

FILED

CCT	LIST CHARGE	STATUTE ONLY	MOC	GOC
1	609.582		18	N
2	609.582		160	N
3	609.224		A5352	N
4	609.224		A5352	N

09 JAN 13 AM 10:18
BY HENN CO. CLERK
COURT ADM.

CTY ATTY FILE NO. 09-4426
CONTROLLING AGENCY MN0272800
CONTROL NO. 09000191

COURT CASE NO. DATE FILED

276091982

- Amended
- Tab Charge Previously Filed
- SERIOUS FELONY
- FELONY
- GROSS MISDM DWI
- GROSS MISDM
- SUMMONS
- WARRANT
- ORDER OF DETENTION
- EXTRADITION

if more than 6 counts (see attached) if Domestic Assault as defined by MS 518B01, sub2a,b

State of Minnesota,

PLAINTIFF,

VS.

NAME: first, middle, last
ANDREW CLARK DARST

Date of Birth
7/11/78

MNCIS #:

DEFENDANT,

LE#: 09-10480
SILS ID: 647188
TRACK ID: 2295598

4915 NORTH ARM DRIVE
MINNETRISTA, MN 55364

COMPLAINT

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant committed the following offense(s). The complainant states that the following facts establish PROBABLE CAUSE.

Complainant, Sgt. Craig Squires of the Minnetrista Police Department, has investigated the facts and circumstances of this offense and believes the following establishes probable cause:

On January 11, 2009 at about 2:18 a.m., officers were dispatched to 805 County Road 19 in Minnetrista, Hennepin County, Minnesota regarding burglary/assault. Upon arrival, they observed that the door to the home had been ripped off of its hinges. The renters, S.M.M. and D.M.F., had just moved in and were having a house warming party.

A.C.D. told police that she and her husband, ANDREW CLARK DARST, Defendant herein, had had an argument earlier in the evening. A.C.D. had then come to the house party and had gotten "really drunk" because she was angry at him. She further stated that Defendant came to the house and had broken down the door. He then began yelling at everyone in the house and hit S.P.L., knocking him to the floor. She stated that she was trying to get him to leave the house by pulling on his jacket.

S.P.L., an adult male, had a cut over his left eye that he reported the Defendant had inflicted after kicking in the door.

S.M.M., an adult male, reported that the Defendant hit him in the head. The Defendant appeared to be full of rage and anger.

D.M.F. said that the Defendant smashed the door open and demanded to know where A.C.D. was and pushed her down several times before hitting S.M.M. and S.P.L.

The Defendant, in a *Mirandized* statement, admitted going to the residence at 805 County Road 19. He asserted that he did so because he wasn't comfortable with the people that his wife was with there. He admitted kicking in the

COMPLAINT SUPPLEMENT

CCT	SECTION/Subdivision	M.O.C.	GOC

COUNT 4: ASSAULT IN THE FIFTH DEGREE (MISDEMEANOR)
 MINN. STAT. § 609.224, SUBD. 1(2), 609.101, SUBD. 2
 PENALTY: 0-90 DAYS AND/OR \$1,000

That on or about January 11, 2009, in Minnetrista, Hennepin County, Minnesota, **ANDREW CLARK DARST** inflicted or attempted to inflict bodily harm on S.P.L.

NOTICE: You must appear for every court hearing on this charge. A failure to appear for court on this charge is a criminal offense and may be punished as provided in Minn. Stat. § 609.49.

THEREFORE, Complainant requests that said Defendant, subject to bail or conditions of release be:
(1) arrested or that other lawful steps be taken to obtain defendant's appearance in court, or
(2) detained, if already in custody, pending further proceedings;
and that said Defendant otherwise be dealt with according to law.

COMPLAINANT'S NAME:

Sgt. Craig Squires

COMPLAINANT'S SIGNATURE:

DATE:

1/12/09

red

Being duly authorized to prosecute the offense(s) charged, I hereby approve this Complaint.

PROSECUTING ATTORNEY'S SIGNATURE:

PROSECUTING ATTORNEY:

NAME/TITLE:

JOHN HALLA (24269X)
 Assistant County Attorney

FORM I-2

ADDRESS/TELEPHONE:

2100 Government Center, Minneapolis, MN 55487
 Telephone: 612-348-6557

Court Case #

This COMPLAINT was subscribed and sworn to before the undersigned this _____ day of _____, 20____

NAME: _____ SIGNATURE: _____

TITLE: _____

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant(s) arrest or other lawful steps be taken to obtain Defendant(s) appearance in Court, or his detention, if already in custody pending further proceedings. The Defendant(s) is/are thereof charged with the above-stated offense.

SUMMONS

THEREFORE YOU, THE ABOVE-NAMED DEFENDANT(S), ARE HEREBY SUMMONED to appear on the _____ day of _____, 20____ at _____ AM/PM before the above-named court at _____ to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

WARRANT

EXECUTE IN MINNESOTA ONLY

To the sheriff of the above-named county, or other person authorized to execute this WARRANT, I hereby order, in the name of the State of Minnesota, that the above-named Defendant(s) be apprehended and arrested without delay and brought promptly before the above-named Court (if in session, and if not, before a Judge or Judicial Officer of such Court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial Officer is available) to be dealt with according to law.

ORDER OF DETENTION

Since the above-named Defendant(s) is already in custody, I hereby order, subject to bail or conditions of release, that the above-named Defendant(s) continue to be detained pending further proceedings.

Bail: \$150,000 + CR

Conditions of Release: No contact with victim(s); No contact with witness(es); No contact with address of the offense or home/work of victim(s) and witness(es)

This COMPLAINT - _____ ORDER OF DETENTION _____ duly subscribed and sworn to, is issued by the undersigned Judicial Officer this _____ day of _____, 20____

NAME: _____
TITLE: **JUDGE OF DISTRICT COURT**

SIGNATURE *Patricia L. Belois*
PATRICIA L. BELOIS
Judge of District Court

Sworn testimony has been given before the Judicial Officer by the following witnesses:

JAN 13 2009 *pld*

STATE OF MINNESOTA COUNTY OF HENNEPIN

Clerk's Signature or File Stamp:

STATE OF MINNESOTA

Plaintiff

vs.

ANDREW CLARK DARST

Defendant.

RETURN OF SERVICE

I hereby Certify and Return that I have served a copy of this COMPLAINT - SUMMONS, WARRANT, ORDER OF DETENTION upon Defendant(s) herein-named.

Signature of Authorized Service Agent:

Minnesota Department of Public Safety
 Bureau of Criminal Apprehension
 Criminal Justice Information Systems (CJIS) Section
 1246 University Avenue, St. Paul, MN 55104-2124
 Phone: (651) 642-0670 Fax: (651) 643-2124

OFFENDER TRACKING FORM

Adult
 or
 Juvenile
 (Check one)

Purpose: 1) Supply the prosecuting authority with the necessary data, when applying for a Felony or Gross Misdemeanor complaint or for a Juvenile Felony or Gross Misdemeanor Petition; 2) Supply BCA with dispositional information if a formal complaint is NOT issued; 3) Allow the prosecutor to report diversion data; 4) Supply the court with information.

To be Completed by Law Enforcement Agency When Applying for a Complaint or Petition
 Complete boxes 1 through 9 and submit with your case to the prosecuting attorney.

1) Controlling Agency Case Number (OCA): <u>09000191</u> (Must be 8 numeric characters)	5) Controlling Agency NCIC Identifier MN <u>0272800</u>
2) Last Name: <u>Darst</u> First Name: <u>Andrew</u> Middle Name: <u>Clark</u>	6) Date of Birth: <u>07 11 1978</u> MM DD YYYY
3) Street Address: <u>4915 N Arm Dr</u> City: <u>Minnetrستا</u> State: <u>MN</u> Zip Code: <u>55364</u>	7) Race (Choose one) <input type="checkbox"/> Black <input type="checkbox"/> American Indian/Eskimo <input checked="" type="checkbox"/> White <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> Other: _____
4) Fingerprints taken? (299C.10 requires submission of Fingerprint Cards) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	8) Ethnicity <input type="checkbox"/> Latino/Hispanic/Chicano (Check if applicable) 9) Date Submitted to Prosecutor: <u>1-12-09</u>

To be Completed by Prosecutor When a Formal Complaint is NOT Issued

Please check the appropriate box below and forward the white copy to the BCA at the address above.

County/City Attorney: Agency Name: _____ Phone: () _____

- Complaint/Petition Denied
- Filed as a Misdemeanor
- Filed as a Targeted Misdemeanor

To Be Completed by Prosecutor for Pre Court Diversion

Start Date: _____ Expected Completion Date: _____

(Circle the Appropriate Statute) Pursuant to Minnesota Statute: 388.24, Subd. 4 (Juvenile) OR 401.065, Subd. 3a (Adult)

Plaintiff: State of Minnesota

Attorney: HALLA, FREDERIC JOHNSON

Defendant: DARST, ANDREW CLARK
4915 NORTH ARM DRIVE
MINNETRISTA, MN 55364

DOB: 07/11/1978 Sex: M
DL:
SID:

Attorney: FLANAGAN, PATRICK WILLIAM
DES LAURIERS, KEVIN C

Warrant: No Race/Ethnicity: N/N



Case Information:	Case Category:	Case Type:	Case Sub-Type:
Case Number/Flags	Count/Statute/Degree/Description/Offense Date/File Date	Community	Prosecuting Agency
27-CR-09-1982 Fingerprints needed	1: 609.582.1(a) FEL - Burglary-First Degree OD: 01/11/2009	Minnetrista	Hennepin County Attor
	2: 609.595.2(a) [A] GMD - Damage to Property-3rd Deg OD: 01/11/2009	Minnetrista	Hennepin County Attor
	3: 609.582.2(a) (1) FEL - Burglary-2nd Degree OD: 01/11/2009	Minnetrista	Hennepin County Attor
	4: 609.224.1(2) MSD - Assault in the Fifth Degree OD: 01/11/2009	Minnetrista	Hennepin County Attor
	5: 609.224.1(2) MSD - Assault in the Fifth Degree OD: 01/11/2009	Minnetrista	Hennepin County Attor

Events and Orders of the Court:

HEARINGS 05/18/2009 Sentencing (9:00 AM) (Judicial Officer: Mabley, Daniel H.)
03/23/2009 Hearing (1:15 PM) (Judicial Officer: Mabley, Daniel H.)

Minutes - Held 03/23/2009

Events

Stipulation - Judicial Officer: Mabley, Daniel H. Charges: 1, 2, 3, 4, 5
Stipulated Facts Trial

Disposition

- Burglary-First Degree (609.582.1(a)) Acquitted (Judicial Officer: Mabley, Daniel H.)
- Damage to Property-3rd Deg (609.595.2(a)) Convicted (Judicial Officer: Mabley, Daniel H.)
- Burglary-2nd Degree (609.582.2(a)(1)) Acquitted (Judicial Officer: Mabley, Daniel H.)
- Assault in the Fifth Degree (609.224.1(2)) Convicted (Judicial Officer: Mabley, Daniel H.)
- Assault in the Fifth Degree (609.224.1(2)) Convicted (Judicial Officer: Mabley, Daniel H.)

03/16/2009 Omnibus Hearing (3:00 PM) (Judicial Officer: Mabley, Daniel H.)

Minutes - Held 03/16/2009

Hearings

03/23/2009 Hearing (1:15 PM) (Judicial Officer: Mabley, Daniel H.)

Events

Taken Under Advisement - Judicial Officer: Mabley, Daniel H.
Stipulated Facts Trial

Plea

- Burglary-First Degree (609.582.1(a)) None (Judicial Officer: Mabley, Daniel H.)

H.)

2. Damage to Property-3rd Deg (609.595.2(a)) None (Judicial Officer: Mabley, Daniel H.)

3. Burglary-2nd Degree (609.582.2(a)(1)) None (Judicial Officer: Mabley, Daniel H.)

4. Assault in the Fifth Degree (609.224.1(2)) None (Judicial Officer: Mabley, Daniel H.)

5. Assault in the Fifth Degree (609.224.1(2)) None (Judicial Officer: Mabley, Daniel H.)

02/17/2009 Omnibus Hearing (11:00 AM) (Judicial Officer: Mabley, Daniel H.)

Minutes - Held 02/17/2009

Hearings

03/16/2009 Omnibus Hearing (3:00 PM) (Judicial Officer: Mabley, Daniel H.)

01/14/2009 First Appearance (1:30 PM) (Judicial Officer: Sommerville, John J.)

Minutes - Held 01/14/2009

Hearings

02/17/2009 Omnibus Hearing (11:00 AM) (Judicial Officer: Mabley, Daniel H.)

Interim Conditions

Post bond (nbr+cr), Conditions, other (no criminal charges), Contact with probation (Supervised), No alcohol/controlled substance use, No contact with victim(s) (stay away 805 County Rd 19 Minnestrista), Random testing, Make all future court appearances, No non-prescription drugs

Events

Order for Release - Defendant: DARST, ANDREW CLARK Judicial Officer: Sommerville, John J.

Notice of Appearance

CONDITIONS 01/13/2009 Post bond (\$150,000.00), No contact with victim(s) (with address of offense or home/work), No contact with witness(es) (with address of offense or home/work)

EVENTS 03/30/2009 Criminal History Disposition has been processed - Charges: 1, 2, 3, 4, 5
03/24/2009 Criminal History Disposition has been processed - Charges: 1, 2, 3, 4, 5
03/24/2009 Criminal History Disposition has been processed - Charges: 1, 2, 3, 4, 5
03/23/2009 Exhibit List - Judicial Officer: Mabley, Daniel H.

One envelope filed

03/23/2009 Order-Other - Judicial Officer: Mabley, Daniel H.

Order Regarding Media access to exhibits - shall be allowed according to District Court's policies and procedures.

03/23/2009 Order-Other - Judicial Officer: Mabley, Daniel H.

Order Regarding Exhibits - shall allow Garrett Fitzgerald to receive copies of exhibits; costs incurred by requesting party

03/23/2009 Findings of Fact, Conclusions of Law and Order - Judicial Officer: Mabley, Daniel H.

Stipulated Facts Trial - Count 1 - NOT GUILTY - of Burglary in the First Degree Count 2. The deft is GUILTY of Damage to Property in the Third Degree (GM) Count 3 - the deft is NOT GUILTY of the crime of Burglary in the Second Degree. Counts 4 and 5 - The deft is GUILTY of Counts 4 and 5 Assault in the Fifth Degree.

03/23/2009 Memorandum - Attorney: FLANAGAN, PATRICK WILLIAM Judicial Officer: Mabley, Daniel H.

Deft's Trial Memorandum

03/18/2009 Correspondence

to Judge Mabley from County Attorney regarding Memorandum sent to the Judge

02/23/2009 Amended Criminal Complaint - Judicial Officer: Belois, Patricia L.

Formal Complaint has amended charges: Probable cause portion remains the same. The offense portion

has been amended to add a new count 2 and renumber the remaining counts (3, 4 and 5).

- 02/06/2009 Certificate of Representation
- 02/06/2009 Request for Disclosure
Defense
- 01/14/2009 Discovery Disclosure
- 01/14/2009 Notice of Evidence and Identification Procedures
- 01/14/2009 Order Granting Public Defender - Judicial Officer: Sommerville, John J.
- 01/13/2009 E-filed Comp-Order for Detention - Judicial Officer: Belois, Patricia L.
- 01/13/2009 Justice Agency Note to File
Bail revised by Hennepin County Jail to \$70000.00
- 01/13/2009 Other Document
Offender tracking form filed

Financial Information:

Financial Summary

Defendant

Total Charges	\$0.00
Total Payments and Credits	\$0.00
Balance Due as of 05/15/2009	\$0.00

Record of Appearance Hearing Occurred: 5/18 Judge: Mabley

Defendant Prosecutor no Court Reporter
 Defense Attorney Clerk & Phone Mary 3561

Date _____ Time _____ Session _____ Hearing _____ Judge _____ Bench (Fail to Appear)
 1. _____ Complaint _____ Quash _____ Recall _____
 2. _____

Cash Bond Ordered Refunded - Cash Bond Ordered Applied to Fine Refunded - Cash/Surety Bond Forfeited - Non Cash Bond Discharged
 Order Reinstating Cash/Surety Bond Post Bond: _____ Hold without Bail New - Revised

Acknowledgement of Rights	Firearms Order	Order Predisposition Investigation	Request for Disclosure
Agreement to Suspend Prosecution	Notice of Evidence and Identification	Order Pre-sentence Investigation	Risk & Needs Assessment
Application for Public Defender	Notice of Appearance	Prob Viol (Admit - Deny - Found - Dis)	Sentencing Order
Certificate of Representation	Petition to Enter Plea of Guilty	Probation Same Terms & Conditions	
Criminal Judgment & Commitment	Order Chemical Dep Evaluation	Case Review: Continue for Dismissal - Stay of Adj - Stay of Imp	
Discharge from Probation	Order Denying Public Defender	Motion: _____	
Failure to Appear	Order Evaluation 20.01 / 20.02	Order: _____	
	Order Granting Public Defender	Notice: _____	

Comments: WCL = 20 min \$300 fine on each misd., concurrent w/gross sent.

Add/Amend Charge: Ct: _____ PMD / MSD / GMD / FEL Description: _____ Statute/Ordinance: _____

Amend Reason:

Probation Violation	Guilty Ct: _____	Adjudication Withheld	Ct: _____	Continued	Ct: _____
Revocation	Not Guilty Ct: _____	Acquittal	Ct: _____	Sentenced	Ct: _____
Court Order	None (Plea Ordered Vacated)	Continued for Dismissal	Ct: _____	Stay of Imp 609.135	Ct: _____
Modification		Convicted	Ct: _____		
Plea Agreement	Jury Trial: Demand / Waived	Dismissed	Ct: _____	Fines/Fees: <u>GROSS MISD</u>	
Other	Speedy Trial: Demand / Waived	Diversion	Ct: _____	Fine <u>\$900</u> Ct: <u>2</u> (W)	
		Prob before Conv (152.18)	Ct: _____	Fine Ct: _____ (W)	

Confinement: (Local or DOC) Ct: <u>2</u>	Confinement: (Local or DOC) Ct: <u>4, 5</u>	Stayed _____ Years
Term: Years _____ Months _____ Days <u>180 d</u>	Term: Years <u>on each</u> Months _____ Days <u>20</u>	Surcharge/Law Library <u>75</u> (W)
Stayed: Years _____ Months _____ Days <u>160 d</u>	Stayed: Years _____ Months _____ Days _____	Prosecution Costs _____ (W)
For: <u>1</u> Years	For: <u>4 days</u>	Chemical Dependency _____ (W)
Credit: <u>4 d</u>	Credit: _____	Public Defender Fee _____ (W)
		Total: <u>\$978 (6 months)</u>

Duration: Start: _____ Time: _____ End: _____ Time: _____
 Serve as: _____ Comments: _____

Work Release - EHM - STS - Weekends
 Service: CS STS Days: 16 Hours: _____ Due Days - Weeks - Months: 4 In Lieu of Fine: \$ _____ or Time/Days: 16 days

Probation: Supervised Probation to the Court Unsupervised Years _____ Concurrent/Consecutive: Ct: _____ Case #: _____

Conditions (Interim/Adult):

Alcohol Monitor	Anger Management	Maintain/Obtain Employment	Complete Treatment	No Same or Similar
Chemical Dependency Eval	Domestic Abuse Program	No Alcohol - Cont Sub Use	Geographic Restriction	No Theft
DWI Clinic	Domestic No Contact	No Firearms	Make Court Appearances	No Trespassing
Follow Probation Rules	No Acts of Domestic Abuse	Pay Restitution: _____	<u>No Contact with Victim</u>	No Weapons
No Alcohol Offenses	No Assault	<u>Remain Law Abiding</u>	No Fleeing Police	Police Escort to Enter
No Alc Related Traffic	No Disorderly Conduct	Restitution Reserved	No Moving Violations	Random Testing
No Careless Driving	No Harassment Violations	Other: _____		Victim Impact Panel
No DL Violations	No Interfere w/911			
No Driving w/o Insurance	No Viol of No Contact Order			
No Reckless Driving	No Viol Order for Protection			

State of Minnesota

Case No. 27-CR 09-1982

SILS No. _____

v. Andrew Darst
Defendant

Charge Damage to Property 30
Case Type: Criminal

TERMS AND CONDITIONS OF SENTENCE

You are sentenced to 180 days in the workhouse and a fine of \$ 900 (plus surcharges and DM assessments). Credit given for 4 days. Of this sentence, \$ — of the fine and ~~120~~ 160 days are stayed for 1 year(s) on the following marked conditions:

OR

Imposition of sentence is stayed (§609.135) for _____ year(s) with \$ _____ (court costs and/or prosecution costs) on the following marked conditions:

1. Serve all workhouse time as ordered and, if eligible, with:

- work/school release a furlough to _____
- Electronic home monitoring (after DM _____ days)

2. Do not commit any ~~of these marked or related~~ offenses:

- Assault Disorderly Conduct Alcohol or drug traffic offense
- Violation of Protection Order Theft Weapon Offense or Possession
- Interference with 911 Call Prostitution
- _____

3. Complete a chemical health evaluation through Rule 25 or private insurance. Follow all recommendations for further evaluation, treatment, aftercare, AA, or other support group or education program.

4. Do not use alcoholic beverages, or non-prescribed drugs. You must submit to random urinalysis or Breathalyzer as requested by Probation.

5. Complete active probation and make regular reports to your probation officer or to the Alternative Supervision Program.

6. Complete a domestic violence or anger management program designated by the probation department within _____ days.

7. Have no contact in person, by phone, by mail or through a third party with Dallas Fischer, Steve Mitchell, Sean Lennes and/or stay away from _____

8. Make restitution for \$ _____ or as determined by the probation department within _____ days.

9. Satisfactorily perform _____ hours of Community Service or ~~DM~~ 16 days of Sentence to Service within ~~120~~ 120 days. This is in place of workhouse, fine or as a condition of probation.

10. Other Provide DNA Sample

THE COURT FINDS THAT:

- The mandatory minimum fine and surcharge is reduced based upon (indigency) (hardship).
- The Public Defender co-payment fee is waived due to (indigency) (hardship)

Date 5/18/09 Dan Mabley
District Court Judge Signature

I have read the checked paragraphs and I understand the conditions of my sentence. I understand that failure to obey all the conditions may result in the Court imposing the entire sentence and issuance of a warrant for my arrest without further notice to me or my attorney.

[Signature]
Defendant's signature

PAYMENT AGREEMENT

Case Number 09-1982			
Last Name DARST	First ANDREW	Middle CLARE	Date of Birth 7/11/78
Address SAME		Apt #	
City	State	Zip Code	

Amount Due \$ 978⁰⁰ Payment is due on 11/20/09

Please call 612-596-7726 for the following:

- To discuss the possibility of an extended payment arrangement
- If your address or phone number has changed since you appeared in Court

PAYMENT CAN BE MADE AT ANY LOCATION INDICATED BELOW

Division One Government Center 300 South Sixth Street Public Service Level Minneapolis, MN 55487 (612) 596-7726	Division Two 6125 Shingle Creek Pkwy Suite 200 Brooklyn Center, MN 55430 (612) 543-2150	Division Three 12601 Ridgedale Drive Suite 300 Minnetonka, MN 55305 (612) 543-1400	Division Four 7009 York Ave South Suite 214 Edina, MN 55435 (612) 543-0400
---	--	---	---

Please note case number on all payments to insure proper credit - DO NOT MAIL CASH
Please Make Checks Payable to DISTRICT COURT ADMINISTRATOR

Required Fees: In addition to any imposed fine, mandatory criminal surcharges and law library fees are also required. Pursuant to Minnesota Statute § 611.17 (c), upon disposition of a case, an individual who has received public defender services shall pay to the court a co-payment for representation provided by a public defender, unless the co-payment is, or has been, waived by the Court.

Failure to pay as indicated above may result in the Hennepin County Fourth Judicial District Court taking the following actions: the addition of a \$50 collection fee and the referral of the unpaid fees to a private collection agency. The collection agency or the court may file a Revenue Recapture claim to offset any of your state tax refunds, or any other amount owed to you by the state, unless the time period allowed by law for collection has expired. You may contest the validity of that offset unless it is based on a court order. To exercise this right, your written request for a hearing must be received by the Minnesota Department of Revenue – Collection Division within 45 days of the date of the notice of the Revenue Recapture claim. Your request must include a detailed explanation of your reason for challenging the offset. You may not raise an issue previously litigated. The collection agency and/or the court may also issue a subpoena, tow your vehicle, seek a judgment against you and/or your property, levy your bank funds, revoke or deny renewal of a professional license, report your unpaid fees to the Credit Bureau, seize property and access non-public government data on you for the purpose of collecting this debt. Additional fees may be applied. Revenue Recapture Act, Minnesota Statute § 270.A.03.

BY SIGNING THIS FORM, THE DEFENDANT AGREES TO ABIDE BY THE TERMS AND CONDITIONS OF THIS PAYMENT AGREEMENT

Defendant's Signature 

Date 5/18/09

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FILED

DISTRICT COURT

RECEIVED BY 1:47
JAN 14 2009
HENNEPIN COUNTY DISTRICT
COURT ADMINISTRATOR

FOURTH JUDICIAL DISTRICT

COURT FILE NO: 27-CR-09-1982

State of Minnesota,

Plaintiff,

vs.

**DEFENDANTS TRIAL
MEMORANDUM**

Andrew Clark Darst,

Defendant.

TO: THE ABOVE-NAMED COURT AND JOHN HALLA, ASSISTANT HENNEPIN COUNTY ATTORNEY, 2100 COURTS TOWER, HENNEPIN COUNTY GOVERNMENT CENTER, MINNEAPOLIS, MINNESOTA, 55487.

Defendant submits this memorandum as his argument for a not guilty verdict on all counts.

FACTS

Officers were dispatched to 805 County Road 19, Minnetrista, for a fight. (Officer White report, page 1). Upon arrival, officers saw the door the door to the residence was off its hinges. Officers also saw damage to a window and a hole in the wall near the door. This hole appeared to be caused by the door knob of the door.

Officers learned that that the lease holder, Dallas Fischer, had recently moved in and was having a house warming party. Officer's learned that Angela Darst was at this party. The witnesses told officers that Angela's husband, Andrew, came over the house, kicked in the door and assaulted people in the home. Officer White saw five people in the kitchen area when he walked in. Officer White observed a laceration over the eye of a man named Sean. Mound Police Officer Hooper assisted Officer White and took pictures. (Officer Hooper Report Pg. 1) Officer White then spoke to a Steve, who said he had been hit on the head. Officer White did not observe any marks. Based upon this initial information, officers began their investigation. Officer White spoke to Karl Allen Frosmann, Sean Paul Lennes, Steven Michael Mitchell, Dallas

Michele Fischer and Stacey Andrews Maness at the residence. All parties refused medical attention. (Officer White Report, page 1)

Karl Frosman was in the kitchen when he heard Andrew pounding on the door and then the door flew open. (Frosman statement pg. 2, lines 6 – 10). Karl Frosman saw people scatter; scream and it appeared that Sean Lennes went down. (Frosman, pg. 2 lines 11-13). Steve Mitchell then came back into the room and put a chair up. (Frosman, pg. 2 lines 15-18). The chair was then knocked down and it busted. (Frosman, pg. 2 lines 18-19). Karl Frosman did not know if Steve Mitchell connected with the chair, or not. (Frosman, pg. 2 line 21). Karl Frosman heard Andrew (Darst) tell his wife to go sit in the car. (Frosman, pg. 2 lines 23-24; pg. 3 lines 11-13). There was some shouting at the door and both Andrew and Angela left. (Frosman, pg. 2 line 24). Andrew did not force Angela to leave. (Frosman, pg. 2 lines 25-28). Stacey Maness came in screaming to call the police. (Frosman, pg. 3 line 15). Karl Frosman tried to call on his phone and then got a call back from dispatch after the homeowner Dallas Fischer got through to police. (Frosman, pg. 3 lines 17-18). Karl Frosman was not injured. (Frosman, pg. 2 lines 29-30). Karl Frosman noticed that the door, the chair, the dog dish and a window were broken in the incident. (Frosman, pg. 3 lines 1-5). Andrew did not appear drunk, but just raging out. (Frosman, pg. 3 lines 6-7).

Sean Lennes just knows of Andrew Darst, but has known his wife for awhile because they lived across from his best friend Dallas Fischer for a long time. (Lennes, pg. 2 lines 2-11). Andrew just started bashing on the door, taking it off its hinges, came in and started pounding on people. (Lennes, pg. 2 lines 15-28 and pg. 3 lines 1-2). Sean Lennes really could not tell the officer what happened, but heard shouting about something that did not make any sense. (Lennes, pg. 2 lines 9-13). The next thing Sean Lennes knew, was that he got hit in the face above the left eye. (Lennes pg. 3, lines 14-17). Andrew did not just walk up and hit Sean, but stormed in the door, started swinging and hit Sean when Sean was trying to get the girls out of the way. (Lennes, pg. 3, lines 20-26).

Steve Mitchell had never met Andrew Darst and was not sure of Andrew Darst's name. (Mitchell, pg. 1 lines 23-26). Steve Mitchell said that Andrew pounded on the door until the

door and window busted in. (Mitchell, pg. 1 lines 22 and 28). The whole situation happened fast. (Mitchell, pg. 2, line 4). According to Steve Mitchell, Andrew came in swinging and punching, but uncertain what Andrew was saying. (Mitchell pg. 2, lines 5-7). Steve Mitchell was hit on the top left side of his skull. (Mitchell pg. 2, lines 13-15). Steve Mitchell is uncertain about the chain of events. (Mitchell pg. 3, line 6). Steve Mitchell said that he was kneeling away from the punches, stood up and doesn't know for what happened after that. (Mitchell pg. 3, line 6). Andrew was yelling and left. (Mitchell pg. 3, lines 15-19). The whole event took place in about a three to four minute time period. (Mitchell, pg. 3, lines 20-21). Andrew did not appear intoxicated. (Mitchell pg. 3, line 23). Steve believes that Andrew Darst came to the house for his wife, Angela Darst, who left in the car with Andrew Darst. (Mitchell pg. 3, lines 24-28 and pg. 4, lines 1-4).

Dallas Fischer is the lease holder at 805 County road 19, Minnetrista, Minnesota, where the events regarding this incident took place. (Dallas Fisher Notarized Statement). On January 11, 2009, Dallas Fischer first spoke to Andrew Darst when he called to check on Angela Darst. (Dallas Fischer Statement, pg. 1, lines 19-21). Dallas Fischer told Andrew Darst that Angela Darst was sick and throwing up in a bucket. (Dallas Fischer Statement, pg. 1, lines 21-23). Andrew Darst sounded fine during the telephone conversation and said he wanted to come pick Angela up to take her home. (Dallas Fischer Statement, pg. 2, lines 1-4; Dallas Fischer Notarized Statement). Dallas Fischer told Andrew Darst how to get to her house, by providing her address, directions and a physical landmark (the house across from the Christmas lights). (Dallas Fischer statement, pg. 2, lines 4-7; Dallas Fischer Notarized Statement). Dallas Fischer was expecting Andrew Darst to enter her home and Andrew Darst was welcome on the property. (Dallas Fischer statement, pg. 2 lines 4-9; Dallas Fischer Notarized Statement). Approximately fifteen minutes later, Dallas Fischer heard pounding on the window. (Dallas Fischer Statement, pg. 2, lines 7-9, and 13). Dallas Fischer said that everyone started yelling at Andrew Darst and Sean Lennes and Steve Mitchell rushed to the door to let him in. (Dallas Fischer Statement, pg. 2, lines 13-15). Dallas Fischer does not know how the door got knocked off its hinges, and did not realize until after the fact that the door was knocked off its hinges. (Dallas Fischer Statement, pg. 2, lines 13-19). After the fact, Dallas Fischer also saw a broken chair, but had no idea how the chair broke and did not see Andrew Darst with the chair. (Dallas Fischer

Statement, pg. 4, lines 2-7). Andrew Darst began calling out for Angela Darst as soon as he entered the home. (Dallas Fischer Statement, pg. 2, line 21). Sean Lennes and Steve Mitchell try to stop him and Andrew Darst began swinging. (Dallas Fischer Statement, pg. 2, lines 29-34; pg. 3 line 1). Andrew Darst then asked which person in the group was Steve. (Dallas Fischer Statement, pg. 3, lines 4-5). Andrew Darst began to go after Steve Mitchell, who was now backed up in the office, but was prevented by both Stacey Manness and Dallas Fischer. (Dallas Fischer Statement, pg. 3, lines 7-8). Stacey Manness and Dallas Fischer were knocked to the ground when they tried to stand in front of Andrew Darst. (Dallas Fischer Statement, pg. 3 lines 7-10). Although Dallas Fischer did not see Angela Darst leave, at some point, Angela Darst left the house voluntarily and went to car. (Dallas Fischer Statement, pg 2, lines 21-26; pg. 3, lines 25-27). Andrew Darst then left the house and drove away with Angela Darst. (Dallas Fischer Statement, pg. 3, lines 29-30; pg. 4 line 1).

Stacey Maness, also spoke to Andrew Darst on the telephone. (Stacey Maness statement, pg. 1, line 19). Andrew called inquiring about Angela Darst and wanting to pick her up from the party (Stacey Maness statement, pg. 1, lines 20-24). Stacey Maness checked with Angela Darst said that she wanted Andrew Darst to pick her up. (Stacey Maness statement, pg. 1, lines 23-27). When Andrew Darst had not arrived within a half-hour from this phone call, Stacey Maness began to call Andrew Darst, but he did not answer the telephone. (Stacey Maness statement, pg. 1, lines 26-30). Stacey Maness told the guys at the party to watch for Andrew Darst. (Stacey Maness statement, pg. 2, line 4). All of the sudden Andrew was at the door, beating on it and then came in swinging. (Maness statement, pg. 2, lines 4-11). Stacey Maness then jumped in front of Andrew Darst to call him down, but she got pushed into the closet. (Maness statement, pg. 2, lines 15-18). During this time, Angela Darst went outside and waited in the van for Andrew Darst. (Maness statement, pg. 2, lines 24-26). Andrew Darst did not appear intoxicated, just furious. (Maness statement, pg. 3, lines 13-15). Andrew Darst then left the house and Stacey Maness asked for the police to be called because she was worried about Angela Darst. (Maness statement, pg. 3, lines 5-9).

While Officer White remained at Dallas Fischer's residence, Officer Wegner remained at the Darst residence and took a taped statement from Angela Darst. Angela Darst said that she

and Andrew Darst, her husband, had a disagreement earlier in the night. (Angela Darst statement, pg. 2 lines 11-12; pg. 3, lines 15-25, 29-31). Angela Darst then went to her friend Dallas Fischer's house around ten p.m., where she got really drunk and was not aware of what was going on. (Angela Darst statement, pg. 2, line 12; pg. 4 lines 1-4; pg. 9 lines 11-15). Dallas Fischer has been friends with the Darst's for about eight years. (Angela Darst statement, pg. 4, lines 28-29). Around two a.m. Andrew Darst called Dallas Fischer's house looking for Angela and a friend handed telephone to Angela Darst. (Angela Darst statement, pg. 2, line 22-25; pg. 4 lines 5-10). Andrew Darst told Angela Darst he would be there in a few minutes to pick her up. (Angela Darst statement, pg. 2, lines 25-26). Andrew Darst sounded upset when speaking to Angela Darst. (Angela Darst statement, pg. 2, lines 22-26). The friend spoke to Andrew Darst and gave Andrew Darst directions the residence prior to handing the phone to Angela Darst. (Angela Darst statement, pg. 4, lines 12-15). Angela Darst then got ready to leave. (Angela Darst statement, pg. 4, line 15). Angela Darst did not see Andrew Darst come into the house, but heard a noise saw him after he was in the house. (Angela Darst statement, pg. 5, lines 2-5). Angela Darst did not see if Andrew Darst hit anyone, but heard him yelling at everyone. (Angela Darst statement, pg. 5, lines 21-23). Everything was moving really fast, so she did not see anything. (Angela Darst statement, pg. 6, lines 2-3). She tried to get Andrew Darst to leave the house by for about thirty-seconds before walking to the car. (Angela Darst statement, pg. 5 lines 25-27). Andrew Darst followed approximately ten seconds later. (Angela Darst statement, pg. 5 lines 29-30). Andrew Darst then drove Angela Darst home. (Angela Darst statement, pg. 7, lines 4-5). Andrew Darst never threatened Angela Darst (Angela Darst statement pg. 10, lines 6-7). Officer White thought the whole thing seemed out of character and bizarre. (Angela Darst statement, pg. 8 lines 15-17; pg. 10 line 8).

After completing these interviews, Officer White learned that Andrew Darst was found at his residence and arrested. Officer White then proceeded to the Minnetrista Public Safety Department to take a Mirandized statement from Andrew Darst. (Officer White Report, page 1). Mound Police Officer Hooper attended the interview with Officer White. (Officer Hooper Report, pg. 1) While en route, Officer White learned that Andrew Darst had agreed to take a portable breath test, which registered .032. (Officer White Report pg. 1 and Officer Wegner Report, pg. 1).

Andrew Darst told the officers that his wife had gone to Dallas Mitchell's house for a party. (Andrew Darst statement, pg. 2, lines 25-27). Andrew Darst became concerned about Angela Darst and called the party, but nobody answered. (Andrew Darst statement, pg. 3, lines 1-2, Andrew Darst notarized statement). Dallas Fischer finally answered the telephone and told Andrew Darst that Angela Darst was sick and passed out. (Andrew Darst statement, pg. 3, lines 2-3; pg. 5, line 12-13, 19-21; pg. 6, lines 5-6; Andrew Darst notarized statement). Andrew Darst was particularly concerned about one person, named Steve, whom Angela Darst said had sexually propositioned her in the past and had allegedly been violent toward women. (Andrew Darst statement, pg. 3 lines 1-9; Andrew Darst notarized statement). This knowledge about "Steve" concerned Andrew Darst even more considering the information he received that his wife, Angela Darst, was drunk and passed out. (Andrew Darst statement, pg. 3, lines 1-9; Andrew Darst notarized statement). Dallas Fischer told Andrew Darst that it was alright for him to come over and pick up his wife, Angela Darst. (Andrew Darst statement, pg. 6, lines 13-16; Andrew Darst statement). Dallas Fischer gave Andrew Darst the address. (Andrew Darst statement, pg. 6, lines 11-12).

Andrew Darst went to the house, found the door locked and nobody would answer the door for him. (Andrew Darst statement, pg. 3 lines 4-5; Andrew Darst notarized statement). Andrew Darst did not know who Steve was and did not see the lease holder Dallas Fischer, or his wife Angela Darst through the window. (Andrew Darst notarized statement). Increasingly concerned about his wife's well being, the refusal of anyone he saw to answer the door, despite the Dallas Fischer telling him to come over to get his wife, and having information about his wife being passed out in a house where "Steve" was, Andrew Darst kicked in the door. (Andrew Darst statement, pg. 3, lines 1-9, 20-31; pg. 4 lines 1-4; Andrew Darst notarized statement). Officer White stated that Andrew Darst's concerns for his wife were "understandable." (Andrew Darst statement, pg. 4, line 4). When Andrew Darst got inside, he was mobbed by everybody and he fought with the people who came at him. (Andrew Darst statement, pg. 3, lines 1-11; pg. 4 lines 13-14; Andrew Darst notarized statement). The group backed off Andrew Darst after he threw a couple of punches. (Andrew Darst statement, pg. 6, lines 19-25). After Andrew Darst saw that his wife was safe and the group quit coming at him, he exchanged a few words with

some people at the party and left with his wife, Angela Darst. (Andrew Darst statement, pg. 3, lines 15-16; pg. 4, lines 27-28; pg. 6, lines 27-28; Andrew Darst notarized statement).

Both the State and the Defense stipulate that the property damage is in excess of five hundred dollars.

APPLICABLE LAW AND ARGUMENT

BURGLARY IN THE FIRST DEGREE

A. CRIMJIG 17.01 Burglary in the First Degree-Defined

The statutes of Minnesota provide that whoever:

- 1) enters a building without the consent of the person in lawful possession,
- 2) and commits a crime while in the building, and
- 3) the building is a dwelling, and another person, not an accomplice, is present in it, is guilty of a crime. (See also, Minn. Stat §§ 609.581 and 609.582, subd. 1).

B. CRIMJIG - Person in Lawful Possession

- 1) When several persons are in lawful possession of a building or of the same part of the building, any one of these persons may consent to the entry or remaining of another person.

In this case Dallas Fischer is the lease holder at 805 County Road 19, Minnetrista, Minnesota. Dallas Fischer invited the Defendant over to her house pick up his wife, Angela Darst. Dallas Fischer gave the Defendant directions and told him to look for the Christmas lights across the street. Dallas Fischer expected the Defendant to come into her home, and he was welcome in her home. This is further evidenced by Stacey Manes' testimony. Ms. Manes states that not only did Dallas Fischer invite the Defendant over to pick up Angela Darst, but Ms. Manes herself did as well. In fact, when the Defendant did not show up to house in a timely fashion, Ms. Manes began calling the Defendant wondering when he would be showing up. Ms. Manes then states that she told a couple of the guys to be looking out for him to arrive. In addition, Angela Darst states that she was expecting the Defendant, her husband, to be picking her up at the residence.

The Defendant clearly had the consent of the lawful person in possession of the building to be in the building. The State is not able to meet its burden of proof beyond a reasonable doubt that the Defendant did not.

BURGLARY IN THE SECOND DEGREE

A. CRIMJIG 17.05 Burglary in the Second Degree-Defined

The statutes of Minnesota provide that whoever:

- 1) enters a building without the consent of the person in lawful possession, and
- 2) with intent to commit a crime, or commits a crime, while in the building, and
- 3) the building is a dwelling,

is guilty of a crime. (See also, Minn. Stat. §§ 609.581 and 609.582, subd. 2; CRIMJIG 17.06 – elements)

B. CRIMJIG - Person in Lawful Possession

- 1) When several persons are in lawful possession of a building or of the same part of the building, any one of these persons may consent to the entry or remaining of another person.

In this case Dallas Fischer is the lease holder at 805 County Road 19, Minnetrista, Minnesota. Dallas Fischer invited the Defendant over to her house pick up his wife, Angela Darst. Dallas Fischer gave the Defendant directions and told him to look for the Christmas lights across the street. Dallas Fischer expected the Defendant to come into her home, and he was welcome in her home. This is further evidenced by Stacey Manes' testimony. Ms. Manes states that not only did Dallas Fischer invite the Defendant over to pick up Angela Darst, but Ms. Manes herself did as well. In fact, when the Defendant did not show up to house in a timely fashion, Ms. Manes began calling the Defendant wondering when he would be showing up. Ms. Manes then states that she told a couple of the guys to be looking out for him to arrive. In addition, Angela Darst states that she was expecting the Defendant, her husband, to be picking her up at the residence.

The Defendant clearly had the consent of the lawful person in possession of the building to be in the building. The State is not able to meet its burden of proof beyond a reasonable doubt that the Defendant did not.

DAMAGE TO PROPERTY IN THE THIRD DEGREE

A. CRIMJIG 18.27 Criminal Damage to Property – Defined

The statutes of Minnesota provide whoever intentionally causes damage to physical property of another without the other's consent is guilty of a crime.

B. CRIMJIG 18.28 Criminal Damage to Property – Elements

The elements of damage to property are:

First, the defendant intentionally caused damage to (the door, window, dog dish, and wall).

Second, the (door, window, dog dish, wall) was the property of another.

Third, the other person did not consent to the damaging of the property.

Fourth, the defendant's act took place on or about January 11, 2009 in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is:

1) Did the damage reduce the value of the property by more than \$500, as measured by the cost of repair and replacement.

The Defendant and the State stipulate that the damaged property amounted to more than \$500.

However, the Defendant has asserted the defense of self defense and defense of others. It is lawful for a person to use reasonable force upon, or toward another person without the other's consent when the actor reasonably believes it is necessary to aid another to resist or aid another in resisting an offense against another person. Minn. Stat. § 609.06.

In this case, Andrew Darst knew the following: his wife was extremely drunk and sick from drinking; she had thrown up; he believed she was passed out; there was another man in the house that had a sexual interest in Defendant's wife; and he was invited to the house to pick his wife up to take her home. When Andrew Darst arrived at Dallas Fischer's home, the group in the kitchen refused to answer the door. This heightened Andrew Darst's concern for his wife and he rushed through the door to her aid. The Defendant used reasonable force by going through the door to aid his wife who he reasonably believed needed his assistance. Officer

White acknowledged this was understandable. Certainly if an officer believes the breach to be reasonable, the state is unable to prove beyond a reasonable doubt that the force was not justified. State v. McKissic, 415 N.W.2d 341 (Minn. Ct. App. 1987).

ASSAULT IN THE FIFTH DEGREE (TWO COUNTS - S.M.M. AND S.PL.)

A. CRIMJIG 13.29 Assault in the Fifth Degree – Defined

The statutes of Minnesota provide that whoever

- 1) Commits an act with intent to intentionally inflicts or attempts to inflict bodily harm upon another

Is guilty of crime. (See also, Minn. Stat. § 609.224, 2ubd. 1)

The Defendant has also asserted self defense for this situation. It is lawful for a person to use reasonable force upon, or toward another person without the other's consent when the actor reasonably believes it is necessary to aid another to resist or aid another in resisting an offense against another person. Minn. Stat. § 609.06.

When Andrew Darst arrived at Dallas Fischer's home, the group in the kitchen refused to answer the door. This heightened Andrew Darst's concern for his wife and he rushed through the door to her aid. The Defendant used reasonable force by going through the door to aid his wife who he reasonably believed needed his assistance. Officer White acknowledged this was understandable. After breaching the door, Andrew Darst was mobbed by the group in the kitchen. They pushed him back toward the wall. Someone raised a chair over their head to strike Andrew Darst with. Andrew Darst did the only thing he reasonably believed he could do to protect him from injury and come to his wife's aid. As soon as the mob retreated and Andrew Darst saw his wife was not in danger, he stopped swinging and retreated to his vehicle. The entire matter lasted only seconds. In defending his person and defending his wife, whom he reasonably believed to be in danger, the state is unable to prove beyond a reasonable doubt that the force used by Andrew Darst was not justified. State v. McKissic, 415 N.W.2d 341 (Minn. Ct. App. 1987).

CONCLUSION

The Defendant had the lease holder's permission to be at the residence. The Defendant's forced used to enter the home and then to defend his person was reasonable and justified to protect his person and his wife, Angela Darst, who the Defendant reasonably believed to be in danger. The Defendant then immediately met his duty to retreat when the danger subsided. The State is unable to prove beyond a reasonable doubt, the required element of "without consent" for the two burglary charges. The State is unable to prove beyond a reasonable doubt that the forced used by the Defendant was not reasonable and justified. The Defendant should be found not guilty on all Counts.

Dated: 3/16/09

Respectfully submitted,



Patrick W. Flanagan, Atty. Reg. No. 238132
University Business Center
7984 University Avenue N.E.
Fridley, MN 55432
(763) 786-5324
Attorneys for Defendant.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FILED
FOURTH JUDICIAL DISTRICT COURT
09 MAR 23 PM 1:59
CRIMINAL DIVISION

DISTRICT COURT ADMINISTRATOR
District Court File Number
27 CR 09-1982

State of Minnesota,
Plaintiff,

FINDINGS, CONCLUSIONS
OF LAW, AND ORDER

vs.

Andrew Clark Darst,
Defendant.

ORIGINAL

The above-entitled matter came duly on before Judge Daniel H. Mabley on March 16, 2009 pursuant to a Stipulated Facts Trial.

APPEARANCES

John Halla, Assistant Hennepin County Attorney, appeared for and on behalf of the County of Hennepin, State of Minnesota.

Patrick Flanagan, Esq., appeared for and on behalf of the Defendant, Andrew Darst, who was present.

On March 16, 2009, the Defendant waived his right to a jury trial on the record and the case was submitted to the Court as a stipulated facts trial. The following investigative files were received from the parties by stipulation and they provide the factual basis for the Court's findings:

- Incident Report from Minnetrista Police Department (ICR #09000191)
- Supplemental Report from Minnetrista Police Department
- Offense Report from Mound Police Department, Officer Hooper (Case Number 09-0074)
- Statements taken by Minnetrista Officers on 1/11/09 of:
 - Andrew Clark Darst
 - Angela Christine Darst
 - Karl Allen Frosmann
 - Sean Paul Lennes
 - Steve Mitchell
 - Dallas Michelle Fischer
 - Stacey Andrews Maness
- Signed Affidavit of Dallas Fischer
- Signed Affidavit of Andrew Darst

Based upon the parties' stipulated submissions, the evidence adduced, and argument of the parties, the Court makes the following:

FINDINGS:

1. On January 11, 2009, at approximately 2:18 a.m. officers Brandon White and Ryan Wegner of the Minnetrista Police Department responded to 805 County Road 19 in the city of Minnetrista, Hennepin County, Minnesota, on report of a fight. Because of their proximity, the neighboring agencies of Mound and Orono were also dispatched to secure the area.
2. Upon arrival, the officers saw that the back door to the residence was off its hinges. Officers also saw damage to a window, a hole in the wall near the door, a broken dog dish, a cracked wooden chair, and some damage to a closet. The damage was photographed by Officer Hooper of the Mound Police Department.
3. Sergeant Sussman of the Mound Police Department was informed that the renters at the residence, Steven Mitchell and Dallas Fischer, had just moved in and were having a house warming party. Officer's learned that Angela Darst was at this party. The witnesses told officers that Angela's husband, Andrew Darst, the Defendant herein, came over to the house, kicked in the door, and allegedly assaulted people in the home. The Defendant and Mrs. Darst then left the residence. The witnesses provided the officers with the address of the Darst residence, and Officer Wegner was able to secure the Defendant and Mrs. Darst upon responding to the address.
4. The five individuals remaining in the kitchen area of the residence were identified as Karl Frosmann, Steve Mitchell, Dallas Fischer, Stacey Maness, and Sean Lennes and were interviewed by Officer White regarding the incident. They all refused medical attention.
5. Officer Wegner interviewed Angela Darst at her residence. The Defendant also agreed to be interviewed after being given a Miranda warning.
6. Based on these interviews, the witnesses first heard the Defendant at the Minnetrista residence when he began pounding on the back door and a nearby window. As they approached the door to respond the Defendant was able to knock down the door and quickly entered the residence. The Defendant came into the residence swinging, punching, and calling for his wife. Steve Mitchell told Officer White that the Defendant was swinging, "like he wanted to kill us." The Defendant punched Mitchell on the top and left side of his head several times. Karl Frosmann also saw Mitchell attempt to protect himself with a chair when he was knocked to the ground by the Defendant. The Defendant also struck Sean Lennes in the head, knocking him to the ground and causing a laceration and a bruise above his left eye. Dallas Fischer and Stacey Maness were yelling and attempting to stop the attack. Maness stated that the Defendant pretty much wanted to beat up any guy in the room. During the commotion Mrs. Darst came into the room and told her husband, the Defendant, to stop and attempted to get him to leave with her.

She then exited the residence and he followed her to the car shortly thereafter and they returned home.

7. Karl Frosman noted that the door, chair, dog dish, and window were not broken before the incident. The Defendant and the State stipulate that the damaged property amounted to more than \$500.

8. Dallas Fischer is the lease holder at 805 County Road 19, Minnetrista, Minnesota, where the incident took place. According to both her signed affidavit and her interview with Officer White, Fischer received a call from the Defendant regarding his wife, and after hearing that she was sick from drinking, he asked for directions so that he could come pick her up. Fischer provided the Defendant with her address and noted in her affidavit that Andrew was welcome to the property. Stacey Mannes confirmed that both Fischer, and herself invited and encouraged the Defendant to come to the house to pick up Mrs. Darst.

8. The Defendant also submitted an affidavit explaining his concern for his wife on the night in question. According to the Defendant, Mrs. Darst informed him that on a prior occasion Steve Mitchell had made unwanted sexual advances on her. However, the Court finds that on the night in question the only information the Defendant had regarding his wife was that she was heavily intoxicated. Furthermore, he had no other information that would have resulted in a concern for the physical safety or well-being of Mrs. Darst. Specifically, the Defendant had no information that Mrs. Darst was under the threat of imminent bodily harm.

9. In the Defendant's affidavit he also claims that he was immediately attacked upon entering the residence. The Court does not find this claim to be credible based on the Defendant's own statements to police, and the corroborated statements of the witnesses. Immediately following the incident the Defendant was interviewed by Officer White and had a chance to explain the confrontation. When directly asked whether anyone hit or assaulted him the Defendant responded, "No, they were pushing me back... Which is understandable considering that, you know, it is their home." Therefore, the Court finds that the Defendant was in fact the initial aggressor upon entering the house.

CONCLUSIONS OF LAW:

Count 1: Burglary in the First Degree

1. The Court finds that the Defendant entered the dwelling at 805 County Road 19, Minnetrista, Minnesota with the consent of Dallas Fischer, a person in lawful possession of the building at the time of the incident.

2. According to Minn CRIMJIG 17.16 (2008), when several persons are in lawful possession of a building or of the same part of the building, any one of these persons may consent to the entry or remaining of another person. Dallas Fischer was a lease holder of

the property in question, and she had the legal right to invite the Defendant to the dwelling and consent to his entry.

3. At least one element of Burglary in the First Degree has not been proven beyond a reasonable doubt. Therefore, the Defendant is **NOT GUILTY** of the crime of **Burglary in the First Degree**, according to Minnesota Statutes section 609.582, subd.1(a); 1a.

Count 2: Damage to Property in the Third Degree

1. The Defendant intentionally caused damage to the door, window, dog dish, and wall at the residence located at 805 County Road 19, Minnetrista, Minnesota.

2. The door, window, dog dish, and wall were the property of another.

3. The owner of the property did not consent to the damage.

4. The parties agree and the Court finds that the damage caused by the Defendant reduced the value of the property by more than \$500.

5. The Defendant's acts took place on or about January 11, 2009, in Hennepin County, Minnesota.

6. Each element of the crime of Damage to Property in the Third Degree has been proven beyond a reasonable doubt. Therefore, the Defendant is **GUILTY** of the Crime of **Damage to Property in the Third Degree** (Gross Misdemeanor) contrary to Minnesota Statutes section 609.595, subd.2(a).

Count 3: Burglary in the Second Degree

1. Similar to Count 1, the Court finds that the Defendant entered the dwelling at 805 County Road 19, Minnetrista, Minnesota with the consent of Dallas Fischer, a person in lawful possession of the building at the time of the incident.

2. According to Minn CRIMJIG 17.16 (2008), when several persons are in lawful possession of a building or of the same part of the building, any one of these persons may consent to the entry or remaining of another person. Dallas Fischer was a lease holder of the property in question, and she had the legal right to invite the Defendant to the dwelling and consent to his entry.

3. At least one element of Burglary in the Second Degree has not been proven beyond a reasonable doubt. Therefore, the Defendant is **NOT GUILTY** of the crime of **Burglary in the Second Degree**, according to Minnesota Statutes section 609.582, subd.2(a)(1).

Counts 4 and 5: Assault in the Fifth Degree

1. The Defendant physically assaulted Steve Mitchell (Count 4) and Sean Lennes (Count 5). In effecting the assault against Mr. Mitchell, the Defendant intentionally inflicted and attempted to inflict bodily harm upon him by punching his head several times. In effecting the assault against Mr. Lennes, the Defendant intentionally inflicted and attempted to inflict bodily harm upon him by striking his face and causing a laceration above his left eye.

2. The Defendant's acts took place on or about January 11, 2009, in Hennepin County, Minnesota.

3. The Defendant's assertion that he was acting in self-defense has been rebutted by proof beyond a reasonable doubt. While the State need only prove the absence of one element of self-defense, the evidence in this matter rebuts multiple conditions necessary for Defendant's claim of self-defense. First, the Defendant acted as the initial aggressor by entering the house and striking Mr. Mitchell and Mr. Lennes. Furthermore, the Defendant did not have a reasonable belief that it was necessary to use force in preventing imminent bodily harm to his person, as he admitted to Officer White that he was never assaulted, but was understandably forced back towards the door exiting the house. Finally, it was reasonably possible for the Defendant to retreat or otherwise avoid danger both before entering the house and after entering the house and securing his wife.

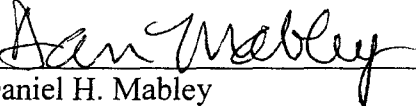
4. While the Defendant asserts that he was also acting in defense of his wife, Angela Darst, the Court concludes that the evidence still establishes beyond a reasonable doubt that at least one element of his defense of others claim is absent. Again, the Defendant acted as the initial aggressor. Although the Defendant may have had an honest belief that his wife was heavily intoxicated within the residence, it was not reasonable to believe that force was necessary to prevent imminent bodily harm to her person. Furthermore, Mrs. Darst told her husband to stop and leave the house, demonstrating that she was never under the threat of imminent bodily harm and the Defendant had a reasonable opportunity to retreat from the situation.

5. Each element of the charge of Assault in the Fifth Degree against Steve Mitchell and Sean Lennes has been proven beyond a reasonable doubt. Additionally the State has proven beyond a reasonable doubt that the Defendant did not act in self-defense or defense of others. Therefore, the Defendant is **GUILTY of Counts 4 and 5, Assault in the Fifth Degree** (Misdemeanor), contrary to Minnesota Statutes sections 609.224, subd.1(2); 609.101 subd.2.

LET JUDGEMENT BE ENTERED ACCORDINGLY

Dated: 3/23/09

BY THE COURT:



Daniel H. Mabley
Judge of District Court



OFFICE OF THE HENNEPIN COUNTY ATTORNEY

MICHAEL O. FREEMAN COUNTY ATTORNEY

March 17, 2009

The Honorable Daniel H. Mabley
Judge of District Court
C1721 Government Center
Minneapolis, MN 55487

09 MAR 18 AM 11:44

DEPUTY
HENNEPIN COUNTY DISTRICT
COURT ADMINISTRATOR

Re: Andrew Clark Darst
MNCIS No. 27CR091983
C.A. File No. 09-4426

Dear Judge Mabley:

I am writing in response to the Defense's Trial Memorandum submitted yesterday after Andrew Darst's waiver of jury trial. As I stated on the record, it is the State's position that there is sufficient evidence to establish beyond a reasonable doubt that the Defendant committed each of the offenses charged in the Amended Complaint. In addition, the evidence establishes beyond a reasonable doubt that Andrew Darst can not be legally excused from criminal liability based upon Minnesota's legal definition of self-defense or defense of others.

The Defendant has the "burden of going forward with evidence to support a claim of self-defense." State v. Graham, 371 N.W.2d 204, 209 (citing State v. Columbus, 258 N.W.2d 122, 123 (Minn. 1977)). If the defendant does not present a *prima facie* case, he is not entitled to a self-defense instruction. State v. Pendleton, 567 N.W.2d 265, 270; State v. Graham, 371 N.W.2d 204, 209 (Minn. 1985).

A claim of self-defense can be rebutted by proof beyond a reasonable doubt showing:

1. the absence of aggression or provocation on the part of the defendant;
2. the absence of an actual and honest belief by the defendant that he was in imminent danger of death, great bodily harm, or some felony and it was necessary to take the action he did;
3. the absence of a reasonable grounds for such belief; and
4. the Defendant could not retreat or otherwise avoid danger if reasonably possible.

State v. Johnson, 152 N.W.2d 529, 532 (Minn. 1967).

The State only needs to prove the absence of one element of self-defense. State v. McKissic, 415 N.W.2d 341, 344 (Minn. 1987); State v. Smith, 374 N.W.2d 520 (Minn. App. 1985) (appellant's act was not in apprehension of great bodily harm or death and thus was not a reasonable act of self-defense); State v. Spaulding, 296 N.W.2d 870, 875 (1980); see also State v. Spann, 182 N.W.2d 873 (Minn. 1970) (appellant did not believe he was in imminent danger of death or great bodily harm).

Based upon the stipulated record in this case, the evidence establishes that Andrew Darst was the aggressor. There is not 'reasonable evidence that the victim was committing an independent assault on the defendant at the time defendant (committed the alleged offense).'" Graham, 371 N.W.2d at 209 (citing State v. Johnson, 310 N.W.2d 96, 97 (Minn. 1981)).

Self-defense is available only to those individuals who act honestly and in good faith. State v. Johnson, 152 N.W.2d 529, 532 (Minn. 1967). A subjective belief in the necessity of using force is required to meet the "good faith" element of self-defense. Id. In addition to having an honest and good faith belief of imminent danger, it is equally necessary that the belief be objectively reasonable. State v. Johnson, 152 N.W.2d 529, 532 (Minn. 1967).

Most importantly, the fourth element in a claim of self-defense is the defendant's duty to retreat. The duty to retreat is a part of the general concept of reasonableness. The Minnesota Supreme Court held that "It is well settled that there is a duty to retreat and avoid danger if reasonably possible." State v. Austin, 332 N.W.2d 21, 24 (Minn. 1983), citing State v. Johnson, 152 N.W.2d 529, 532 (1967). This requirement is also set out in CRIMJIG 7.08 which states that "the legal excuse of self-defense is available only to those who act honestly and in good faith. This includes the duty to retreat or avoid the danger if reasonably possible." This rule was approved in Johnson, State v. Baker, 160 N.W.2d 240 (1968), State v. Jones, 271 N.W.2d 534 (Minn. 1978), and State v. Morrison, 351 N.W.2d 359 (Minn. 1984). A defendant may not use a self-defense claim if he did not take the opportunity for a safe retreat.

General provisions for authorized use of reasonable force in defense of self are detailed in Minn. Stat. § 609.06 which states that "*reasonable* force may be used upon or toward the person of another without the other's consent when the following

circumstances exist or the actor reasonably believes them to exist” (emphasis added). Minn. Stat. §609.06(3) states that one of those circumstances is when such force is “used by any person in resisting or aiding another to resist an offense against the person.”

The defendant’s belief in the necessity of force must be reasonable. A subjective belief in the necessity of using force is required to meet the “good faith” element of self-defense. However, it is equally necessary that the belief be objectively reasonable. State v. Johnson, 277 Minn. 368, 373 (Minn. 1967). See also, Sanford v. State, 499 N.W.2d 496, 500 (Minn. Ct. App. 1993), rev. denied (Minn. 1993). State v. Hennum, 428, N.W.2d 859, 866 (Minn. Ct. App. 1988), affirmed in part, reversed in part, on other grounds, 441 N.W.2d 793 (Minn. 1989).

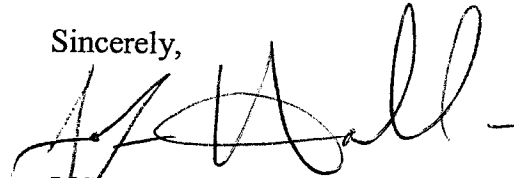
According to Minn. CRIMJIG 7.06, “the kind and degree of force which a person may lawfully use in self-defense is limited by what a reasonable person in the same situation would believe to be necessary. Any use of force beyond that is regarded by the law as excessive.” It is well established that “[t]he degree of force used in self-defense must not exceed that which appears to be necessary to a reasonable person under similar circumstances.” State v. McKissic, 415 N.W.2d 341, 344 (citing State v. Bland, 337 N.W.2d 378, 381 (Minn. 1983)).

Reasonable force may be used upon or toward another person when the actor reasonably believes the actor is resisting *or aiding another* to resist an offense against the person. Minn. Stat. § 609.06 subd. 1(3) (2002) (emphasis added). The defendant cannot be the initial aggressor and attempt to claim defense of others. State v. Columbus, 258 N.W.2d 122, 125 (Minn. 1977) (defendant denied defense of others instruction where defendant was the initial aggressor).

In the current case, Andrew Darst’s claim of self-defense does not meet the well recognized legal standard articulated above. The evidence establishes that the Defendant forced his way into the house breaking the door, assaulted several people once inside and failed to retreat from the house. In addition, despite his purported concerns for his wife’s well-being, he failed to summon the police or paramedics to assist his wife whom he believed to be sick due to intoxication. In his statement at page four, the Defendant admitted that no one inside of the house assaulted him. Asked by the officer

"Did anybody hit you, did anybody assault you, did anybody assault you?" Darst responded "No, they were pushing me back....Which is understandable considering that, you know, it is their home....They were just applying body pressure....back towards the door."

Sincerely,

A handwritten signature in black ink, appearing to read "John Halla", with a horizontal line extending to the right.

JOHN HALLA
Assistant County Attorney
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JH:hlg

cc: Patrick W. Flanagan (Via Facsimile)