

20090244

SUPREME COURT NUMBER 20090244
DISTRICT COURT NUMBER 08-06-K-1026

IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

NOV - 6 2009

TILMER EVERETT,
PLAINTIFF/APPELLANT **STATE OF NORTH DAKOTA**

VS.

STATE OF NORTH DAKOTA,
RESPONDANT/APPELLEE.

REPLY-BRIEF OF APPELLANT EVERETT

APPEAL FROM JUDGEMENT DENYING POST-CONVICTION
AUGUST 6th, 2009
DISTRICT COURT OF BURLEIGH COUNTY
SOUTH CENTRAL JUDICIAL DISTRICT
JUDGE BRUCE ROMANICK

TILMER EVERETT; PRO SE.
PLAINTIFF/APPELLANT
P.O. BOX 5521
BISMARCK, N.D.
58506

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ISSUES PRESENTED: POST-CONVICTION N.D.C.C. 29-32.1-01 (e) EVIDENCE, NOT PREVIOUSLY PRESENTED OR HEARD, REQUIRING VACATION OF THE CONVICTION, OR SENTENCE IN THE INTEREST OF JUSTICE; (a),(b),(f),(h),, AS WHICH IS SUBJECTED TO AN COLLATERAL ATTACK WITH AN AFFIDAVIT (s) ATTACHED AS LEGAL SUPPORT.

I. GROUND ONE; (f) CONVICTION OBTAINED BY THE UNCONSTITUTIONAL FAILURE, OF THE PROSECUTION TO DISCLOSE "EVIDENCE" FAVORABLE TO THE DEFENDANT,. (MIRANDA RIGHTS FORM OF TWO INVESTIGATIONS IS MISSING-OUT OF BOTH DET.MARKS AND DET.CLARCKSONS POLICE REPORTS LIKE STATED. AND PAGE 5., OF DET.CLARCKSONS POLICE REPORT IS ALSO MISSING FROM THAT POLICE REPORT, OUT OF "SIX" PAGES. 1-6!

II. GROUND TWO; (d) CONVICTION OBTAINED BY USE OF "EVIDENCE" OBTAINED PURSUANT TO AN UNLAWFUL ARREST. (A DVD VIDEO INTERVIEW OF TWO INVESTIGATIONS, "20 YEAR OLD AND 18 YEAR OLD WOMEN", WAS USED AGAINST ME TILMER EVERETT DURING MY TRIAL WITH MANIPULATION AND CORRUPTION FROM, THE FACTS STATED AGAINST ME BY POLICE. MALICIOUSLY ALLOWING HER (STATE'S ATTORNEYS) WITNESSES DET.MARKS AND DET.CLARCKSON TO COMMIT FRAUD AND PERJURY UNDER OATH.) CASE NO.06-K-1026!

III. GROUND THREE; CONSPIRACY TO COMMIT FRAUD AND PERJURY. (STATE'S ATTORNEY CYNTHIA FELAND PLAYED A KEY ROLE AS A CO-CONSPIRATOR AND MASTERMIND WITH TWO BISMARCK POLICE DETECTIVES NAMED ROGER MARKS AND DEAN CLARCKSON DURING MY TRIAL, TO DEFRAUD AND MANIPULATE THE CIRCUMSTANCES INTO MY ORDEAL, BY WITHOLDING EVIDENCE FROM "ME" ABOUT BOTH THEIR CASES, WITH THE MALICIOUS INTENT OF USEING EVIDENCE AGAINST, ME TILMER EVERETT AS IF TO SHAKE THE TRUTH.) DELIBERATELY VIOLATING, MY RIGHTS IN THE COURT OF LAW, FROM MY ARREST TO MY TRIAL!

CONCLUSION

9.

INDEX OF BRIEF

NONE.

CERTIFICATE OF SERVICE

10.

"WE ARE ALL FREE MEN PROTECTED BY THE CONSTITUTION".

TABLE OF CASES

BRADY VS. Md,
373 U.S. 83,87 (1963).

KYLES VS. WHITLEY,
514 U.S. 419,453 (1995).

MOONEY VS. HOLOHAN,
294 U.S. 103,112 (1935).

NAUPE VS. ILL.,
360 U.S. 264,269 (1959).

U.S. VS. ROSSY,
953 F.2d 321 (7th CIR. 1992).

WHITE VS. RAGEN,
324 U.S. 760, 89 L.Ed 1348,65 S.ct. 978 (1945).

U.S. VS. BOOTHE,
994 F.2d 63 (2nd CIR. 1993).

MAHONEY VS. KERSEY,
976 F.2d 1054 (7th CIR. 1992).

U.S. VS. EYSTER,
948 F.2d 1196 (11th CIR. 1991).

STATE VS. THOMPSON,
552 N.W. 2d 386 (N.D. 1996).

DEMARO VS. U.S.,
928 F.2d 1074 (11th CIR. 1991).

U.S. VS. CROSS,
928 F.2d 1459 (6th CIR 1993).

U.S. VS. CUFFIE,
80 F.3d 514 (D.C. CIR. 1996).

STATUTES AND OTHER AUTHORITIES

BLACK'S LAW DICTIONARY (EIGHTH EDITION) P.685, FRAUD- A KNOWING MIS-
REPRESENTATION, OF THE TRUTH OR CONCEALMENT OF A MATERIAL FACT TO IN-
DUCE, ANOTHER TO ACT TO HIS OR HER DETRIMENT. FRAUD IS USUALLY A TORT,
BUT IN SOME CASES (esp. when the conduct is willful) IT MAY BE A CRI-
ME,.- ALSO TERMED, intentional fraud.

actual fraud. A CONCEALMENT OR FALSE REPRESENTATION THROUGH A STATE-
MENT, OR CONDUCT THAT INJURES ANOTHER WHO RELIES ON IT IN ACTING.

P.1258, PROSECUTORIAL MISCONDUCT- A PROSECUTOR'S IMPROPER OR ILLEGAL
ACT (or failure to act), ESP. INVOLVING AN ATTEMPT TO AVOID REQUIRED
DISCLOSURE OR TO PERSUADE THE JURY TO WRONGLY CONVICT A DEFENDANT OR
ASSES AN UNJUSTIFIED PUNISHMENT. IF PROSECUTORIAL MISCONDUCT RESULTS
IN A MISTRIAL, A LATER PROSECUTION MAY BE BARRED UNDER THE DOUBLE
JEOPARDY CLAUSE. [CASES: CONSTITUTIONAL LAW 257.5, 268(8); §§ 993-
995, 1072-1073; CRIMINAL LAW §§ 486,490,495-496, 1233-1234, 1236,
1252.]

prosecutorial vindictiveness- THE ACT OR AN INSTANCES OF INTENTIONALLY
CHARGING A MORE SERIOUS CRIME OR SEEKING A MORE SEVERE PENALTY IN RE-
TALIATION, FOR A DEFENDANT'S LAWFUL EXERCISE OF A CONSTITUTIONAL
RIGHT.

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CONSPIRACY TO COVER-UP A CRIME BY POLICE AND THE STATE'S ATTORNEY OF
CASE NO.06-K-1026, STATE VS. EVERETT. (PERJURED TESTIMONY.)

STATEMENT OF ISSUES PRESENTED FOR REVIEW

THIS IS A REVIEW OF THE DISTRICT COURTS CONVICTION OF ISSUES FOR REVIEW, : I-III., GROUNDS OF THE N.D.C.C. 29-32.1-01 (e) EVIDENCE, NOT PREVIOUSLY PRESENTED OR HEARD, REQUIRING VACATION OF THE CONVICTION OR SENTENCE IN THE INTEREST OF JUSTICE; (a),(b),(f), AND (h)., WHICH IS SUBJECTED TO AN COLLATERAL ATTACK, WITH AN "AFFIDAVIT" ATTACHED AS LEGAL SUPPORT. GENUINE ISSUES OF MATERIAL FACTS...

GROUND ONE

(f) CONVICTION OBTAINED BY THE UNCONSTITUTIONAL FAILURE OF THE PROSECUTION, TO DISCLOSE TO THE DEFENDANT "EVIDENCE" FAVORABLE TO THE DEFENDANT. (MIRANDA RIGHTS FORMS ARE MISSING-OUT OF BOTH DET.MARKS AND DET.CLARCKSONS POLICE REPORTS LIKE STATED AND PAGE 5., OF DET. CLARCKSONS, POLICE REPORT IS ALSO MISSING-OUT OF HIS POLICE REPORT.)

SUPPORTING FACT: A PROSECUTOR NAMED CYNTHIA FELAND FAILED TO GIVE ME TILMER EVERETT THOSE DOCUMENTS AS PART OF MY DISCOVERY, JUST SO SHE HAD THE OPPORTUNITY AND MALICIOUS INTENT FROM PREVENTING ME THE DEFENDANT, IN EXPOSING THE TRUE FACTS CAUSED INTO MY ORDEAL BY THE BISMARCK, POLICE DEPARTMENT ON MAY 30th, 2006 DURING MY TRIAL.) FACT!

GROUND TWO

(d) CONVICTION OBTAINED BY USE OF "EVIDENCE" OBTAINED PURSUANT TO AN UNLAWFUL ARREST. (BOTH THE BURLEIGH COUNTY STATE'S ATTORNEYS OFFICE AND THE BISMARCK POLICE DEPARTMENT USED A DVD VIDEO INTERVIEW OF TWO INVESTIGATIONS AGAINST ME TILMER EVERETT THE DEFENDANT DURING MY TRIAL AND HAD IT ADMITTED INTO EVIDENCE, WITH FRAUD AND PERJURY.)

SUPPORTING FACT: A PROSECUTOR NAMED CYNTHIA FELAND ALLOWED HER STATE WITNESSES (THE BISMARCK POLICE DEPARTMENT) TO USE EVIDENCE AGAINST ME

TILMER EVERETT DURING MY TRIAL. THAT THIS EVIDENCE WAS USED AGAINST "ME" WITH FRAUD AND MANIPULATION, FROM THE FACTS AS TO HOW AND WHAT CAUSED MY BEING FALSELY ACCUSED AND WRONGFULLY ARRESTED.

GROUND THREE

CONSPIRACY TO COMMIT FRAUD AND PERJURY. (A BURLEIGH COUNTY PROSECUTOR, NAMED CYNTHIA FELAND AND TWO BISMARCK POLICE DETECTIVES NAMED ROGER MARKS AND DEAN CLARCKSON ALL CONSPIRED TO DEFRAUD AND CORRUPT EACH OF THEIR INVESTIGATIONS, WITH THE CRIMINAL INTENT OF COVERING-UP, A CRIME THAT WAS REPORTED TO THE BISMARCK POLICE DEPARTMENT.)

SUPPORTING FACT: ON DECEMBER 5 AND 6, 2006 ALL THREE OF THOSE INDIVIDUALS, NAMED (FELAND, MARKS, CLARCKSON) MALICIOUSLY VIOLATED MY RIGHTS BY MISLEADING THE COURT AND JURY DURING MY TRIAL OF TWO INVESTIGATIONS STATED AGAINST ME WITH CORRUPTION. COMPOUNDING FRAUD WITH MORE FRAUD AS IF TO SHAKE THE TRUTH. (TWO WOMEN'S CASES THEY ACCUSED ME OF.)

NATURE OF THE CASES

ON MAY 30th, 2006 I TILMER EVERETT GOT FALSELY ACCUSED (20 YEAR OLD WOMAN NAMED K.WT.) AND WRONGFULLY ARRESTED (18 YEAR OLD WOMAN NAMED F.L.) FROM ONE INVESTIGATION INTO THE OTHER BY THE BISMARCK POLICE DEPARTMENT. THAT A BISMARCK POLICE DETECTIVE NAMED ROGER MARKS HAD INTENTIONALLY MISLED AND GAVE AN 18 YEAR OLD WITNESS THE NAMES OF HIS "SUSPECTS" TO AN ON-GOING INVESTIGATION THAT HE WAS CONDUCTING. THEN FROM THAT POINT HE (DET.MARKS) HAD VERIFIED THOSE CIRCUMSTANCES WITH TWO OTHER BISMARCK POLICE OFFICERS, AFTER REQUESTING FOR THEIR ASSISTANCE, ABOUT AN DISCOVERY THAT HE HAD ACKNOWLEDGE AND MADE CONCERNING THE CIRCUMSTANCES TO HIS INVESTIGATION. SEE; POLICE REPORTS 1-4 AND DVD INTERVIEW TRANSCRIPTS STATED ON MAY 30th, 2006 AS "EVIDENCE" ABOUT, THOSE FACTS AND CIRCUMSTANCES STATED AGAINST ME TILMER EVERETT BY BISMARCK POLICE, THAT I HAD SUBMITTED IN MY ORIGINAL APPENDIX TO YOU THE NORTH DAKOTA SUPREME COURT.

ON NOVEMBER 28th, 2006 THE DAY OF MY TRIAL THE STATES MAIN WITNESS NAMED F.L., DID NOT SHOW-UP FOR MY TRIAL AND THE STATE'S ATTORNEY REQUESTED THE COURT FOR AN "CONTINUANCE" UNDER FALSE PRETENCES WITH MY OBJECTION NOTED BY THE COURT. (VIOLATING MY RIGHTS.)

ON DECEMBER 5-7, 2006 A BURLEIGH COUNTY PROSECUTOR NAMED CYNTHIA FELAND MALICIOUSLY CONSPIRED WITH ALL HER STATE WITNESSES TO FABRICATE, AND CORRUPT TWO INVESTIGATIONS STATED AGAINST ME JUST TO FALSE PROSECUTE ME TILMER EVERETT IN THE COURT OF LAW. TO THIS DAY NOBODY HAS EVER BEEN CHARGE OR ARRESTED FOR THAT MATTER CONCERNING A REPORTED CRIME MADE TO THE BISMARCK POLICE DEPARTMENT, BECAUSE BOTH THE POLICE DEPARTMENT AND STATE'S ATTORNEYS OFFICE TAG-TEAMED UP AGAINST ME THE DEFENDANT (TILMER EVERETT) TO DEFRAUD THOSE FACTS. CASE NO.06-K-1026!

STATEMENT OF THE FACT

ON MAY 31st, 2006 I TILMER EVERETT HAD MY FIRST INITIAL APPEARANCE ON THIS DAY AFTER THE FACT OF BEING WRONGFULLY ACCUSED FROM ONE INVESTIGATION, INTO THE OTHER BY THE BISMARCK POLICE DEPARTMENT. A CHARGE CALLED GROSS SEXUAL IMPOSITION. THAT THIS CASE AND CHARGE WAS CALLED INFRONT OF JUDGE THOMAS SCHNEIDER IN THE SOUTH CENTRAL JUDICIAL DISTRICT OF BURLEIGH COUNTY COURTHOUSE. ON THIS PARTICULAR DAY, I HAD STATED TO THIS JUDGE THAT I AM PLEADING "NOT GUILTY" AND REQUESTED THE COURT THAT I WANTED PICTURES TAKEN OF ME TILMER EVERETT, BECAUSE I HAD HICKEYS FROM THE GIRL (F.L.) THAT I WAS WITH THE NIGHT BEFORE. THIS REQUEST WAS GRANTED BY BOTH THE JUDGE AND THE STATE'S ATTORNEY IN THAT HEARING. (SEE APPENDIX; PAGE 2.)

ON JUNE 19, 2006 I TILMER EVERETT APPEARED FOR AN PRELIMINARY HEARING, INFRONT OF JUDGE SONNA ANDERSON. IN THIS HEARING, I CONTINUED TO PRESERVE MY NOT GUILTY PLEA ON THAT CASE AND CHARGE THAT WAS STILL, BEING PROCESSED AGAINST "ME" BY THE BURLEIGH COUNTY STATE'S ATTORNEYS, OFFICE. JUDGE SONNA ANDERSON HAD INFORM ME TILMER EVERETT THAT, THIS CASE AND CHARGE WAS HEADED FOR A PRE-TRIAL COURT DATED IN JULY 31, 2006. AT THAT TIME I HAD AN ATTORNEY NAMED SUSAN SCHMIDT, WHO WAS ALSO PRESENT AT THIS HEARING. (SEE APPENDIX; PAGE 10.)

ON JULY 31, 2006 I TILMER EVERETT AGAIN APPEARED FOR A HEARING CALLED, A PRE-TRIAL CONFERENCE INFRONT OF JUDGE DONALD JORGENSEN. IN THIS, HEARING MY ATTORNEY NAMED SUSAN SCHMIDT HAD RAISED A COUPLE OF ISSUES REGARDING MY "DISCOVERY" WHICH WE STILL HAVE NOT RECEIVED FROM, THAT POINT AND I WANTED TO GET THIS MESS RESOLVED AS SOON AS POSSIBLE, . WITH THE STATE'S ATTORNEY NAMED CYNTHIA FELAND LYING AND MANIPULATING, EACH OF THOSE ISSUES ADDRESSED. FROM THAT POINT, JUDGE DON-

ALD, JORGENSEN HAD ADVISED BOTH MY ATTORNEY SUSAN SCHMIDT AND THE STATE'S ATTORNEY NAMED CYNTHIA FELAND THAT ALL MY "DISCOVERY" WAS SUPPOSE TO BE GIVEN TO ME TILMER EVERETT THE DEFENDANT BY THE 15th, OF SEPTEMBER 2006 FROM THAT HEARING DATE.(7-31-06.) 45 MORE DAYS TO COMPLETE ALL THE DISCOVERY I NEEDED FOR MY TRIAL, AFTER HAVING BEEN ADVISED BY MY ATTORNEY THAT I WANTED THIS CASE AND CHARGE RESOLVED AS SOON AS POSSIBLE AND THAT IT WAS MY ATTORNEY'S OBLIGATED RESPONSIBILITY, TO NOTIFY THE COURT IN A MOTION, IF THIS WAS NOT PROPERLY DONE OR NOT SATIISFIED. JUDGE DONALD JORGENSEN SETTING MY TRIAL DATE, FOR THE LATTER PART OF SEPTEMBER. (SEE APPENDIX; PAGE 16.)

ON NOVEMBER 28th, OF 2006 WHEN THE STATE'S MAIN WITNESS NAMED F.L., DID NOT SHOW-UP FOR MY TRIAL WHEN SUBPEONAED TO, AND MY TRIAL HAVING BEEN GRANTED TO A CONTINUANCE UNDER FALSE PRETENCES IN THE JUDGE'S CHAMBERS, WITH MY "OBJECTION" NOTED. MY STAND-BY COUNSEL NAMED TODD SCHWARZ HAD TAKEN OVER MY CASE AS MY ATTORNEY AND MADE STATEMENTS ON RECORD ABOUT KNOWLEDGE THAT HE HAD CONCERNING THE CIRCUMSTANCES INTO MY ORDEAL CAUSED BY THE BISMARCK POLICE DEPARTMENT. "AS BEING FALSELY ACCUSED BY THEM (POLICE), FROM ONE INVESTIGATION INTO THE OTHER AND HOW BEING NAMED A SUSPECT FROM THAT FIRST INVESTIGATION." THAT HE KNEW, THE STATE'S ATTORNEY WANTED TO DEFRAUD THOSE CIRCUMSTANCES STATED AGAINST ME TILMER EVERETT WHEN THE FACTS WERE PERFECTLY CLEAR AND STATED, THAT WAY ABOUT BOTH CASES. (SEE APPENDIX; PAGE 23.) "WITNESS"!

ON JUNE 7th, 2009 I TILMER EVERETT HAD MADE A REQUEST WITH THE BISMARCK, CHIEF OF POLICE NAMED KEITH WITT ABOUT SOME "EVIDENCE" THAT I NEEDED IN REGARDS TO MY COMPLAINTS THAT I HAD FILED AGAINST DET.MARKS AND DET.CLARCKSON WITH HIM AND THE INTERNAL AFFAIRS. INSTEAD THIS GUY NAMED KEITH WITT TOLD ME TILMER EVERETT, THAT THIS EVIDENCE (DVD VIDEO'S,.) I WAS REQUESTING FOR HAD BEEN DESTROYED. AND THAT I WANTED TREVOR GOODIRON ARRESTED! (SEE APPENDIX; PAGE 24.)

THAT THESE ARE THE STATEMENT OF FACTS I HAVE ADDRESSED TO YOU THE NORTH DAKOTA SUPREME COURT;

1. ON MAY 30, 2006 A CASE AND CHARGE WAS PROCESSED AGAINST ME TILMER EVERETT BY THE BURLEIGH COUNTY STATE'S ATTORNEYS OFFICE WITH FRAUDULENT, CIRCUMSTANCES ON AN 18-YEAR-OLD WOMAN WHO GOT DECEIVED ABOUT AN DIFFERENT INVESTIGATION, WHICH CAUSED HER TO JUMP ON THE BAND-WAGON, AND LYING ALSO. THERE ARE FACTS THAT STATE THIS...

2. ON JUNE 19, 2006 THOSE DEFRAUDED FACTS CAUSED BY BISMARCK POLICE WERE ADVISED TO ME TILMER EVERETT BY THE BURLEIGH COUNTY DISTRICT COURTS, WITH THE ADVISEMENT THAT MY NEXT HEARING WOULD BE JULY 31, 2006 CALLED A PRE-TRIAL CONFERENCE. CONTINUING WITH FRAUDULENT CIRCUMSTANCES, BY THE STATE'S ATTORNEYS OFFICE...

3. ON JULY 31, 2006 DISTRICT COURT JUDGE DONALD JORGENSEN MADE IT CLEAR TO BOTH MY ATTORNEY SUSAN SCHMIDT AND STATE'S ATTORNEY CYNTHIA FELAND THAT ALL MY "DISCOVERY" WOULD BE OFFERED TO ME TILMER EVERETT BY SEPTEMBER 15th, 2006. THIS WAS NOT DONE!

4. ON NOVEMBER 28, 2006 MY ATTORNEY NAMED TODD SCHWARZ (WITNESS) HAD "KNOWLEDGE" ABOUT THE FACTS AND CIRCUMSTANCES CAUSED ON ME TILMER EVERETT, BY BISMARCK POLICE YET DID NOTHING. BY STILL GOING ALONG WITH THE PROSECUTORS PROCEEDINGS OF THIS FRAUDULENT CASE AND CHARGE LATER INTO THE WEEK, WHICH CAUSED MY BEING MALICIOUSLY CONVICTED IN THE COURT, OF LAW. THIS IS CALLED INEFFECTIVE ASSISTANCE AND MISCONDUCT FOR ALLOWING AN INNOCENT PERSON TO UNJUSTLY REPRESENTED...

5. ON JUNE 7, ~~2009~~ I HAD MADE A REQUEST WITH THE BISMARCK CHIEF OF POLICE NAMED KEITH WITT ABOUT EVIDENCE (DVD VIDEOS.) THAT I NEEDED AND A COMPLAINT AGAINST TREVOR GOODIRON TO BE PROCESSED. ONLY TO BE GIVEN BAD NEWS ABOUT THOSE DVD VIDEO'S BEING DESTROYED AND THERE WAS INSUFFICIENT EVIDENCE TO ARREST TREVOR GOODIRON. WRONG!!

ARGUMENT

1. GROUND ONE: (f) CONVICTION OBTAINED BY THE UNCONSTITUTIONAL FAILURE, OF THE PROSECUTION TO DISCLOSE "EVIDENCE" FAVORABLE TO THE DEFENDANT, . (MIRANDA RIGHTS FORMS AND PAGE 5., OF POLICE REPORTS ARE MISSING-OUT OF DET,MARKS AND DET.CLARCKSONS REPORTS.)

UNDER THE N.D.C.C. 29-32.1-01 (e) EVIDENCE, NOT PREVIOUSLY PRESENTED OR HEARD, REQUIRING VACATION OF THE CONVICTION OR SENTENCE IN THE INTEREST, OF JUSTICE; (a),(b),(f),(h)., WITH AN AFFIDAVIT ATTACHED AS LEGAL SUPPORT TO THAT APPLICATION, DOES ENTITLE RELIEF.

POST-CONVICTION PROCEEDINGS AND APPLICATIONS ARE HEARINGS AND REQUESTS TO THE COURT OF THAT CONVICTION, OF WHAT WAS DONE WRONG IN THAT TRIAL AND PROVE WHAT "ISSUES" ADDRESSED WERE ILLEGAL TO THE POINT OF WRONGFUL, PROSECUTION BY THE STATE'S ATTORNEY OF THAT CASE AND CHARGE. AND SO, SINCE THE PROSECUTION FAILED TO DISCLOSE OR OFFER ME THE DEFENDANT TILMER EVERETT THOSE DOCUMENT ADDRESSED AND STATED IN THE POLICE REPORTS, DOES CONSTITUTE A BRADY VIOLATION. PREJUDICIAL ISSUE!

STATE'S ATTORNEY CYNTHIA FELAND HAS NEVER ADDRESSED THIS ISSUE AT ALL IN HER BRIEF OR APPENDIX TO YOU THE NORTH DAKOTA SUPREME COURT BECAUSE SHE KNOWS SHE DID VIOLATE MY RIGHTS INTENTIONALLY IN THE COURT OF LAW OF CASE NO.06-K-1026 AND THOSE RECORDS SUBMITTED IN MY ORIGINAL APPENDIX, PROVES IT. THERE IS NO RES JUDICATA! THIS ISSUE HAS NEVER BEEN RAISED OR ADDRESSED BEFORE AND THIS THE FIRST TIME. THEREFORE THIS ISSUE, IS ENTITLED TO AN COLLATERAL ATTACK AND BE HEARD. UNDER THE N.D.-C.C., 29-32.1-01 (e),(a),(b),(f), AND (h)., BY LAW...

2. GROUND TWO: (d) CONVICTION OBTAINED BY USE OF "EVIDENCE" OBTAINED PURSUANT TO AN UNLAWFUL ARREST. (A DVD VIDEO INTERVIEW OF TWO INVESTIGATIONS, WAS USED AGAINST ME TILMER EVERETT BY THE BISMARCK POLICE

DEPARTMENT AND THE BURLEIGH COUNTY STATE'S ATTORNEYS OFFICE DURING MY TRIAL WITH MANIPULATION AND FRAUD.)

STATE'S ATTORNEY CYNTHIA FELAND HAD THIS DVD VIDEO INTERVIEW OF TWO INVESTIGATIONS "USED" AS EVIDENCE AGAINST ME TILMER EVERETT WHILE UNDER OATH WITH ONE OF HER WITNESSES NAMED DEAN CLARCKSON. AS THEY BOTH CONSPIRED TO DEFRAUD AND MANIPULATE MY RIGHTS BEING READ TO "ME", CONCERNING BOTH CASES OF BEING NAMED A WITNESS FIRST; SUSPECT SECOND, WHEN IN FACT I WAS REALLY NAMED THEIR PRIME SUSPECT TO EACH OF THOSE CASES UNTIL I CORRECTED THEM IN THAT INTERVIEW. THIS IS CALLED CORRUPTION, AND A COVER-UP OF A CRIME THEY COMMITTED AGAINST ME TILMER EVERETT BY MALICIOUSLY FRAMING ME WITH FRAUDULENT CIRCUMSTANCES FROM THE FACTS. (THAT MIRANDA RIGHTS FORM COULD HAVE HELPED ME PROVE ALL THOSE LIES THEY WERE STAGING AGAINST ME IN MY TRIAL.) THEREFORE MY RIGHTS WERE INTENTIONALLY VIOLATED JUST TO HIDE THE TRUTH! THIS IS NOT ONLY AGAINST THE LAW BUT ALSO CONSIDERED A CONSPIRACY...

3. GROUND THREE: CONSPIRACY TO COMMIT FRAUD AND PERJURY. (THE STATE'S ATTORNEY PLAYED A KEY ROLE (MASTERMIND) AS AN CO-CONSPIRATOR DURING MY TRIAL TO MALICIOUSLY DEFRAUD AND MANIPULATE THE BISMARCK POLICE DEPARTMENTS INVESTIGATIONS THAT THEY HAD STATED AGAINST ME TILMER EVERETT FROM ONE CASE INTO THE OTHER.) LIES AFTER LIES!

THE TRANSCRIPTS I HAD SUBMITTED IN MY ORIGINAL APPENDIX DOES SHOW AND PROVE THOSE CIRCUMSTANCES AS TO THE WAY THE FACTS GOT DEFRAUDED IN THE COURT OF LAW DURING MY TRIAL INTENTIONALLY. THIS DOES NOT GIVE THE RIGHT OR PRIVILEGE OF THE POLICE OR STATE'S ATTORNEY TO DO THIS TO ME AT ALL. THIS IS CRIMINAL WITHOUT A DOUBT...

BY CYNTHIA FELAND, ROGER MARKS, AND DEAN CLARCKSON! THEREFORE I AM GOING TO ALSO FILE CRIMINAL CHARGES ON EACH AND EVERYONE OF THEM WITH THE F.B.I AND GRAND JURY REAL SOON...

CONCLUSION

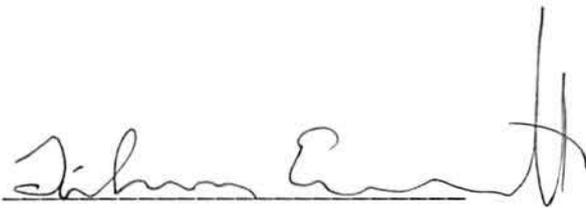
BASED ON THE APPELLEE'S (STATE'S ATTORNEY) FAILURE TO ACKNOWLEDGE OR EVEN ADDRESS THE "THREE GROUNDS" THAT I HAD RAISED AS ISSUES IN THAT POST-CONVICTION APPLICATION, IN HER BRIEF. DEMONSTRATES HER MALICIOUS INTENT TO AGAIN, TO TRY AND MISGUIDE THE FACTS, FROM THOSE, GROUNDS I HAD STATED AGAINST HER. (ABOUT WITHHOLDING EVIDENCE FROM "ME" BEFORE MY TRIAL AND ALSO USEING EVIDENCE AGAINST "ME" DURING, MY TRIAL; JUST SO SHE HAD THE OPPORTUNITY TO CONSPIRE WITH TWO BISMARCK POLICE DETECTIVES (MARKS AND CLARCKSON) TO DEFRAUD THOSE FACTS AND CIRCUMSTANCES STATED IN THE BISMARCK POLICE DEPARTMENT POLICE REPORTS 1-4 AND DVD INTERVIEWS OF EACH OF THEIR CASES.) WHICH, THEY (B.P.D) CAUSED INTO MY ORDEAL!

SEE ORIGINAL APPENDIX; PAGES 10-168., FOR FACTS AND DETAILS.

THEREFORE THE ARGUMENTS THAT THE APPELLEE STATED IN HER BRIEF TO YOU THE NORTH DAKOTA SUPREME COURT, SHOULD BE DECLARED AND RULED AS BEING "FRIVOLOUS" AND "MERITLESS", AS TO THE THREE GROUNDS THAT I HAD ADDRESSED IN THAT POST-CONVICTION APPLICATION, WHICH SHE REFUSED TO ADDRESS IN THAT BRIEF SHE FILED. DENYING HER REQUEST AND THAT REPLY, SHE HAD MADE IN HER BRIEF DATED OCTOBER 22, 2009.

I REALLY AM INNOCENT.

DATED THIS 5 DAY OF NOVEMBER, 2009.



TILMER EVERETT
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58506