have this matter wrested from the Supreme Court and have jurisdiction divested back to District Court for resolution of a Rule 35 motion.
5. Defendant sets forth that District Court has already refused to consider the Rule 35 motion due to the fact that this appeal is pending and unresolved. Coons, et.al. v. Coons, et.al., 51-2021-CV-00473, Index #174.
6. Defendant is aware the District Court, in making that decision, cited to Wilson v. Kopyy, 2002 ND 179, specifically with regard to the fact trial court loses its jurisdiction upon the filing of a notice of appeal, except in exceptions.

7. Defendant has cited to no such exception that would allow District Court to exercise jurisdiction until the appeal currently before this Court is resolved.
8. Jurisdiction does not return to District Court until the Supreme Court issues its mandate, being “the official way for an appellate court to communicate its judgment and return jurisdiction to the district court.” Quamme v. Quamme, 2022 ND 124 ¶13, *citing* Hieb v. State, 2016 ND 146, ¶11.
9. Defendant cites no mechanism for returning the matter to Supreme Court or Supreme Court resuming its jurisdiction should this Court be agreeable to returning this matter to District Court.
10. If this Court determines it appropriate to remand this matter to District Court, the appeal would need to be suspended, including the State’s deadline for submission of its brief.
11. Therefore, State prays that the Defendant’s request be **DENIED**, or alternatively, that if Defendant’s request be granted that State’s deadline for submission of its brief be suspended as well, and for such other relief as this Court, in its discretion, may deem just, proper, and equitable.

Dated this 9th day of January, 2023.



Tiffany M. Sorgen, #09322
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IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

State of North Dakota,)
) Supreme Court No. 20220289
 Plaintiff/Appellee,)
) District Court No. 51-2021-CR-00725
)
 vs.)
)
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 Susan Scheel Coons,)
)
)
 Defendant/Appellant.)

AFFIDAVIT OF SERVICE

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

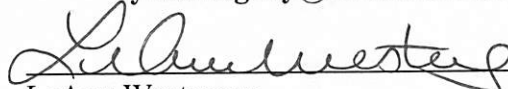
That she is a citizen of the United States of America, over the age of twenty-one years, and is not a party to nor interested in the above entitled action; that on the 9th day of January, 2023, this Affiant provided a true and correct copy of the following documents in the above entitled action:

State's Response to Defendant's Motion for Remand

By electronic service to the following:

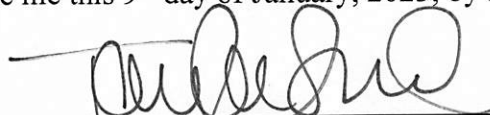
BENJAMIN C PULKRABEK
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LYNN BOUGHEY
ATTORNEY AT LAW
lynnboughey@midconetwork.com



LeAnn Westereng

Subscribed and sworn to before me this 9th day of January, 2023, by LeAnn Westereng



Notary Public

TAYLOR M SHORT
Notary Public
State of North Dakota
My Commission Expires Nov. 15, 2025