

ORIGINAL FAX

November 13, 2008

08-628

Supreme Court
State Capitol
Room 2413
Lincoln, NE 68509

RE: DARREN J. DRAHOTA
Case # CR07-230

The Lancaster County Adult Probation did not complete a presentence investigation on Darren J. Drahota for the Lancaster County District Court.

If you have any other questions, I can be contacted at 441-8861.

Sincerely,

Nancy A. Pettito

Nancy Pettito

FILED
NOV 13 2008
CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

11-6

IN THE COURT OF APPEALS FOR THE STATE OF NEBRASKA

STATE OF NEBRASKA,

Appellee,

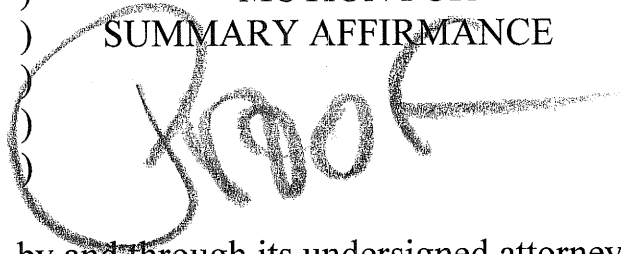
v.

DARREN J. DRAHOTA,

Appellant.

CASE NO. A-08-628

MOTION FOR
SUMMARY AFFIRMANCE




The Appellee, State of Nebraska, by and through its undersigned attorneys, moves the Court for Summary Affirmance of the order of the District Court of Lancaster County affirming the Lancaster County Court's finding of guilt pursuant to Neb. Ct. R. App. P. § 2-107(B)(2) on the ground that the questions presented are so insubstantial as not to merit argument.

Respectfully submitted,

STATE OF NEBRASKA, Appellee,

BY: JON BRUNING, #20351
Attorney General

BY: 
George R. Love, # 19332
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68508
(402) 471-3833
Attorneys for Appellee

FILED
OCT 23 2008
CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing Motion for Summary Affirmance and Memorandum was served upon the Appellant herein by placing a copy of the same in the United States Mail, first class postage prepaid, to the last known address of: Darren Drahota, 1100 West C Street, # 211, Lincoln, NE 68522, on this 23rd day of October, 2008.

A handwritten signature in cursive script, reading "George R. Love", is written over a horizontal line.

George R. Love, #19332
Assistant Attorney General

GRL/kas

IN THE COURT OF APPEALS FOR THE STATE OF NEBRASKA

STATE OF NEBRASKA,)	CASE NO. A-08-628
)	
Appellee,)	
	)	MEMORANDUM BRIEF IN
v.	)	SUPPORT OF MOTION
	)	FOR SUMMARY AFFIRMANCE
DARRON J. DRAHOTA,)	
)	
Appellant.)	

This memorandum brief is filed in support of Appellee's Motion for Summary Affirmance pursuant to Neb. Ct. R. App. P. § 2-107(B)(2) which requires that such a motion shall document the claimed lack of substance for the questions presented by citations to dispositive portions of the record and to the controlling statutory and case law. The issue on appeal is whether the district court erred by affirming the County Court's determination that the evidence was sufficient to find the Appellant guilty of Disturbing the Peace.

STATEMENT OF THE CASE

A. Nature of the Case

This is appeal from the district court's order affirming the County Court's finding that the evidence was sufficient to find Drahota guilty of disturbing the peace.

B. Issues Tried Below

Whether the evidence supports the finding of guilt.

C. How the Issues Were Decided:

The district court affirmed the county court's finding of guilt.

D. Standard of Review:

When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Muro*, 269 Neb. 703, 695 N.W.2d 425 (2005). In reviewing a criminal conviction, an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence. *State v. Jonusas*, 269 Neb. 644, 694 N.W.2d 651 (2005). Such matters are for the finder of fact, and a conviction will be affirmed, in the absence of prejudicial error, if the properly admitted evidence, viewed and construed most favorably to the State, is sufficient to support the conviction. *Id.*

Upon appeal from a county court in a criminal case, a district court acts as an intermediate appellate court, rather than as a trial court, and its review is limited to an examination of the county court record for error or abuse of discretion. Both

a district court and a higher appellate court generally review appeals from a county court for error appearing on the record. *State v. Schulte*, 12 Neb. App. 924, 928, 687 N.W.2d 411, 415 (Neb. Ct. App. 2004).

STATEMENT OF FACTS

William Avery was a professor of political science and Darren Drahota was a student at the University of Nebraska at Lincoln. (3:1-25). Between January 27, 2005, and February 10, 2006, Drahota and Avery exchanged email messages. (E1, 1-12:10, 10). Eventually, Avery requested that Drahota stop sending him emails as he found Drahota's emails, "hateful, racist and vile." (4:7-13). At one point, Drahota threatened Avery with physical violence. (22:25; 23:1-10). After three requests by Avery to Drahota to stop sending emails, Drahota sent emails under a different domain address. (28:3-13; 5:17-25; 6:1-4)(E1, 1-12:10, 10). The domain address was Averylovesalqueda@yahoo.com. (T45)(28:18-24). Avery stated that these emails disturb him. (11:15-20). Avery turned the emails over to the police. (30:2-8).

Investigator Sexton traced the new domain address to Jennifer Schultz who lived with Darren Drahota. (36:15 - 38:). Drahota eventually admitted he was the one that sent the emails to Avery. (39:1-6).

The district court found there was sufficient evidence to sustain the trial

court's finding that Drahota sent Avery unwanted emails after Avery had repeatedly asked him to stop contacting him. (T47). The emails sent by Drahota were meant to anger and incite Avery and often contained profane, indecent, and abusive remarks. (T48).

ARGUMENT

Drahota argues that his emails are protected speech and that because Avery had the option of simply deleting the emails, the evidence is insufficient to support the conviction. (Brief of Appellant, p. 2 & 7).

As to free speech, the Nebraska Supreme Court stated:

The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others....

... One may, however, *be guilty of the offense if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended. Decisions to this effect are many, but examination discloses that, in practically all, the provocative language which was held to amount to a breach of the peace consisted of profane, indecent, or abusive remarks directed to the person of the hearer. Resort to epithets or personal abuse is not in any proper sense communication of*

information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.

State v. Broadstone, 233 Neb. 595, 600-601, 447 N.W.2d 30, 34 (1989)(emphasis added), citing, *Cantwell v. Connecticut*, 310 U.S. 296, 308-10, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).

Here, Exhibit 1 reflects the hateful, profane, and threatening language used by Drahota and sent to Avery. In no sense is that type of language protected speech. Drahota relies upon *State v. Hai Dang*, 220 Neb. 120, 368 N.W.2d 486 (1985), for the proposition the evidence is insufficient to support his conviction. (Brief of Appellant, p. 4). Drahota seems to argue that the method of communication somehow prevents his communications from rising to the level of disturbing the peace.

As the district court noted in distinguishing the case of *State v. Hai Dang*, 220 Neb. 120, 368 N.W.2d 486 (1985), relied upon by Drahota:

“It was not the method of communication that led to the final result in *Hai Dang*, rather it was a lack of evidence in relation to the content of the communications made between the parties. There was little, if any, credible evidence that the Defendant in *Hai Dang* had made any threats; used

abusive, profane, or indecent language; or acted violently towards his ex-girlfriend. In the instant case, the court concludes that there was sufficient evidence for the trial court to find that the Defendant's acts constituted a disturbance of the peace."

(T49).

The evidence viewed most favorably to the State supports the trial court's finding that Drahota disturbed the peace of Avery.

CONCLUSION

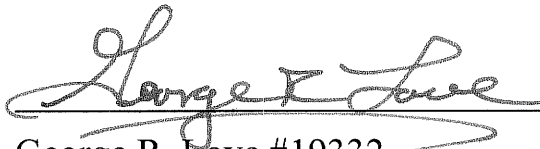
For the foregoing reasons the Appellee respectfully requests a summary affirmance of the ruling by the District Court of Lancaster County affirming the county court's finding that the evidence was sufficient to support the conviction of disturbing the peace.

Respectfully submitted,

STATE OF NEBRASKA, Appellee,

BY: JON BRUNING, #20351

Attorney General

BY: 

George R. Love #19332

Assistant Attorney General

2115 State Capitol

Lincoln, NE 68509

(402) 471-2682

Attorneys for Appellee

GRL/kas

11-10

IN THE COURT OF APPEALS FOR THE STATE OF NEBRASKA


STATE OF NEBRASKA,)	CASE NO. A-08-628
)	
Appellee,)	
)	
)	
v.	)	MOTION FOR EXTENSION
	)	OF BRIEF DATE
DARREN J. DRAHOTA,)	
)	
Appellant.)	

COMES NOW the Appellee, State of Nebraska, and requests Appellee's brief dates be extended until thirty days after this Court's ruling on the Appellee's pending motion for summary affirmance, in the event that such motion is overruled.

Respectfully submitted,

STATE OF NEBRASKA, Appellee,

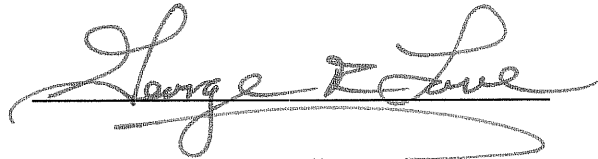
BY: JON BRUNING, #20351
Attorney General

BY: 
George R. Love, #19332
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509
(402) 471-2682
Attorneys for Appellee

FILED
OCT 23 2008
CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing Motion for Extension of Brief Date and Affidavit of Cause was served upon the Appellant herein by placing a copy of the same in the United States Mail, first class postage prepaid, to the last known address of: Darren Drahota, 1100 West C Street, # 211, Lincoln, NE 68522, on this 23rd day of October, 2008.

A handwritten signature in cursive script, reading "George R. Love", written over a horizontal line.

George R. Love, #19332
Assistant Attorney General

GRL/kas

IN THE COURT OF APPEALS FOR THE STATE OF NEBRASKA

STATE OF NEBRASKA,	)	CASE NO. S-08-0628
)	
Appellee,)	
v.	)	AFFIDAVIT OF CAUSE
)	
DARREN J. DRAHOTA,)	
)	
Appellant.)	

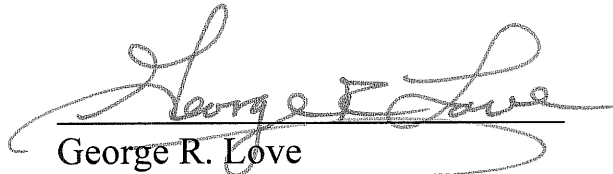
STATE OF NEBRASKA)	
	)	ss
COUNTY OF LANCASTER)	

I, George R. Love, first duly sworn upon my oath, hereby depose and state as follows:

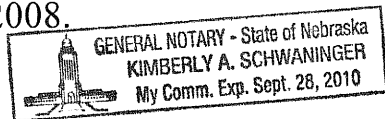
1. That the undersigned is one of the attorneys for the Appellee in the above-captioned matter.

2. That the motion filed herein is requested for cause and in the interest of judicial efficiency in that there is pending before this Court a motion for summary affirmance, which, if granted, would render a brief on the merits in the foregoing matter unnecessary.

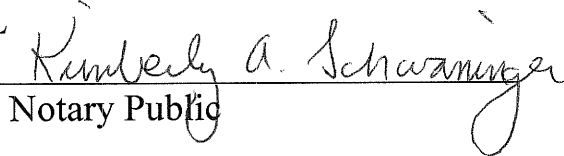
Further Affiant Sayeth Naught.


George R. Love

SUBSCRIBED AND SWORN TO before me on this 23rd day of October, 2008.



SEAL


Notary Public

ORIGINAL FAX

To whom it may concern:

I have a pending case with the Court of Appeals. I have tried perfecting my appeal on two different occasions and they simply were not good enough representations in order to perfect. I have actually given a completed brief (over two months ago) to the court, but was mailed a letter shortly thereafter claiming that I needed to do X, Y, and Z. My concern is access to this court. It is claimed on the website that everybody should have access to the court and not only should they have access, but that it is government's duty to grant this access. So I work my tail off on a brief and put many hours into it and the court will not even look at it because of simple things such as a cover page not being gray? A jurisdictional statement telling the court how it has authority to hear a case? Doesn't the court know the rules well enough to determine if it has jurisdiction over a case? How on earth can that be my responsibility; the average person? I have put numerous hours into my appeal and have hit another roadblock in my jurisdictional statement. Where do I find the proper statute that grants this authority? Upon a call to the supreme court office, I was merely told "in Nebraska statute." Really? Nestled neatly within the thousands of legislative documents? I just don't understand how the court can refuse to take a look at my brief, being that I am not an attorney, and determine exactly what it is that I am contesting. I was told by the nice lady who accepted my initial brief that it looked good, but was not entirely correct according to guidelines, but that the judges might make an exception because it was concise and to the point. I had a back and forth political exchange with a VERY liberal instructor who preached nothing but hate in his class for all of the years that I was at UNL and I said sent some scathing, but non-threatening, comments back to him and he ran to a police detective that he knew and had him write a citation. I requested a jury, not entirely true. I WANTED to request a jury trial, but my attorney told me to do just a bench trial. It was an open and shut case---No need to mess with a jury---let's get it done and out of the way. Well, I was found guilty of Disturbing the Peace. I find it a misuse of the legal system and I merely want the Appeals Court to look at it. Meanwhile, I am looking for resources and cannot find them. I cannot even find an email for the court. The court is inaccessible to electronic mail? I just don't understand any of this. I want my revised brief to be allowed. I am unable to find statutory authority, but I know the court has it. The court knows this too. Without that, I am forced to miss the deadline. It's unfortunate. I wanted the court to determine if an email exchange constituted disturbing the peace. Thanks for your time.

Darren Drahota—ddrahota@hotmail.com

Case No. A-08-000628

1100 West C #211 Lincoln, NE 68522

FILED

OCT 06 2008

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

Received Time Oct. 6. 4:52PM

08-0628 9-22

I, Darren Drahofer, request that the Court grant a 30 day extension to the deadline of my briefs' due date. I received notice from the Court that there were several errors that needed to be addressed and received approximately 10 days to correct the errors. These errors require me to nearly redo the entire brief. I have also had a major death in the family in that 10 day period that caused me considerable amounts of time dealing with. I would appreciate discretion from the Court. Thank you.

FILED

SEP 04 2008

Darren Drahofer

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

Case no. A 08-0628

Copy served to Attorney General's office on September 04, 2008

)
)
)
)
)
)
)
)
)

Defendant/Appellant.

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

6-30

IN THE NEBRASKA COURT OF APPEALS

STATE OF NEBRASKA,

Plaintiff/Appellee

vs.

DARREN J. DRAHOTA,

Defendant/Appellant.

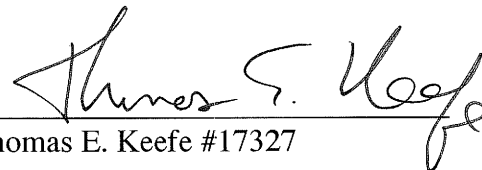
Court of Appeals No. A-08-000628

MOTION TO WITHDRAW
AS COUNSEL FOR DEFENDANT/
APPELLANT

COMES NOW Defendant/Appellant's attorney, Thomas E. Keefe, and moves this Court to allow him to withdraw as counsel for Defendant in the above case.

WHEREFORE, Thomas E. Keefe asks the Court for an order allowing him to withdraw as counsel for Defendant.

DATED this 11th day of June, 2008


Thomas E. Keefe #17327

Student Legal Services

University of Nebraska--Lincoln

P.O. Box 880461

Lincoln, NE 68688-0461

(402) 472-3350

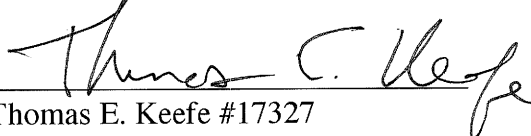
FILED

JUN 13 2008

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Motion was mailed on the 12th day of June, 2008 by certified mail, return receipt requested to Darren Drahota, 1100 West C Street, #211, Lincoln, NE 68522 and that a copy of this Motion was sent by regular U.S. mail to the Plaintiff/Appellee by mailing to Lancaster County Attorney, 575 S. 10th Street, Lincoln NE 68508 on the same date


Thomas E. Keefe #17327

called for
service on 6/16

May 28, 2008

08-0628

Re: State of Nebraska

vs.

Darren Drahota (appellant/defendant)

Case No. CR07-230

This is notice to the Court that the defendant wishes to appeal the District Courts' affirmation of the Lancaster County Courts' decisions in said case. Notice is given to the Clerk of the District Court of Lancaster County that the defendant wishes to appeal this case to the Nebraska Court of Appeals and also fills out an affidavit requesting the court to allow the case to proceed In forma Pauperis as it did through the Lancaster District Court.

Respectfully submitted

By: Darren Drahota appellant/defendant
Darren Drahota

LANCASTER COUNTY
2008 MAY 29 PM 2 40
CLERK OF THE
DISTRICT COURT

FILED

JUN 09 2008

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS



000577714D02

001

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska)
Petitioner)
)
)
)
vs)
)
Darren Drahota)
Respondent)

Docket CR07 Page 230

MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS ON APPEAL

Comes now the Respondent, and respectfully moves the court for an Order
(Petitioner/Respondent)
permitting filing of this action in forma pauperis.

This motion is based upon the ground that the party herein does not have sufficient money
or property to pay the costs of this action.

Dated this 29 day of May, 2008

Darren Drahota
Name

1100 West C #211
Address and Zip Code

Lincoln, NE 68502

402 841-1588
Phone Number

Bar # (if applicable)

LANCASTER COUNTY
2008 MAY 29 PM 2 40
CLERK OF THE
DISTRICT COURT

[Signature]

Bundla



000577713D02

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

State of Nebraska,)
Petitioner)
)
vs)
)
Darren Drahotka,)
Respondent)

Docket _____ Page _____

IN FORMA PAUPERIS AFFIDAVIT

STATE OF NEBRASKA)
) ss.
LANCASTER COUNTY)

Darren Drahotka, being first duly sworn upon oath, deposes and states:

1. That I am the petitioner/respondent in the the above-captioned action
2. That because of my poverty, I am unable to pay the filing fees or the costs of service (if applicable).
3. That my current assets consist of :

Cash	<u>0</u>
Checking Account	<u>2.00</u>
Savings Account	<u>150.00</u>
Stocks or bonds	<u>0</u>
Real Property	<u>0</u>
Personal Property	<u>0</u>
Automobile	<u>0</u>

Total: 152.00

4. That my current monthly living expenses are as follows:

Rent	<u>270.00</u>
Utilities	<u>60.00</u>
Groceries	<u>360.00</u>
Transportation	<u>150.00</u>
Clothing/Misc.	<u>50.00</u>

Total: 830.00

5. That I am/am not employed. If employed, I am employed at Midlands Mechanical and make 1,800 gross and 900.00 net per moth. If unemployed, I have been unemployed since _____

6. That my present source of income is from:

	Amount
a. <u>Work</u>	<u>900.00</u>
b. _____	_____
c. _____	_____
d. _____	_____

7. That I receive no other financial assistance other than that listed above.

Therefore, I believe I am entitled to the redress sought and should be allowed to pursue my case in forma pauperis.

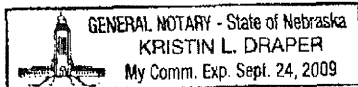
Darren Drabota
(Petitioner/Respondent)

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The undersigned states that she/he has read the foregoing, knows the contents thereof and that the statements and allegations contained therein are true, under penalty of perjury.

Darren Drabota Darren Drabota
(Petitioner/Respondent)

Subscribed and sworn to before me this 29 day of May, 20 08.



[Signature] 5/29/08
Notary Public

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

v.

DARREN DRAHOTA,

Defendant.

CR07-230

ORDER SUSTAINING MOTION
TO PROCEED IN FORMA
PAUPERIS ON APPEAL

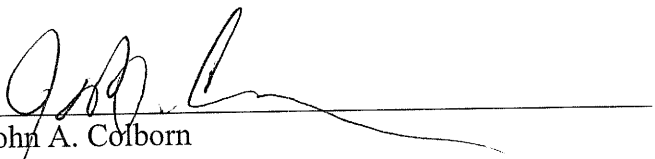
On May 29, 2008, Defendant Darren Drahota filed a motion to proceed in forma pauperis on appeal. The court determines that the motion to proceed in forma pauperis on appeal should be sustained and granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the motion to proceed in forma pauperis on appeal is sustained and granted. A copy of this order is sent to counsel of record and to the defendant.

Dated this 4th day of June, 2008.

BY THE COURT:

LANCASTER COUNTY
2008 JUN 4 PM 3 49
CLERK OF THE
DISTRICT COURT


John A. Colborn
District Judge



000570383D02

Brenda

CERTIFICATE

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

Case No. CR 07-230

STATE OF NEBRASKA,

Plaintiff

Eric S. Miller, #19480
575 South 10th Street
Lincoln, Nebraska 68508
(402) 441-7321

vs.

DARREN J. DRAHOTA,
(1/19/81),
Defendant

Darren Drahota
1100 West "C" Street, Apt. 211
Lincoln, Nebraska 68522
(402) 841-1588

(see next for more parties)

I certify that the attached are true and accurate copies of pleadings filed in the above-captioned case.

The case is a criminal case in which a plea was entered:

- (x) not guilty (trial held) Origin of Case:
 ☐ to jury ☒ County Court
 ☒ to judge ☐ District Court ☐ Other
 ☐ guilty or nolo contendere

 ☐ felony ☒ misdemeanor
 ☐ post conviction ☐ plea in bar

Notice of Appeal directed to: ☒ Court of Appeals ☐ Supreme Court
Statutory Authority: ☐ Death Sentence ☐ Life Imprisonment
 ☐ Constitutionality of statute ☐ Other (specify statute)

The notice of appeal was filed on May 29, 2008.

The poverty affidavit was filed on May 29, 2008.

Cost bond posted on in \$.

Cash in lieu of cost bond posted on in \$; or supersedeas bond posted on in \$. (Neb. Rev. Stat. 25-1914 and 25-1916). (Reissue 1991).

All motions for new trial have been disposed of: ☐ Yes. Date .

☐ No.

☒ No motions for new trial filed.

Date: June 6, 2008



Sue M. Kirkland
Clerk of the District Court

By

Deputy

[Handwritten signature]

Re: CR07-230

Thomas E. Keefe, #17327
Student Legal Services
335 Nebraska Union
Lincoln, Nebraska 68588-0461
(402) 472-3350
(attorney for defendant)

CLERK'S TRANSCRIPT

STATE OF NEBRASKA

VS.

DARREN J. DRAHOTA

CR 07-230

A-08-000628

Transcript fee: IFP

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PLEAS:

In the District Court of Lancaster County, Nebraska, Third Judicial District, during the 2007-2008 term of Court which began on January 1, 2008, in the City of Lincoln in said County and State and on May 29, 2008, during said term were present: Honorable Jodi L. Nelson, Judge Presiding; Terry Wagner, Sheriff; and Sue M. Kirkland, Clerk

BE IT REMEMBERED that at the several times herein set forth were filed in the Office of the Clerk of said Court papers of which the following are true and correct copies and proceedings were had and done in the cause below named as follows to-wit:

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,
Plaintiff

vs.

DARREN J. DRAHOTA,
Defendant

)
)
)
)
)
)
)
)
)
)

Docket CR 07 Page 230

000001

IN THE LANCASTER COUNTY COURT, THIRD JUDICIAL DISTRICT

STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN J. DRAHOTA,

Defendant.

DISTRICT COURT CASE NO. CR07-230

CASE NO. CR06-21284

NOTICE

TO THE CLERK OF THE LANCASTER DISTRICT COURT:

You are hereby notified that no fee has been received for preparation of the Transcript for Appeal in the above-referenced matter. Pursuant to the Revised Rules of the Supreme Court of the State of Nebraska (I. D. 2.), enclosed is a certified copy of the written Notice of Appeal in this case.

Dated this 12th day of March, 2007.

De Ann Bourne
DEPUTY CLERK

LANCASTER COUNTY

2007 MAR 12 PM 3 25

CLERK OF THE
DISTRICT COURT

000002



000393720D02

4

CLERK OF
IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA,
THIRD JUDICIAL DISTRICT

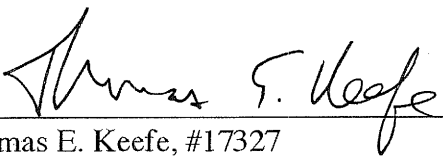
2007 FEB 23 A 10:40

STATE OF NEBRASKA,	)	CASE ID	CR06-21284
)		
Plaintiff,)		
)		
vs.	)	NOTICE OF APPEAL	
)		
DARREN DRAHOTA)		
)		
Defendant,)		

COMES NOW the defendant in the above-entitled case and hereby gives notice of his intention to appeal and prosecute an appeal to the District Court of Lancaster County, Nebraska, from the Final Order of this Court made on or about Tuesday, January 30, 2007, sentencing defendant Darren Drahota. Defendant requests that the sentence be suspended during said appeal.

DARREN DRAHOTA, Defendant

By: _____


Thomas E. Keefe, #17327
Attorney for Defendant
Student Legal Services
University of Nebraska-Lincoln
335 Nebraska Union
Lincoln, NE 68588-0461
(402) 472-3350

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was hand delivered to the office of the prosecutor at 575 South 10th Street, Lincoln, Nebraska, on this 23rd day of February, 2007.

Thomas E. Keefe

000003

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

VS.

DARREN J. DRAHOTA,
(1/19/81)

Defendant.

CASE ID # **CRO6 21284**

COMPLAINT
FOR:

DISTURBING THE PEACE
M III 28-1322 (09522)

The Complaint and information of **ERIC S. MILLER** Deputy County Attorney, Lancaster County aforesaid, made in the name of the State of Nebraska, before a Judge of the County Court, within and for said County, this 25th day of October, 2006, who, being duly sworn, on oath, says that **DARREN J. DRAHOTA**, on or about June 14, 2006, in the County and State aforesaid, then and there being, did intentionally disturb the peace and quiet of any person, family, or neighborhood, to wit: William Avery, contrary to the form of the Statutes in such cases made and provided, and against the peace and dignity of the State of Nebraska.

THE STATE OF NEBRASKA, Plaintiff

GARY E. LACEY
LANCASTER COUNTY ATTORNEY

ARR: 10/25/06 AT 1:30 PM



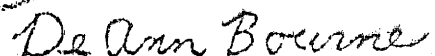
ERIC S. MILLER, #19480
DEPUTY COUNTY ATTORNEY

ERIC S. MILLER, Deputy County Attorney, being duly sworn according to law, says the facts stated in her/his foregoing Complaint are true as she/he verily believes.



ERIC S. MILLER
DEPUTY COUNTY ATTORNEY
OCT 25 2006

SUBSCRIBED in my presence and sworn to before me this _____ day of October, 2006.



ESM:mh

CLERK/JUDGE OF THE COUNTY COURT

000004

COMPLAINT

LINCOLN POLICE DEPARTMENT

UNIFORM CITATION AND COMPLAINT
IN THE COUNTY COURT OF LANCASTER COUNTY NEBRASKA

STATE OF

NEBRASKA VS.

DATE OF OFFENSE

HOUR

CASE ID

LAST NAME

FIRST NAME

M.I.

STREET:

CITY:

STATE:

ZIP CODE

DRIVER'S LICENSE NO.:

CLASS

EXP. DATE

STATE

DOB

SEX:

HEIGHT:

WEIGHT:

EYES:

HAIR:

R/ETH:

CMV

ENDORSEMENTS

RESTRICTIONS

HAZ. MAT.

VEHICLE COLOR:

YEAR:

MAKE:

STYLE:

MODEL:

VEHICLE LICENSE

STATE

YEAR

V.I.N.

PHONE NO.

The undersigned being duly sworn, says the defendant, at the date and time shown,

at or near (location) 1100 West C #211

In the City of:

County of:

State of

SELECTIVE #

LINCOLN

LANCASTER

Nebraska

Did unlawfully commit the following offense(s):

- ☐ Speeding _____ MPH in _____ Zone
10.14.250 School Zone 10.14.260
- ☐ Violate Traffic Signal 10.12.030
- ☐ Failure to Yield R.O.W. 10.14.040
☐ Veh. ☐ Ped.
- ☐ Follow Too Closely 10.14.160
- ☐ No Seat Belt 10.14.365
- ☐ Driving 10.16.030
- ☐ Suspended License 10.16.060
- ☐ Trespassing 10.14.190
- ☐ Assault 10.12.010
- ☐ No Operators License 10.16.060
- ☐ No License on Person 10.16.060
- ☐ No Valid Registration 10.08.010/Fictitious Plates
- ☐ No Insurance 10.16.070
- ☐ Improper Turn 10.14.170
- ☐ Violate Stop Sign 10.14.010
- ☐ Negligent Driving 10.14.290
- ☐ Failure to Signal 10.14.170
- ☐ Disturbing the Peace 10.16.050
- ☐ Theft 10.14.140
- ☒ Other _____

LB 047354

Officer 1

Sexton

No. 358

Officer 2

No.

Prosecutor

Filed & Sworn Before Me

Date

Your Court Appearance

Date: 10.25.06 Time 1:30 pm

Judge/Clerk

Court Address

575 S

10th

Room No.

25

This is an appearance only, not a trial date.

I promise that I will appear in court
at the above time and place.

X Darren Drahotz

Your signature is not an admission of guilt, but a promise to appear.
Failure to comply with the terms of this citation is punishable by jail or fine or both and may result in suspension of your operator's license.

☐ Waiver Allowed.

WAIVERS.

☐ You must appear in court.

If the "waiver allowed" box is checked, you are allowed to plead guilty to this offense without appearing in court. You have the right to a trial and may appear in court.

If you choose to plead guilty, you may pay a fine of \$ _____ and costs of \$ _____ for a total of \$ _____. See back for payment instructions.

If the other box is checked or if you wish to appear in court, you should appear in court as directed above.

STATE OF NEBRASKA

Plaintiff,

VS.

DARREN J. DRAHOTA ,

Defendant.

District Court Case No. CR07-230

County Court Case No. CR06-21284

NOTICE

The County Court is not in receipt of the deposit for the Bill of Exceptions in the above-entitled matter; therefore, said Bill of Exceptions will not be issued.

Dated this 22nd day of March, 2007.

De Ann Bourne

DEPUTY CLERK

WYOMING COUNTY

07 MAR 22 PM 4:10

CLERK OF DISTRICT COURT

000006



000402230D02

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN DRAHOTA,

Defendant,

CASE NO. ^{CK} 107-230

NOTICE OF APPEAL
OF DENIAL TO PROCEED
IN FORMA PAUPERIS

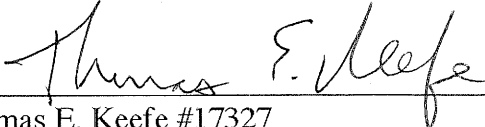
COMES NOW the defendant in the above-entitled case and hereby gives notice of his intention to appeal the denial of his request to proceed *In Forma Pauperis*, pursuant to Neb. Rev. Stat. §25-2301.02 (2006 Cum. Supp.). Defendant requests that the District Court overturn the lower court's ruling and order the bill of exceptions and transcript for the original appeal to be paid for by Lancaster County.

Attached to this Notice are the following documents in support of this appeal:

1. A copy of defendant's Motion to Proceed *In Forma Pauperis*;
2. A copy of Affidavit In Support of Motion To Proceed *In Forma Pauperis*;
3. A copy of County Court Case Action Summary with lower court's decision denying Defendant's *in forma pauperis* eligibility; and
4. Affidavit of Defendant in support of this appeal.

DARREN DRAHOTA, Defendant

By:


Thomas E. Keefe #17327
Attorney for Defendant
Student Legal Services
University of Nebraska-Lincoln
335 Nebraska Union
Lincoln, NE 68588-0461
(402) 472-3350

LANCASTER COUNTY

07 MAR 30 AM 9:56

CLERK OF DISTRICT COURT

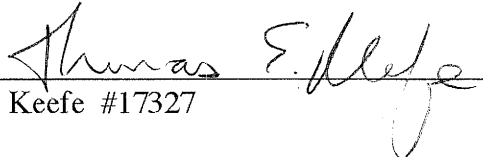
000007



000405170D02

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was hand delivered to the office of the Prosecutor, 575 South 10th Street, Lincoln, NE 68508, on this 30th day of March, 2007.



Thomas E. Keefe #17327

000008

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN DRAHOTA,

Defendant,

CASE NO. ^{CK} 107-230

AFFIDAVIT
IN SUPPORT OF APPEAL
OF DENIAL TO PROCEED
IN FORMA PAUPERIS

STATE OF NEBRASKA,)

) ss.

COUNTY OF LANCASTER)

The affiant being first duly sworn, deposes and says:

1. When defendant filed the original Affidavit In Support Of Motion To Proceed In Forma Pauperis he had money in a bank account, but that money has since been depleted by Defendant's outstanding debts.

2. This affidavit is made pursuant to Neb. Rev. Stat. §25-2301 et seq.

3. I am the defendant in the above-entitled criminal action and was sentenced to a fine of \$250 plus \$64.00 court costs.

4. Because of my poverty, I am unable to post an appeal bond or pay the costs of preparing a transcript or record.

5. My current assets consist of:

a. Cash.....	\$15
b. Checking Account.....	\$800
c. Savings Account.....	\$0
d. Real Property.....	\$0
e. Stocks or Bonds.....	\$0
f. Personal Property.....	\$200
g. Automobile.....	\$0

6. My current liabilities per month consist of:

a. Rent.....	\$300
b. Utilities.....	\$150
c. Food.....	\$400
d. Clothing.....	\$50

LANCASTER COUNTY

2007 MAR 30 PM 3 28

CLERK OF THE DISTRICT COURT

000000



000405457D02

e. Transportation.....\$50

7. I am employed at _____ and I earn \$_____ net per month.

8. I have no other sources of income.

9. I have incurred the following debts:

a. Credit card(s).....\$100/mo

b. UNL Tuition and books\$600

10. My appeal is based on, but not limited to, the errors set out in the Motion to Proceed In Forma Pauperis.

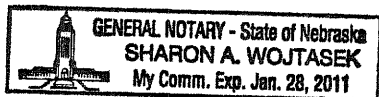
Dated this _____29th_____ day of _____March_____, 2007.

Darren Drahot

DARREN DRAHOTA, Affiant

STATE OF NEBRASKA,)
) ss.
COUNTY OF LANCASTER.)

Subscribed and sworn to before me this 29th day of March, 2007.



Sharon A. Wojtaszek

Notary Public

000010

000011

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA,
THIRD JUDICIAL DISTRICT

STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN DRAHOTA,

Defendant,

CASE NO. CR0

AFFIDAVIT IN SUPPORT OF
MOTION TO PROCEED
IN FORMA PAUPERIS

STATE OF NEBRASKA,)

) ss.

COUNTY OF LANCASTER)

COPY

The affiant being first duly sworn, deposes and says:

1. This affidavit is made pursuant to Neb. Rev. Stat. §25-2301 et seq.
2. I am the defendant in the above-entitled criminal action and was sentenced to a fine of \$250 plus \$64.00 court costs.
3. Because of my poverty, I am unable to post an appeal bond or pay the costs of preparing a transcript or record.
4. My current assets consist of:
 - a. Cash.....\$10.00
 - b. Checking Account.....\$3000.00
 - c. Savings Account.....\$0
 - d. Real Property.....\$0
 - e. Stocks or Bonds.....\$0
 - f. Personal Property.....\$0
 - g. Automobile.....\$1500.00
5. My current liabilities per month consist of:
 - a. Rent.....\$340.00
 - b. Utilities.....\$60.00
 - c. Food.....\$300.00
 - d. Clothing.....\$100.00
 - e. Transportation.....\$100.00

000012

- Dated this 21st day of February, 2007.

Darren Drahota, Affiant

STATE OF NEBRASKA,)
) ss.
COUNTY OF LANCASTER.)

BE IT KNOWN, that on the 21st day of February, 2007, before me personally appeared Darren Drahota above named, who is to me known to be the person described in and who executed the above Affidavit, and acknowledged the same to be his voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Sharon A. Weisbach
Notary Public



CASE ACTION SUMMARY
Criminal and Traffic
State vs.

Page _____ of _____

Case No. 0206-21284

Date
FEB 23 2007

Clerk's Record

Darren Deahota

*Defendant files timely Notice
of Appeal*

*All facets of sentence stayed
pending further proceedings on
appeal.*

*Def. has several thousand
dollars in his bank account.*

*Motion to appeal I. F. P.
is denied!*

Feb 23.07

*Thomas Keefe
call immediately
sup left!*

*Copy to
Hanan*

COPY

000014

CONSTABLE FEES _____ WITNESS FEES _____ SHERIFF FEES _____

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN DRAHOTA,

Defendant.

CASE NO. CR07-230

ORDER OF REMAND

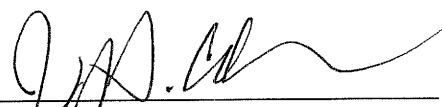
NOW on this 10th day of May, 2007, at 10:00 a.m., the above-entitled matter came before the Court for hearing on Defendant's Appeal of the County Court's Denial To Proceed *In Forma Pauperis*. Tom Keefe was present for the Defendant and Rod Reuter was present for the State of Nebraska.

The Court heard arguments and reviewed the applicable statute -- Neb. Rev. Stat. §25-2301.02. The Court finds that no hearing was conducted and that Neb. Rev. Stat. §25-2301.02 requires the County Court to conduct an evidentiary hearing on the County Court's objection to and denial of Defendant's Motion to Proceed *In Forma Pauperis*.

IT IS THEREFORE ORDERED that this matter is remanded to Lancaster County Court to conduct an evidentiary hearing on the County Court's objection to and denial of Defendant's Motion to Proceed *In Forma Pauperis* in County Court case CR06-21284.

BY THE COURT:

DATED: May 11, 2007


John A. Colborn, District Court Judge

LANCASTER COUNTY
2007 MAY 11 PM 2 16
CLERK OF THE
DISTRICT COURT

000015



000420290D02

copy to
Co Ct

Prepared by: Thomas E. Keefe

Thomas E. Keefe #17327

Attorney for Defendant

University of Nebraska

Student Legal Services

P.O. Box 880461

Lincoln, NE 68588-0461

(402) 472-3350

000016

CR07-230

 COPY

Mandate: District Court to County Court

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

TO: County Court of Lancaster County, Nebraska:

WHEREAS, in an action in your court, captioned:

STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN J. DRAHOTA,

Defendant,

you rendered judgment.

And whereas, Darren J. Drahota, Defendant, has prosecuted an appeal to this court.

On consideration of and pursuant to §25-2733, R.R.S. 1989, the judgment which you rendered has been reviewed for error appearing on the record made in the County Court and has been ***remanded back to Lancaster County Court to conduct an evidentiary hearing on the County Court's objection to and denial of defendant's Motion to Proceed In Forma Pauperis in County Court Case No. CR06-21284** by the District Court and has become a final order of this court on May 11, 2007.**

Now, therefore, you shall, without delay, proceed to enter judgment in conformity with the decision and opinion of this court attached hereto.

Witness the Honorable John A. Colborn, District Judge, and the seal of this court.

Dated: June 12, 2007

Suzanne M. Kirkland
Clerk of the District Court

By: 

Deputy



LANCASTER COUNTY
07 JUN 12 AM 8:35
CLERK OF DISTRICT COURT



000431895D02

000017

*Affirmed, Affirmed but modified, Reversed, Reversed and remanded or Dismissed. (If the District Court reverses, it may enter judgment in accordance with its findings or remand the case to the County Court for further proceedings consistent with the judgment of the District Court.)

District Court No. CR07-230	)	**Costs assessed in District Court**	
	)	Costs due Clerk of District Court	\$
County Court No. CR06-21284	)	Docket fee due	\$
	)	Due	\$
Date District Court Judgment issued:	)	Due	\$
May 11, 2007	)	Total costs:	\$
)		
(See attached certificate))		
)		

000018

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN DRAHOTA,

Defendant.

CASE NO. CR07-230

ORDER OF REMAND


NOW on this 10th day of May, 2007, at 10:00 a.m., the above-entitled matter came before the Court for hearing on Defendant's Appeal of the County Court's Denial To Proceed *In Forma Pauperis*. Tom Keefe was present for the Defendant and Rod Reuter was present for the State of Nebraska.

The Court heard arguments and reviewed the applicable statute -- Neb. Rev. Stat. §25-2301.02. The Court finds that no hearing was conducted and that Neb. Rev. Stat. §25-2301.02 requires the County Court to conduct an evidentiary hearing on the County Court's objection to and denial of Defendant's Motion to Proceed *In Forma Pauperis*.

IT IS THEREFORE ORDERED that this matter is remanded to Lancaster County Court to conduct an evidentiary hearing on the County Court's objection to and denial of Defendant's Motion to Proceed *In Forma Pauperis* in County Court case CR06-21284.

BY THE COURT:

DATED: May 11, 2007


John A. Colborn, District Court Judge

LANCASTER COUNTY
2007 MAY 11 PM 2 16
CLERK OF THE
DISTRICT COURT

000420290D02

000019

Prepared by: Thomas E. Keefe

Thomas E. Keefe #17327

Attorney for Defendant

University of Nebraska

Student Legal Services

P.O. Box 880461

Lincoln, NE 68588-0461

(402) 472-3350

000020

COUNTY COURT APPEAL TO DISTRICT COURT CERTIFICATE OF TRANSCRIPT

CASE NUMBER
CR06-21284

DISTRICT COURT CASE NO. CR07-230

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA
575 South 10th Street, Lincoln, Nebraska 68508 (402) 441-7295

APPEARANCES

STATE OF NEBRASKA,
Plaintiff

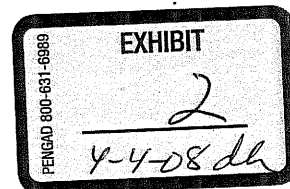
For the Plaintiff: ERIC S. MILLER

VS.

DARREN J. DRAHOTA,
Defendant

For the Defendant: THOMAS E. KEEFE

LANCASTER COUNTY
2007 NOV 29 PM 3 29
CLERK OF THE
DISTRICT COURT



CERTIFICATE OF TRANSCRIPT OF APPEAL IN FORMA PAUPERIS

I, the undersigned, Clerk of the Lancaster County Court, certify that the attached are true and accurate copies of the pleadings filed in this case. (Index attached).

The notice of appeal was filed on February 23, 20 07.

The District Court filing fee in the amount of \$ 51.00 was paid on February 28, 20 07, or

A poverty affidavit (copy attached) was filed on February 23, 20 07. (Denied)

I further certify that the following costs (☐ have) (☒ have not) been paid:

Defendant's Unpaid Costs:

Filing Fee	\$ 23.75	Service Fees	\$ 15.50	Automation Fee	\$ 6.00
LEIF	\$ 2.00	Witness Fees	\$ 20.00	Other	\$
Judges Retirement	\$ 7.00	Transcript Fees	\$	TOTAL UNPAID:	\$ 79.50
Legal Aid/Services	\$ 5.25	Bill of Exceptions	\$	TOTAL IFP COSTS:	\$ 5.50
Defendant's In Forma Pauperis Costs: Transcript Fees \$5.50					

Date: 11-29-07 By the Court: Donna Hubert
Deputy Clerk



Appendix 1



000503557D02

000021

IN THE LANCASTER COUNTY COURT, THIRD JUDICIAL DISTRICT

THE STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN J. DRAHOTA,

Defendant.

Case No. CR06-21284

I N D E X

1. COMPLAINT AND ATTACHMENT -----	Page 1
2. JOURNAL ENTRIES AND ORDERS -----	Page 3
3. NOTICE OF APPEAL -----	Page 11
4. MOTION TO PROCEED IN FORMA PAUPERIS -----	Page 12
5. AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS -----	Page 13
6. PRAECIPE FOR TRANSCRIPT -----	Page 15
7. PRAECIPE FOR BILL OF EXCEPTIONS -----	Page 16
8. STATEMENT OF ISSUES -----	Page 17
9. JOURNAL ENTRY -----	Page 18

000022

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

VS.

DARREN J. DRAHOTA,
(1/19/81)

Defendant.

CASE ID #

CRO6 21284

COMPLAINT
FOR:

DISTURBING THE PEACE
M III 28-1322 (09522)

The Complaint and information of **ERIC S. MILLER** Deputy County Attorney, Lancaster County aforesaid, made in the name of the State of Nebraska, before a Judge of the County Court, within and for said County, this 25th day of October, 2006, who, being duly sworn, on oath, says that **DARREN J. DRAHOTA**, on or about June 14, 2006, in the County and State aforesaid, then and there being, did intentionally disturb the peace and quiet of any person, family, or neighborhood, to wit: William Avery, contrary to the form of the Statutes in such cases made and provided, and against the peace and dignity of the State of Nebraska.

THE STATE OF NEBRASKA, Plaintiff

GARY E. LACEY
LANCASTER COUNTY ATTORNEY


ARR: 10/25/06 AT 1:30 PM


ERIC S. MILLER, #19480
DEPUTY COUNTY ATTORNEY

ERIC S. MILLER, Deputy County Attorney, being duly sworn according to law, says the facts stated in her/his foregoing Complaint are true as she/he verily believes.


ERIC S. MILLER
DEPUTY COUNTY ATTORNEY

SUBSCRIBED in my presence and sworn to before me this 25 day of October, 2006.


CLERK/JUDGE OF THE COUNTY COURT

ESM:mh

000026

COMPLAINT

LINCOLN POLICE DEPARTMENT

UNIFORM CITATION AND COMPLAINT

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF

NEBRASKA VS.

DATE OF OFFENSE

HOUR

CASE ID

LAST NAME

FIRST NAME

M.I.

STREET:

CITY:

STATE:

ZIP CODE

DRIVER'S LICENSE NO.:

CLASS

EXP. DATE

STATE

DOB

SEX

HEIGHT

WEIGHT

EYES

HAIR

R/ETH

CMV

ENDORSEMENTS

RESTRICTIONS

HAZ. MAT.

VEHICLE COLOR

YEAR

MAKE

STYLE

MODEL

VEHICLE LICENSE

STATE

YEAR

V.I.N.

PHONE NO.

The undersigned being duly sworn, says the defendant, at the date and time shown, at or near (location) 1100 West C #211 In the City of: LINCOLN County of: LANCASTER State of Nebraska SELECTIVE #

Did unlawfully commit the following offense(s):

- | | |
|---|--|
| <input type="checkbox"/> Speeding _____ MPH in _____ Zone | <input type="checkbox"/> No Operators License 10.16.060 |
| <input type="checkbox"/> 10.14.250 School Zone 10.14.260 | <input type="checkbox"/> No License on Person 10.16.060 |
| <input type="checkbox"/> Violate Traffic Signal 10.12.030 | <input type="checkbox"/> No Valid Registration 10.08.010/Fictitious Plates |
| <input type="checkbox"/> Failure to Yield R.O.W. 10.14.040 | <input type="checkbox"/> No Insurance 10.16.070 |
| <input type="checkbox"/> Veh. <input type="checkbox"/> Ped. | <input type="checkbox"/> Improper Turn 10.14.170 |
| <input type="checkbox"/> Follow Too Closely 10.14.160 | <input type="checkbox"/> Violate Stop Sign 10.14.010 |
| <input type="checkbox"/> No Seat Belt 10.14.365 | <input type="checkbox"/> Negligent Driving 10.14.290 |
| <input type="checkbox"/> D.U.I. 10.16.055 | <input type="checkbox"/> Driving on Suspended License 10.14.050 |
| <input type="checkbox"/> Suspended License 10.14.050 | <input type="checkbox"/> Driving on Revoked License 10.14.050 |
| <input type="checkbox"/> Trespassing 10.14.190 | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Assault 10.14.010 | |

LB 047354

Officer 1 <u>Sexton</u>	No. <u>358</u>	Officer 2	No.
-------------------------	----------------	-----------	-----

Prosecutor	Filed & Sworn Before Me
	Date

Your Court Appearance	Judge/Clerk
Date: <u>10.25.06</u> Time <u>1:30</u> <u>pm</u>	

Court Address <u>575 S 10th</u>	Room No. <u>25</u>
--	--------------------

This is an appearance only, not a trial date.
I promise that I will appear in court at the above time and place. X Darren Drahotz

Your signature is not an admission of guilt, but a promise to appear.
Failure to comply with the terms of this citation is punishable by jail or fine or both and may result in suspension of your operator's license.

☐ Waiver Allowed. **WAIVERS.** ☐ You must appear in court.
If the "waiver allowed" box is checked, you are allowed to plead guilty to this offense without appearing in court. You have the right to a trial and may appear in court.
If you choose to plead guilty, you may pay a fine of \$ _____ and costs of \$ _____ for a total of \$ _____. See back for payment instructions.
If the other box is checked or if you wish to appear in court, you should appear in court as directed above.

2/02

000024

CASE ACTION SUMMARY

- Criminal and Traffic -

IN THE LANCASTER COUNTY COURT, THIRD JUDICIAL DISTRICT

State vs. Drahota, Darren J. Case No. CR0621284

Date	Attorney Appearance:	Clerk's Record
Defendant arraigned		
Plea/Guilty Ct.	1 2 3 4	
Plea/Not Guilty Ct.	1 2 3 4	
Plea/No Contest	1 2 3 4	
Fine: Count	1 2 3 4	
Trial - Docket Call - Preliminary Hearing		
- Disposition without Trial -		
Day	Month	Year
Bond for appearance \$ FULL 10% P.R.		
Bond Condition:		

*027106 in
date due
notices sent
to both*

In Custody:

10/27/06
(Date)

Judge

*At defendant's request, case
is reset for arraignment on
11-10-06 1:30 at #25*

By

[Signature]
OCT 27 2006

Date

OCT 27 2006

Defendant's Motion(s) for Discovery
and Disclosure contained as to
service. As a condition thereof,
Discretionary Discovery granted to
the State.

[Signature: James H. Suter]
Judge

000025

CONSTABLE FEES _____ WITNESS FEES _____ SHERIFF FEES _____

JOURNAL ENTRY AND ORDER

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

ST V. DARREN J DRAHOTA

DOB: 1/19/1981

Case ID: CR 06 21284

Citation: LB 47354

Printed on 11/01/2006 at 1:37

Room 02C25

Page 1

CHARGES (AMENDMENTS/PLEAS/FINDINGS/FINES/PRESENTENCE/JAIL/DISMISSALS)

<u>CHARGE</u>	<u>STATUTE</u>	<u>DESCRIPTION</u>	<u>CLASS</u>	<u>TYPE</u>
01	28-1322	Disturbing the peace	3	MSD
Plea: Not Guilty				

A P P E A R A N C E S A N D A D V I S E M E N T

Judge James L Foster
Defendant DARREN J DRAHOTA
Defense Counsel Keefe, Thomas, E.
Prosecutor Eric Miller

Defendant advised of the nature of the above charges, and all possible penalties.

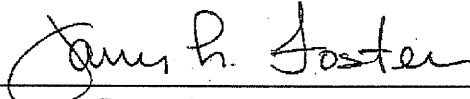
A R R A I G N M E N T

Defendant enters above pleas.

F U T U R E C O U R T A P P E A R A N C E S

Case continued to 12/13/2006 at 10:30 AM
in County Courtroom 23 for Trial - Bench Trial

Hon.


James L Foster

11/01/2006

Date

Bailiff

Tape Nos. V5203

000026

CONFIDENTIAL

CASE FILE COPY

- 4 -

JOURNAL ENTRY AND ORDER

CASE ACTION SUMMARY
Criminal and Traffic
State vs.

Drabota, Darren

DEC 13 2006

Page _____ of _____

Case No. CP-06-21284

Date

Clerk's Record

10:30

#23

12-13-06

DEC 13 2006

TRIAL

1-30-07

N-defendant

N-witness

Maureen Hammon

Tom Keefe → Δ

William Avery called

Professor of Political Science
(at UN-L apparently)

State senator

also

Hated rec. E-mails from Δ

started to save ↑

because E-mails

are HATEFUL, VILE

~~Racist~~

VULGAR?

Gave Δ 1st on Jan 27th

would or occasionally resent saying
don't send me E-mail

Feb 9. '06

told him don't send me any
more

OK all turn over to police

State Rests

000027

CONSTABLE FEES

WITNESS FEES

Feb. 10.07

SHERIFF FEES

CASE ACTION SUMMARY
Criminal ~~State vs.~~
State vs.

DEC 13 2006

Page 2 of

Case No.

Date

But June 14³ 16th

Clerk's Record

got 2 more E-mails
re Ing.

They both said "I should be
upset because Zagari was killed"

I should be ??

Ex 1 = ~~the~~ diff. E-mails

20 diff. E-mails

000028

CONSTABLE FEES WITNESS FEES SHERIFF FEES

CASE ACTION SUMMARY
Criminal and Traffic
State vs.

Page _____ of _____

Case No. C206-21284

Date

1.30.07

Clerk's Record

Ct asks questions re
Ex 1
objection to Ex 2 sustained.

Ed Sexton LPD S30.

Avery said Feb. & told A to stop.

June got anonymously sent E-mails
Avery gave him

when server takes from server
always takes originator

The end protocol address
registered Run Reader
TimeWarner

Got Dist. Ct. Order
Server came back to
Jennifer Schultz

Lived there w/ Darren Dinkota
Went there
talked to A

000025

CONSTABLE FEES

WITNESS FEES

SHERIFF FEES

CASE ACTION SUMMARY
Criminal and Traffic
State vs.

Page _____ of _____

Case No. 006-2184

Date _____

Clerk's Record

Droho, Darren

Droho denied initially

Told him he's got search
warrant

Given that he admitted
to making e-mails -

I came personally
Got citation

000050

CONSTABLE FEES _____ WITNESS FEES _____ SHERIFF FEES _____

CASE ACTION SUMMARY
Criminal and Traffic
State vs.

Page _____ of _____

Case No. CR06-21284

Date _____

Clerk's Record

Motion to Dismiss overruled.

Def. rests

Def. found Guilty

1-07

WITNESS FEE.
PAY TO CW
CITY/COUNTY

JAN 30 2007

LED

Time Payment Application entered. Folio 5/10/07
Gross 200 file.

FILED

JAN 30 2007

CLERK OF LANCASTER
COUNTY COURT
DISTRICT THREE

000031

CONSTABLE FEES _____

WITNESS FEES _____

SHERIFF FEES _____

CASE ACTION SUMMARY
Criminal and Traffic
State vs.

Page _____ of _____

Case No. 0206-21284

Date
FEB 23 2007

Clerk's Record

Darren Deahota

Defendant files timely Notice
of Appeal

All facets of sentence stayed
pending further proceedings on
appeal.

Def. has several thousand
dollars in his bank account.

Motion to appeal I. F. P.
is denied!

FILED

FEB 23 2007

CLERK OF DISTRICT COURT
COUNTY COURT
DISTRICT THREE

FILED

FEB 23 2007

CLERK OF DISTRICT COURT
COUNTY COURT
DISTRICT THREE

2/28/07

R963798 7900

MA

Thomas Keefe
call immediately
7 sup left.

2/23/07 T. Keefe
called office
w/ Tolson and
Cordero sent
copy to Tom Keefe
JH

copy to
Hanan

Maureen

Hanan
2-23-07
called left message
w/ Richard M. Hamman
Assistant JH

000032

CONSTABLE FEES _____

WITNESS FEES _____

SHERIFF FEES _____

CLERK OF
LANCASTER COUNTY
COURT
IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA,
THIRD JUDICIAL DISTRICT

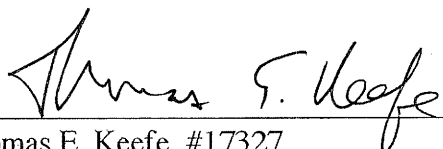
2007 FEB 23 A 10:40

STATE OF NEBRASKA,	)	CASE ID	CR06-21284
)		
Plaintiff,)		
)		
vs.	)	NOTICE OF APPEAL	
)		
DARREN DRAHOTA)		
)		
Defendant,)		

COMES NOW the defendant in the above-entitled case and hereby gives notice of his intention to appeal and prosecute an appeal to the District Court of Lancaster County, Nebraska, from the Final Order of this Court made on or about Tuesday, January 30, 2007, sentencing defendant Darren Drahota. Defendant requests that the sentence be suspended during said appeal.

DARREN DRAHOTA, Defendant

By: _____


Thomas E. Keefe, #17327
Attorney for Defendant
Student Legal Services
University of Nebraska-Lincoln
335 Nebraska Union
Lincoln, NE 68588-0461
(402) 472-3350

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was hand delivered to the office of the prosecutor at 575 South 10th Street, Lincoln, Nebraska, on this 23rd day of February, 2007.

Thomas E. Keefe

000033

CLERK OF
LANCASTER COUNTY
IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA,
THIRD JUDICIAL DISTRICT

2007 FEB 23 A 10:40

STATE OF NEBRASKA,	)	CASE ID	CR06-21284
)		
Plaintiff,)		
)		
vs.	)	MOTION TO PROCEED	
	)	IN FORMA PAUPERIS	
DARREN DRAHOTA)		
)		
Defendant,)		

COMES NOW the defendant, in the above-entitled matter, and moves the court to make and enter an Order authorizing an appeal herein, to the District Court of Lancaster County, Nebraska, *in forma pauperis*, without prepayment of docket fees, appeal costs, and any other incidental costs of this appeal. The issues I intend to present on appeal are: 1) The verdict is not sustained by sufficient evidence that proves the Defendant's guilt beyond a reasonable doubt; and, 4) the Court erred in overruling Defendant's Motion To Dismiss after the State rested.

Darren Drahota, Defendant

By: Thomas E. Keefe
Thomas E. Keefe, #17327
Attorney for Defendant
Student Legal Services
University of Nebraska-Lincoln
335 Nebraska Union
Lincoln, NE 68588-0461
(402) 472-3350

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was hand delivered to the office of the prosecutor at 575 South 10th Street, Lincoln, Nebraska, on this 23rd day of February, 2007.

Thomas E. Keefe
Thomas E. Keefe

000034

CLERK OF
IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA,
THIRD JUDICIAL DISTRICT

2007 FEB 23 A 10:40

STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN DRAHOTA,

Defendant,

CASE NO. CR0

AFFIDAVIT IN SUPPORT OF
MOTION TO PROCEED
IN FORMA PAUPERIS

STATE OF NEBRASKA,)
) ss.
COUNTY OF LANCASTER)

The affiant being first duly sworn, deposes and says:

1. This affidavit is made pursuant to Neb. Rev. Stat. §25-2301 et seq.
2. I am the defendant in the above-entitled criminal action and was sentenced to a fine of \$250 plus \$64.00 court costs.
3. Because of my poverty, I am unable to post an appeal bond or pay the costs of preparing a transcript or record.
4. My current assets consist of:

a. Cash.....	\$10.00
b. Checking Account.....	\$3000.00
c. Savings Account.....	\$0
d. Real Property.....	\$0
e. Stocks or Bonds.....	\$0
f. Personal Property.....	\$0
g. Automobile.....	\$1500.00
5. My current liabilities per month consist of:

a. Rent.....	\$340.00
b. Utilities.....	\$60.00
c. Food.....	\$300.00
d. Clothing.....	\$100.00
e. Transportation.....	\$100.00

sworn!

000035

6. I am employed at Metro Lawn Company only in the summer months. I am a full-time student at the University of Nebraska – Lincoln.
7. I have no other sources of income.
8. I have incurred the following debts:
- a. Credit card(s) \$1000.00
 - b. UNL Tuition and books \$3000.00
9. My appeal is based on, but not limited to, the errors set out in the Motion to Proceed *In Forma Pauperis*.

Dated this 21st day of February, 2007.

Darren Drahota

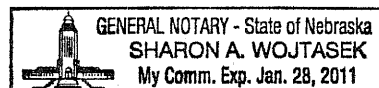
Darren Drahota, Affiant

STATE OF NEBRASKA,)
) ss.
COUNTY OF LANCASTER.)

BE IT KNOWN, that on the 21st day of February 2007, before me personally appeared Darren Drahota above named, who is to me known to be the person described in and who executed the above Affidavit, and acknowledged the same to be his voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Sharon A. Wojtasek
Notary Public



000036

CLERK OF
LANCASTER COUNTY
IN THE COUNTY COURT, LANCASTER COUNTY, NEBRASKA,
THIRD JUDICIAL DISTRICT
2007 FEB 23 A 10:40

STATE OF NEBRASKA,) CASE ID CR06-21284
)
Plaintiff,)
)
vs.) PRAECIPE FOR TRANSCRIPT
)
DARREN DRAHOTA)
)
Defendant,)

TO THE CLERK OF THE COUNTY COURT:

Please prepare, certify, and deliver to the District Court of Lancaster County, Nebraska, a transcript in this matter, containing the following information:

1. The complaint filed herein;
2. All case action summary entries in the County Court;
3. Statement of the Issues;
4. Notice of Appeal;
5. Motion for Leave to File In Forma Pauperis and Affidavit in Support;.

DARREN DRAHOTA, Defendant

By: Thomas E. Keefe
Thomas E. Keefe, #17327
Attorney for Defendant
Student Legal Services
University of Nebraska-Lincoln
335 Nebraska Union
Lincoln, NE 68588-0461
(402) 472-3350

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was hand delivered to the office of the prosecutor at 575 South 10th Street, Lincoln, Nebraska, on this 23rd day of February, 2007.

Thomas E. Keefe
Thomas E. Keefe

000037

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA,
THIRD JUDICIAL DISTRICT

STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN DRAHOTA

Defendant,

2007 FEB 23

A 10:40

CASE ID CR06-21284

PRAECIPE FOR
BILL OF EXCEPTIONS

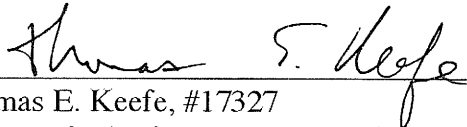
TO THE REPORTER OF SAID COURT:

Please prepare, certify, and deliver to the District Court of Lancaster County, Nebraska, a Bill of Exceptions in this matter, which should contain the following:

1. All comments and proceedings during the trial and sentencing proceedings on December 13, 2006 and January 30, 2007.
2. All exhibits offered and all exhibits received during the trial on December 13, 2006 and January 30, 2007.

DARREN DRAHOTA, Defendant

By:


Thomas E. Keefe, #17327
Attorney for Defendant
Student Legal Services
University of Nebraska-Lincoln
335 Nebraska Union
Lincoln, NE 68588-0461
(402) 472-3350

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was hand delivered to the office of the prosecutor at 575 South 10th Street, Lincoln, Nebraska, on this 23rd day of February, 2007.


Thomas E. Keefe

000038

CLERK OF
IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA,
THIRD JUDICIAL DISTRICT

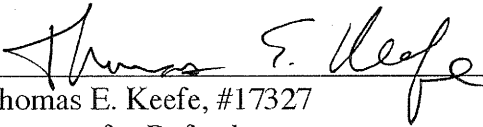
2007 FEB 23 A 10:40

STATE OF NEBRASKA,	)	CASE ID	CR06-21284
)		
Plaintiff,)		
)		
vs.	)	STATEMENT OF ISSUES	
)		
DARREN DRAHOTA)		
)		
Defendant,)		

COMES NOW Darren Drahota, by and through his attorney, Thomas E. Keefe, and presents to the Court a statement of issues which appellant intends to present on appeal:

1. The Court erred in overruling Defendant's Motion To Dismiss after the State rested.
2. The verdict is not sustained by sufficient evidence that proves the Defendant's guilt beyond a reasonable doubt.

DARREN DRAHOTA, Defendant

By: 
Thomas E. Keefe, #17327
Attorney for Defendant
Student Legal Services
University of Nebraska-Lincoln
335 Nebraska Union
Lincoln, NE 68588-0461
(402) 472-3350

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was hand delivered to the office of the prosecutor at 575 South 10th Street, Lincoln, Nebraska, on this 23rd day of February, 2007.


Thomas E. Keefe

000039

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

THE STATE OF NEBRASKA,

Plaintiff,

vs.

Attorneys for Plaintiff

Harvey Dakota

Defendant.

Tom Keefe

Attorneys for Defendant

Doc. only 2/11 Page

2007 NOV 21 P 3:56

CLERK OF
LANCASTER COUNTY
COURT
FILED

Conducting an evidentiary
hearing with one who
has all the information
he chooses to divulge or
with hold is
pointless!

10 P. P. approved

DATED this 15 day of Nov 2007

GALE POKORNY
Lancaster County Judge

000040

1162447

STATE OF NEBRASKA FORM NO. 9:5 1/96 Rev.	COUNTY COURT APPEAL TO DISTRICT COURT CERTIFICATE OF TRANSCRIPT	CASE NUMBER CR06-21284
---	--	---------------------------

DISTRICT COURT CASE NO. CR07-230

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA
575 South 10th Street, Lincoln, Nebraska 68508 (402) 441-7295
APPEARANCES

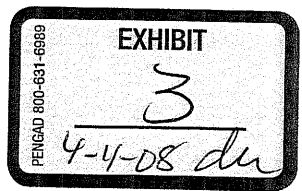
STATE OF NEBRASKA,
Plaintiff

For the Plaintiff: ERIC S. MILLER

VS.

DARREN J. DRAHOTA,
Defendant

For the Defendant: THOMAS E. KEEFE



ADDENDUM TO
CERTIFICATE OF TRANSCRIPT
OF APPEAL IN FORMA PAUPERIS

LANCASTER COUNTY
2007 DEC 17 PM 3 28
CLERK OF THE
DISTRICT COURT

I, _____ the undersigned, _____ Clerk of the _____ Lancaster County Court, certify that the attached are true and accurate copies of the pleadings filed in this case. (Index attached).

The notice of appeal was filed on _____, 20 ____.

The District Court filing fee in the amount of \$ _____ was paid on _____, 20 ____, or

A poverty affidavit (copy attached) was filed on _____, 20 ____.

I further certify that the following costs ☐ have ☐ have not been paid: X are In Forma Pauperis:
Defendant's In Forma Pauperis Costs:

Filing Fee	\$ _____	Service Fees	\$ _____	Automation Fee	\$ _____
LEIF	\$ _____	Witness Fees	\$ _____	Other	\$ _____
Judges Retirement	\$ _____	Transcript Fees	\$ _____	TOTAL	\$ <u>159.25</u>
		Bill of Exceptions	\$ <u>159.25</u>		

Date: 12-17-07 By the Court: _____ Deputy Clerk



Adopted April 13, 1994; amended January 31, 1995.

Appendix 1



000510136D02

000041

IN THE LANCASTER COUNTY COURT, THIRD JUDICIAL DISTRICT

THE STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN J. DRAHOTA,

Defendant.

Case No. CR06-21284

District Court Case No. CR07-230

I N D E X

1. BILL OF EXCEPTIONS (Original) ----- Enclosed

000042

11162447
3210302

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA,

STATE OF NEBRASKA,)
)
Appellee/Plaintiff,)
)
vs.)
)
DARREN DRAHOTA)
)
Appellant/Defendant,)

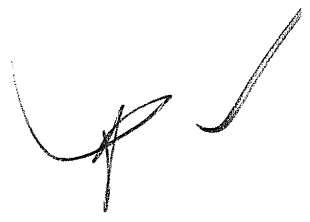
CASE NO. CR07-230

NOTICE OF FILING OF
TRANSCRIPT & BILL OF EXCEPTIONS
AND MOTION FOR PROGRESSION
ORDER

COMES NOW the Appellant/Defendant, in the above-entitled matter, and moves this Court to make and enter a Progression Order in this appeal from the Lancaster County Court for the following reasons:

1. On November 17, 2007 the Lancaster County Court entered an Order allowing Appellant/Defendant to proceed in this Court *In Forma Pauperis*; and
2. On December 17, 2007 the Bill of Exceptions and the Transcript from the County Court were filed with the Clerk of the District Court of Lancaster County, Nebraska.

WHEREFORE, the Appellant/Defendant asks the Court to make and enter a Progression Order that will allow this appeal to proceed.



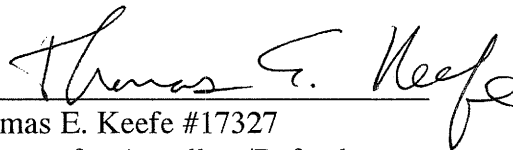
LANCASTER COUNTY
2008 FEB 13 PM 2 18
CLERK OF THE
DISTRICT COURT



000531633D02

000046

Dated this 13th day of February, 2008, by

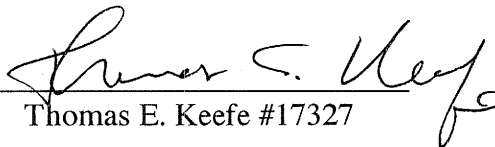


Thomas E. Keefe #17327
Attorney for Appellant/Defendant
University of Nebraska--Lincoln
Student Legal Services
P.O. Box 880461
Lincoln, NE 68688-0461
(402) 472-3350

CERTIFICATE OF SERVICE

COMES NOW the appellant/defendant's attorney, Thomas E. Keefe, and certifies that a true and correct copy of this Motion was submitted to the prosecutor's office on this 13th day of

February, 2008.



Thomas E. Keefe #17327

000044

11162447

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

CASE NO. CR 07-230

Plaintiff,

vs.

DARREN DRAHOTA

Defendant.

This matter came before the court on April 4, 2008 on Defendant's Appeal from his conviction and sentence in the County Court of Lancaster County, Nebraska. Attorney Keefe appeared on behalf of the Defendant. Attorney Reuter appeared for the State. Hearing was held and evidence was adduced. The matter was argued and submitted. The court, being fully informed, now finds and orders as follows:

BACKGROUND

From January 27, 2005 through February 10, 2006 Darren Drahota (hereinafter "Defendant") and William Avery exchanged email messages. William Avery was a professor of political science and the Defendant was a previous student of Professor Avery at the University of Nebraska -- Lincoln. During the summer of 2006, Mr. Avery was a candidate for the Nebraska Unicameral. Correspondence between Mr. Avery and the Defendant became more and more heated. Eventually, Mr. Avery requested that Mr. Drahota stop corresponding with him.

In June 2006, Mr. Avery received two email messages from the e-mail domain address of "averylovesalqueda@yahoo.com." Mr. Avery contacted the Lincoln Police Department to

LANCASTER COUNTY
2008 APR 29 PM 2 53
CLERK OF THE
DISTRICT COURT

000045



000553316D02

ISSUED

investigate the e-mails. Investigator Edward Sexton contacted Mr. Avery and obtained copies of the June 2006 e-mails, and also the January and February 2006 e-mails between Mr. Avery and the Defendant. In September 2006, Inspector Sexton traced the June email messages to a Roadrunner account provided by Time Warner Cable. The subscriber for the Roadrunner account was Jennifer Schultz. Inspector Sexton contacted Ms. Shultz and discovered that she lived with the Defendant. Inspector Shultz contacted the Defendant. Eventually, the Defendant admitted to sending the e-mail messages to Mr. Avery.

On December 13, 2006 and January 30, 2007, a trial was held in the Lancaster County Court. The Defendant was convicted of the charge of disturbing the peace. The Defendant filed a timely appeal of the County Court's decisions with this court.

STANDARD OF REVIEW

A trial court's findings in a criminal case have the effect of a jury verdict, and a conviction in a bench trial will be sustained if the properly admitted trial evidence, viewed and construed most favorably to the State, is sufficient to support the conviction. *State v. Abbink*, 260 Neb. 211, 214, 616 N.W.2d 8, 11 (2000).

An appellate court "will reverse a verdict of guilty based on evidence whenever it is so lacking probative force that the court can say as a matter of law it is insufficient to support a finding of guilty beyond a reasonable doubt. *State of Nebraska v. Hai Dang*, 220 Neb. 120, 121, 368 N.W.2d 486, 487 (1985).

ANALYSIS

The first issue in this case is whether there is sufficient evidence contained in the record to sustain the trial court's finding beyond a reasonable doubt that the defendant sent unwanted e-mails

to Mr. Avery after Mr. Avery asked the Defendant to stop sending him e-mails. The second issue is whether sending these unwanted e-mails constitutes disturbing the peace.

This court finds that there is sufficient credible evidence contained in the record to sustain the trial court's finding beyond a reasonable doubt that the Defendant was responsible for sending unwanted e-mails to Mr. Avery under the e-mail domain name of "averylovesalqueda@yahoo.com." In January and February of 2006, Mr. Avery and the Defendant engaged in a political debate of sorts via e-mail. While initially both parties openly engaged in an open "parson banter" that often contained socially "repulsive" ideas and personal insults, eventually Mr. Avery found the Defendant's e-mail messages disturbing and requested that the Defendant stop e-mailing him. In June of 2006, Mr. Avery again began receiving e-mails from someone using the domain name "averylovesalqueda@yahoo.com." Mr. Avery found these e-mails disturbing and alarming and called the Lincoln police to investigate who was sending the e-mails. Following Investigator Sexton's investigation, he traced the origins of the unwanted June e-mails to the Defendant's apartment. When Investigator Sexton confronted the Defendant about the unwanted June e-mails, the Defendant first denied sending the e-mails. When Investigator Sexton told him he could get a warrant to detain and search the computer at the Defendant's residence, the Defendant admitted to sending the e-mails to Mr. Avery. Viewing the evidence and construing it most favorably to the State, this court finds there is sufficient evidence to sustain the trial court's finding that the Defendant sent Mr. Avery unwanted e-mails after Mr. Avery had repeatedly asked him to stop contacting him.

This court also finds that the Defendant did commit an act of disturbing the peace pursuant to Neb. Rev. Stat. § 28-1322 (Reissue 1995), which provides that "[a]ny person who shall

intentionally disturb the peace and quiet of any person, family, or neighborhood commits the offense of disturbing the peace. "A breach of the peace is a violation of public order." *State v. Broadstone*, 233 Neb. 595, 599, 447 N.W.2d 30, 33 (1989), citing *State v. Coomes*, 170 Neb. 298, 301, 102 N.W.2d 454, 457 (1960). "It is the same as disturbing the peace." *Id.* "The definition of breach of the peace is broad enough to include the offense of disturbing the peace." *Id.* "The offense known as breach of the peace embraces a great variety of conduct." *Id.* at 600, 447 N.W.2d at 34. "It includes not only violent acts but acts and words likely to produce violence in others." *Id.* It may also include profane, indecent, or abusive remarks. *Id.*

The court concludes that there was sufficient evidence from the which the trial court could conclude that the Defendant did intentionally write disturbing e-mails to Mr. Avery. The Defendant's e-mails contained content that was meant to anger and incite Mr. Avery and often contained profane, indecent, and abusive remarks. The court concludes that the Defendant's actions constituted a disturbance of the peace.

The Defendant argues that, although sending unwanted e-mails may be annoying, it does not constitute a breach of the peace. The Defendant relies upon *State v. Hai Dang*, 220 Neb. 120, 368 N.W.2d 486 (1985), in support of his argument, and argues that this court should similarly overturn the Defendant's conviction. This court finds this argument without merit. In *Hai Dang*, the Defendant was convicted of disturbing the peace when he allegedly made repeated unwanted telephone calls to his ex-girlfriend and eventually showed up at her house to deliver a birthday card. The Nebraska Supreme Court overturned the Defendant's conviction for insufficiency of the evidence. The evidence in that case, showed that the Defendant and his girlfriend had been going together for 2 ½ years. The girlfriend's testimony was inconsistent as to exactly when she and the

Defendant had broken up and when the alleged unwanted telephone conversations had occurred and what was said. The Nebraska Supreme Court characterized the girlfriend's testimony as being "so confusing and disconnected that it was utterly lacking in probative force." *Id.* at 121, 368 N.W.2d at 488.

The Defendant argues *Hai Dang* stands for the proposition that unwanted e-mails and similarly unwanted telephone calls cannot constitute a disturbance of the peace. This court does not agree and finds that *Hai Dang* is distinguishable from the instant case. It was not the method of communication that led to the final result in *Hai Dang*, rather it was a lack of evidence in relation to the content of the communications made between the parties. There was little, if any, credible evidence that the Defendant in *Hai Dang* had made any threats; used abusive, profane, or indecent language; or acted violently towards his ex-girlfriend. In the instant case, the court concludes that there was sufficient evidence for the trial court to find that the Defendant's acts constituted a disturbance of the peace.


CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the judgment and sentence of the County Court of Lancaster County are affirmed. Within two judicial days after this decision becomes final, the clerk of this court shall issue a mandate in appeals from the county court and transmit the mandate in appeals to the clerk of the county court on the form prescribed by the Supreme Court, together with a copy of this order. The costs of this action are taxed to Lancaster County.

A copy of this order is sent to counsel of record and to the trial court.

DATED this 29th day of April, 2008.

BY THE COURT:



John A. Colborn
District Court Judge

Rod Reuter, *Deputy County Attorney, Attorney for the State*
Tom Keefe, *Attorney for the Defendant*

May 28, 2008

Re: State of Nebraska

vs.

Darren Drahota (appellant/defendant)

Case No. CR07-230

This is notice to the court that the defendant wishes to appeal the District Courts' affirmation of the Lancaster County Courts' decisions in said case. Notice is given to the Clerk of the District Court of Lancaster County that the defendant wishes to appeal this case to the Nebraska Court of Appeals and also fills out an affidavit requesting the court to allow the case to proceed In forma Pauperis as it did through the Lancaster District Court

Respectfully submitted

By: Darren Drahota appellant/defendant
Darren Drahota

LANCASTER COUNTY

2008 MAY 29 PM 2 40

CLERK OF THE
DISTRICT COURT

000051



000577714D02

LANCASTER COUNTY
08 JUN -4 PM 1:08
CLERK OF DISTRICT COURT

CR07-230

June 4, 2008

Lancaster County Court
575 South 10th Street
Lincoln, NE 68508

RE: State of Nebraska v. Darren J. Drahota
County Court Number: CR06-21284

TO WHOM IT MAY CONCERN:

On April 29, 2008, Judge Colborn affirmed the County Court's decision in the above case. A Mandate was directed to be issued 30 days from that date.

On May 29, 2008, the defendant appealed the District Court's decision to the Nebraska Court of Appeals.

After the Mandate is received from the Nebraska Court of Appeals, a Mandate will be issued from District Court to County Court.

Thank you,

Lorraine Harre
Deputy

000052



000579335D02

Case ID CR 07 230 Old Case ID _____
Caption State v. Darren J Drahota

Text

05/10/2007

Colborn

Attorney Keefe present for defendant. Deputy County Attorney Reuter present for State. Matter argued and submitted. Attorney Keefe to submit order remanding matter to county court for evidentiary hearing on motion to proceed in forma pauperis.

05/11/2007

Colborn

For Order of Remand, see file.

02/14/2008

Colborn

For progression order and order for hearing, see file.

04/04/2008

Colborn

Attorney Keefe present for defendant. Deputy County Attorney Reuter +

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Case ID CR 07 _____ 230 Old Case ID _____
Caption State v. Darren J Drahota

Text

present for State. Appeal hearing held. Evidence adduced. Matter argued and submitted.

04/29/2008

Colborn

For order affirming decision of county court, see file. TRIED

06/04/2008

06-04-2008 Colborn

Motion to proceed in forma pauperis on appeal sustained. For order, see file. Copy of order sent to counsel of record and to defendant. b

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COPY

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

v.

DARREN DRAHOTA,

Defendant.

CR07-230

**ORDER SUSTAINING MOTION
TO PROCEED IN FORMA
PAUPERIS ON APPEAL**

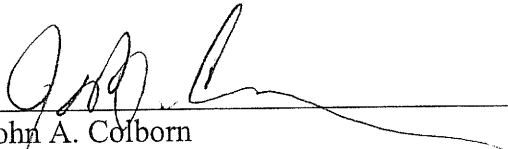
On May 29, 2008, Defendant Darren Drahota filed a motion to proceed in forma pauperis on appeal. The court determines that the motion to proceed in forma pauperis on appeal should be sustained and granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the motion to proceed in forma pauperis on appeal is sustained and granted. A copy of this order is sent to counsel of record and to the defendant.

Dated this 4th day of June, 2008.

BY THE COURT:

LANCASTER COUNTY
2008 JUN 4 PM 3 49
CLERK OF THE
DISTRICT COURT


John A. Colborn
District Judge

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000570383D02

Brenda

C E R T I F I C A T E

State of Nebraska)
Lancaster County) ss.

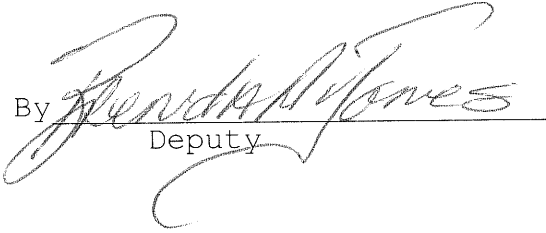
I, Sue M. Kirkland, Clerk of the District Court, Third Judicial District of Nebraska, within and for the County of Lancaster, do hereby certify that the above and foregoing is a true and correct transcript of pleadings with all endorsements thereon and open orders of the Court entered in a cause in said Court wherein State Of Nebraska is the Plaintiff, Darren J. Drahota is the Defendant, as found at case number Docket CR 07 Page 230, as the same appear fully upon the records and files of said Court now in my charge remaining as Clerk aforesaid.

Witness my hand, the seal of said Court at Lincoln, Nebraska this 25th day of June, 2008.



Sue M. Kirkland
Clerk of the District Court

By


Deputy

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