

20110189

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

SUPREME COURT NO.20110189
DISTRICT COURT NO.08-06-K-1026

Tilmer Everett

Defendant/Appellant,

Vs.

State of North Dakota

Respondent/Appellee,

Brief of Appellant

Appeal from Order Denying Post-Conviction Relief
June 20, 2011
South Central Judicial District
Burleigh County Case No.08-06-K-1026
Judge Bruce Romanick

And

Appeal from Order Denying Motion to Recuse or Remove Judge
June 20, 2011
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Judge Bruce Romanick

Tilmer Everett; Pro Se.
Defendant/Appellant
Box 5521
Bismarck, North Dakota
58506

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Issues Presented: Post-Conviction N.D.C.C. 29-32.1-01 (b), (c) "New Evidence"

A. Ground One: Denial of effective assistance of counsel. (*by Susan Schmidt.*)

B. Ground Two: Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant. (*Case No.06-9417.*)

C. Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure. (*falsified application used for search warrant.*)

Also with

Issues Presented: I Tilmer Everett had filed a motion with the District Court pursuant to N.D.R.Civ.P. Rule 60 (b) i-iv., requesting to have judge Bruce Romanick recused or removed from Case No.06-K-1026 (06-9442) due to his prejudice and bias., Also that I have filed a complaint against judge Bruce Romanick with the judicial conduct commissions., And if that recusal would have been granted by the court I Tilmer Everett

wanted to motion the District Court with a request to vacate the September 3rd, 2010 Order denying request to compel discovery.. And also to request the District Court again to vacate the Order prohibiting further filings by defendant without leave of this court., And file a request for reconsideration to the District Court's March 28th, 2011 Order the Request for a subpoena is denied. *(As a Notice of Appeal against that order for request for a subpoena denied by judge Bruce Romanick had been filed by me Tilmer Everett with "No" response back at all, from judge Bruce Romanick (the court), to that notice of appeal requested dated April 1st, 2011.) Prejudiced!*

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We are all free men protected by the constitution!!

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521 F.2d 842, 845 (7th, Cir. 1996).

Offutt Vs. United States,
348 U.S. 11, 14, 75 S.Ct 11, 13 (1954).

Statutes and other authorities

U.S.C.A. Const. Amend 5, Due Process (the due process clause).

U.S.C.A. Const. Amend 6, Effective Assistance of Counsel.

U.S.C.A. Const. Amend 6, Right to face Accuser (confrontation clause).

Interference with exercise of civil rights by District Court judge Bruce Romanick Denying me Tilmer Everett the right to be heard on evidentiary issues with post-conviction relief requests filed.

“The right to a tribunal free from bias or prejudice is based, not on section 144, but the Due Process Clause.”

If you were a non-represented litigant, and should the Court not follow the law as to Non-Represented Litigants, then the judge has expressed an “appearance of partiality” and, under the law, it would seem that he/she has disqualified him/herself.

Notes:

- * The Supreme Court has also held that if a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution.
- * When any officer of the court has committed “fraud on the court”, the orders and judgments of that court are void, of no legal force or effect.
- * Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since both treason and the interference with interstate commerce are criminal acts, No judge has immunity to engage in such acts.

.....

Criminal Fraud- Fraud that has been made illegal by statute and that subjects the offender to criminal penalties such as fines and imprisonment.

Statement of Issues Presented for Review

This is the presentation of the District Court's denying my post-conviction relief and also denying my motion to recuse or remove judge as issues for review;

I. Post-Conviction Relief N.D.C.C. 29-32.1-01(b) (e) New Evidence received from Ward County clerk of court Susan Hoffer dated July 2nd, 2010 informing me Tilmer Everett that the courthouse was open for business as normal on November 28th, 2006 with weather data reports of November 2006 stated by Thomas R. Karl the Director of the National Climatic Data Center also submitted confirming that there never was no bad weather at all in Minot North Dakota on that day. Material facts addressed to the District Court as evidence that proves that State's Attorney Cynthia Feland straight-out lied in her request for a "Continuance" on the day of my trial and violated my rights. (With three (3) grounds addressed.) See; Supreme Court No.20110189 Appendix volume 1 pages #1-28.

Ground One

Denial of effective assistance of counsel. My public defender name Susan Schmidt **failed** to properly make a couple of "objections" in my favor as my Attorney with motions that she could have filed with the District Court against the Burleigh County State's Attorneys Office, when requests were made under N.D.C.C. 29-15-21 to have my trial judge name Donald Jorgensen disqualified and granted by the District Court. Instead what she (Susan Schmidt) did was that she filed a motion to withdrawal from my case and charge altogether! See; Arguments for details.

Ground Two

Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant. The Burleigh County State's Attorneys Office (Cynthia Feland) had intentionally manipulated a Court Order made against them (the prosecution) dated July 31, 2006 by judge Donald Jorgensen and had deliberately withheld a lot of evidence from me Tilmer Everett for my trial (Case No.06-K-1026). In regards to Case No.06-9417 as companion case (discovery) with Case No.06-9442. See; Arguments for details.

Ground Three

Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure. Both the Burleigh County State's Attorneys Office and the Bismarck Police Department had illegally conspired against me Tilmer Everett to have my DNA taken from "me" under an fraudulent case and charge (06-9442), by using a falsified affidavit (application) to the District Court dated June 2, 2006 and then manipulating that DNA evidence against me Tilmer Everett during my trial with there expert state witness name Hope Olson. See; Arguments for details.

And

2. June 3rd, of 2011 I Tilmer Everett had filed a motion to the District Court requesting to have Judge Bruce Romanick recused or removed from Case No.06-K-1026 pursuant to the North Dakota Rules of Civil Procedure Rule 60(b) i-iv., due to prejudicial and bias acts made within Case No.06-9417 and Case No.06-9442. See; Arguments for details.

And also the other reason *why* I wanted judge Bruce Romanick recused and removed was because I did have a complaint filed against him with the judicial conduct commissions and I felt that this draws a conflict of interest within my appeal. (Complaint File No.380-JC-1105.) I will not be disclosing my complaint documents as this a precaution that it could and might sabotage my complaint or this appeal.

When I Tilmer Everett had filed that motion to the Court and “if” that motion would have been granted by the District Court, it would have been my intent in than requesting the District Court with another motion to have judge BruceRomanick’s orders made against me Tilmer Everett vacated and or reconsidered as being declared void. *All of them!*
See; Supreme Court No.20110189 Appendix volume 2 pages #1-25.

Nature of the Case

March the 11th, of 2011 I Tilmer Everett had filed and requested for Post-Conviction relief pursuant to chapter 29-32.1 of the North Dakota Century Code with the District Court of Burleigh County in Bismarck North Dakota. Stating to the Court that I Tilmer Everett the petitioner am qualified for relief under the N.D.C.C. 29-32.1-01(1) as:

- b. The conviction was obtained under a statute that is in violation of the Constitution of the United States or the Constitution of North Dakota, or that the conduct for which the applicant was prosecuted is constitutionally protected.*

- e. Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice. (New Evidence!) A letter that I Tilmer Everett had received July 6th, 2010 from clerk of court Susan Hoffer, Ward County Minot, North Dakota dated July 2nd, 2010 advising "me" that the courthouse for Ward County was open for business as normal on November 28th, 2006. (On the day of my trial!) That this document would be evidence that proved Cynthia Feland "lied" to the District Court in her request for a Continuance. I Tilmer Everett had also submitted and addressed more evidence to the District Court with documents as weather climatological data reports of North Dakota dated November of 2006 certified and stated by the Director Thomas R. Karl of the National Climatic Data Center, that proved again, Cynthia Feland lied about the Weather. Constitutes as New Evidence!!*

That those documents (evidence) addressed to the District Court in my request for post-conviction relief dated March 11, 2011 did establish, as legal support, to the District Court that my rights were violated by the Burleigh County States Attorneys Office from having a fair and impartial trial. (11-28-06) When in fact by law, judge Bruce Romanick should have granted me the defendant my request for that relief and or he should have dismissed my Case (06-9442) and charge with prejudice!

[Since I Tilmer Everett never really knew "if" the courthouse for Ward County really was closed due to bad weather and or because I never really knew what the Weather really was like on November 28th, 2006. As this information was finally addressed and given to me by the clerk of court Susan Hoffer dated July 2nd, 2010 (4 years later). As I than had addressed it to the District Court in my request for relief with those weather

data reports submitted also. Which proved in the end, that the "continuance" was a lie along. Therefore this entitled me Tilmer Everett the defendant to attack that issue again within my appeal. Or what?]

Because what had happened instead was that I Tilmer Everett had received a response back from judge Bruce Romanick dated June 20, 2011 with a memorandum opinion and order denying post-conviction relief. **See;** Supreme Court No.20110189 Appendix volume 1 pages #29-30. And that's when I Tilmer Everett had filed a notice of appeal against judge Bruce Romanick's order denying me my request for relief. **See;** Supreme Court No.20110189 Appendix volume 1 pages #31-33. **Read also;** Appendix volume 1 pages #34-51. (Nature of the Case.)

It will be noted for the record: In no shape or form has judge Bruce Romanick in his order dated June 20, 2011 ever stated and or address for that matter, my New Evidence (that letter dated July 2nd, 2010 that I had finally received from Susan Hoffer and also about the Weather data dated November 28th, 2006.), that I Tilmer Everett had sent to him and also that I had declared in my request for relief dated March 11, 2011. Is this not prejudicial? In my opinion, I strongly feel that the reason why judge Romanick didn't respond properly to that issue is because he is bias...

And also, in no shape or form have I Tilmer Everett ever received the prosecution's side of their reply-response in regards to my request for relief, that I had filed with the District Court dated March 11, 2011. Why! Prior to receiving judge Bruce Romanick's ruling and order dated June 20, 2011 that he the judge had stated and made against me Tilmer Everett. Is this not prejudicial or what? In my opinion, I strongly feel that it is. I feel the reason why the prosecution failed to respond properly is because they do

concede to the fact that I did expose on record to the District Court that they did lie, about the weather, concerning that request they made for that Continuance, and that they (the prosecution) did in fact violated my rights...

And

In June the 3rd, of 2011 (about 2 and a half months later), after I Tilmer Everett had filed that post-conviction relief dated March 11, 2011. I had filed a motion again dated March 15, 2011 and it was denied by judge Bruce Romanick. Because I still hadn't received an response back from either the State's Attorneys Office or District Court. And that's when I Tilmer Everett had filed a motion to the District Court requesting to have judge Bruce Romanick recused or removed from my case file (06-9442) due to his prejudice and bias acts made within Case No.06-K-1026. **See;** Supreme Court No.20110189 Appendix volume 2 pages #11-21.

Then in June the 20th, of 2011 I Tilmer Everett had received a response back from judge Bruce Romanick denying me my request to have him recused or removed from my case file. **See;** Supreme Court No.20110189 Appendix volume 2 pages #26-27.

As I Tilmer Everett had than filed a notice of appeal dated June 23, 2011 against judge Bruce Romanick's Order **See;** Supreme Court No.20110189 Appendix volume 2 page #28. **Read also;** Appendix volume 2 pages #29-46. As this would be considered the Nature of the Case (*both appeals*) which brings me to you the North Dakota Supreme Court.

Statement of the Facts

1. May the 30th, of 2006 I Tilmer Everett had been illegally accused and than wrongfully arrested by the Bismarck Police Department from one investigation into the other. With the acknowledgement stated by Bismarck police for a fact that I Tilmer Everett had been named their prime suspect to each of those investigations. All this evidence as discovery can be established within Case No.06-9417 first and Case No.06-9442 second. As this would allow me the defendant Tilmer Everett to prove this. That it really was the Bismarck Police Department who started all this mess in my life for a fact.

See; Supreme Court No.20110189 Appendix volume 1 pages #52-71 as evidence of those circumstances proving this! Factual elements stated in those reports made by Bismarck police explaining how I Tilmer Everett had been in fact illegally accused and named a suspect from one investigation into the other. (Both of those Cases.)

2. Then in May 31, of 2006 A Bismarck police detective name Dean Clarckson had Illegally submitted and drafted an deceitful Affidavit against me Tilmer Everett to the District Court of Burleigh County. As this Affidavit will proves fraud and perjury stated by the named individual who signed it, because this document demonstrates his intent of attempting to covering-up *mistakes* made in that first investigation (06-9417) stated about me Tilmer Everett in those above circumstances in those police reports.

See; Supreme Court No.20110189 Appendix volume 1 page #72.

3. Because on that same day (May 31, 2006), I Tilmer Everett than had gotten illegally processed and also illegally charged by the Burleigh County State's Attorneys Office for just Case No.06-9442 and not Case No.06-9417. As this hearing went in front of judge

Thomas Schneider and the prosecutor is State's Attorney Cynthia Feland. I plead not guilty at that time. This proceeding establishes that the Burleigh County State's Attorneys Office involvement with the Bismarck Police Department to have me "Tilmer Everett" Set-up and framed from that point on, for an fraudulent case and charge. See; Supreme Court No.20110189 Appendix volume 1 pages #73-80.

4. June 1, 2006 I Tilmer Everett had received a letter from an Attorney name Susan Schmidt Advising me that she had been appointed to be my public defender. In this letter Susan Schmidt told me that she was going to obtain all police reports and such other information from the Burleigh County State's Attorneys Office as they are required by law to provide to me Tilmer Everett. In this letter Ms. Schmidt wanted me to also provide her with a list of names as witnesses that I believed would be of any assistance in my defense. See; Supreme Court No.20110189 Appendix volume 1 pages #81-82.

5. June 1, 2006 my public defender named Susan Schmidt then had requested the Burleigh County State's Attorneys Office for all discovery. Those document that were requested for (discovery), will be used as evidence against the State, that meant that the State's Attorneys Office was made aware of the fact that they had to give me all facts the circumstances pertaining to my being illegally accused and wrongfully arrested from one investigation into the other. That means everything! See; Supreme Court No.20110189 Appendix volume 1 pages #83-85.

6. June 2, 2006 Burleigh County State's Attorney name Richard J. Riha had signed an sworn Affidavit against me Tilmer Everett to the District Court. Charging me with the

crime called Gross Sexual Imposition on or about the 30th, day of May, 2006 and states in that document that he has read the **Information** against me Tilmer Everett and believes that the facts set forth are true. This document will be used as evidence against Mr. Riha's that proves his involvement, as the State's Attorneys head prosecutor, with the Bismarck Police Department in committing fraud and perjury with the District Court of Burleigh County in Bismarck North Dakota. See; Supreme Court No.20110189 Appendix volume 1 page #86. (As a conspirator!)

7. Then on that same day (June 2nd, 2006), that document stated above was used against me Tilmer Everett by Bismarck police in requesting the District Court for a search warrant of obtaining my DNA illegally. That application that was used by a Bismarck police detective name Dean Clarckson and also with a Burleigh County State's Attorney name Julie Lawyer in front of District Court Judge Gail Hagerty. That hearing had taken place without my knowledge. Making that whole proceeding illegal, due to the fact that the case and charge (06-9442) was already illegal. As I was unable to make a proper objection in my defense as my right against that request made. (As I Tilmer Everett wasn't able to contest that application being used!) See; Supreme Court No.20110189 Appendix volume 1 pages #87-93.

8. June 2, 2006 a Bismarck police detective name Dean Clarckson than had executed that search warrant against me Tilmer Everett. This search taken from me Tilmer Everett was illegal because of the fact that a deceitful and untruthful case and charge was being staged against me Tilmer Everett under fraudulent circumstances by Bismarck police

of which then was used against “me” as evidence during my trial. See; Supreme Court No.20110189 Appendix volume 1 page #94.

9. June 5, 2006 the Burleigh County State’s Attorneys Office had the audacity to serve me Tilmer Everett and my attorney name Susan Schmidt with an “guilty plea” recommendation for that fraudulent case and charge (06-9442) that I Tilmer Everett was being set-up and framed for. *No Way!* My attorney name Susan Schmidt had sent this to me in June 7, 2006. See; Supreme Court No.20110189 Appendix volume 1 pages #95-101.

10. June 19, 2006 a arraignment hearing was held in front of judge Sonna Anderson. In this proceeding Judge Anderson ordered 7 stipulation. Setting my dispositional conference for July 31, 2006. (This document will be used as evidence against my attorney name Susan Schmidt that establishes that she failed to do her job, in my defense, when this attorney failed to request the State’s Attorneys Office “again” for all that discovery concerning both cases.) See; Supreme Court No.20110189 Appendix volume 1 page #102.

11. July 31, 2006 I Tilmer Everett then went in front of Judge Donald Jorgensen for a dispositional conference. In this hearing Judge Jorgensen had preserved my not guilty plea that I had made in my arraignment hearing. Judge Jorgensen also *ordered* the prosecution 45 days to give me Tilmer Everett all discovery as to the facts and circumstances of my being arrested by the Bismarck Police Department in May the 30th, of 2006. Which meant that the State’s Attorneys Office had until September 15th, of

2006. (there deadline.) Also Judge Jorgensen ordered and ruled that a fast and speedy trial would be scheduled so after that. Telling my attorney Susan Schmidt that it would be her responsibility to file a motion to compel "if" the prosecution failed to give all that discovery. (Both Cases.) And No! Judge Jorgensen did not tell the prosecution to just give my attorney Susan Schmidt only those police reports of Case No.06-9417. Judge Jorgensen ordered that "all discovery" was to be given to me. See; Supreme Court No.20110189 Appendix volume 1 pages #103-108.

12. August 3rd, 2006 a notice of assignment of judge and order setting trial date had been scheduled by the District Court. Judge Donald Jorgensen had been assigned to be my trial judge and my trial had been set and scheduled for November 16-17, 2006. See; Supreme Court No.20110189 Appendix volume 1 page #109.

13. August 10th, 2006 a Burleigh County State's Attorney name Cynthia Feland then had filed an deceitful motion with the District Court to have Judge Donald Jorgensen illegally disqualified under N.D.C.C. 29-15-21. This document (that illegal motion) will be used as evidence against both my attorney name Susan Schmidt with "ground one" as ineffective assistance of counsel and also against the Burleigh County State's Attorneys Office with "ground two" as conviction obtain by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant. As "they" violated my due process rights and also my fast and speedy trial rights. See; Supreme Court No.20110189 Appendix volume 1 page #110-111.

14. August 18, 2006 Judge Sonna Anderson than had granted that illegal motion that State's Attorney Cynthia Feland filed with the District Court. This document will be

used as evidence against the Burleigh County State's Attorneys Office and District Court that proves that they also violated my rights from a fair and impartial trial. Again this shows that my due process rights and my fast and speedy trial rights were in fact violated. See; Supreme Court No.20110189 Appendix volume 1 page #112.

15. August 31, 2006 my attorney name Susan Schmidt filed a motion to withdrawal with the District Court. *See; Register of Actions #20 for those stated details.* Then a hearing was held for September 6th, 2006 by the District Court. In this hearing Judge Romanick heard the motion requested by Susan Schmidt. Those transcripts stated on record will be used as evidence against Susan Schmidt with my appeal that proves that "she" failed to establish to the Court at that time (September 6th, 2006), that the prosecution *lied* in that motion to the court dated August 10th, 2006 about Judge Donald Jorgensen. (Because those transcripts stated clearly shows that my attorney name Susan Schmidt did have knowledge about Judge Donald Jorgensen ruling against the prosecution's side about all discovery to be given to me Tilmer Everett by September 15th, 2006!) Yet she failed to expose that lie as my defense to the District Court on that day. *"That State's Attorney Cynthia Feland did lie in her motion about Judge Donald Jorgensen and because of that, my attorneys (Susan Schmidt), could have argued under that same statute (29-15-21) that was used, that the request made by the prosecution was illegal, because of the fact that same statute that was being used did prohibited the prosecution from making such a request in the first place altogether."* As my attorney Susan Schmidt failed to state any of this at that time, in my defense, when she was aware of this! See; Supreme Court No.20110189 Appendix volume 1 pages #113-124.

16. November 27, 2006 a pretrial conference was held in front of judge Bruce Romanick, with Mr. Romanick violating my rights when he had my subpoena quashed that I had served on State's Attorney Cynthia Feland. "Because there is nothing in the law states that I Tilmer Everett (a defendant) can not have a prosecutor subpoenaed for a trial." Especially when I the defendant would have good reason to believe that this named individual (Ms. Feland), was in fact having "me" set-up and framed for an illegal case and charge (06-9442) under fraudulent circumstances made within Case No.06-9417. As I do have the right to question this *witness* who had been served with a subpoena for my trial, since she was the lead prosecutor with knowledge about all the facts and circumstances of two investigations gone bad. (Caused by Bismarck police!) This would have been a good opportunity as my defense in proving on record during my trial and for my appeal process that she Cynthia Feland was in fact defrauding and manipulating two investigations (Case No.06-9417 and Case No.06-9442) against me Tilmer Everett and this would be evidence that she was the mastermind in maliciously playing fraud upon the court to have "me" illegally prosecuted and convicted. (Read; Transcript of page 13. lines, 18-25. then on thru page 14.lines, 1-14.) As judge Bruce Romanick denied me my right from doing so! See; Supreme Court No.20110189 Appendix volume 2 pages 59-94.

17. November 28th, 2006 on the day of my trial. The prosecution requested the District Court for a Continuance under fraudulent circumstances. This issue and day relates to my request for post-conviction relief filed with the District Court in March of 2011 as New Evidence. (the letter received from Ward County and about the Weather.) I Tilmer Everett will also be submitting my questions asked on F.L. on the day of my trial that I

had notarized on January 16, 2007 by Casey Kapp. All those circumstances stated on record will also be submitted against the "prosecution" and "court" as evidence proving that my rights were violated on that day from a fair trial. (Everything!) See; Supreme Court No.20110189 Appendix volume 1 pages #125-153.

18. December 6, 2006 a Burleigh County State's Attorney name Cynthia Feland called in her fifth state witness name Hope Olson. This State Witness and the prosecutor both manipulated the DNA tests stated and found on F.L. during my trial against me Tilmer Everett. Problem was F.L.'s boyfriend name Clint FoolBear testified that he and F.L. both had sex that same morning on May the 30th, 2006. Proving that those stated tests submitted establishes why all those numbers are mixed-up and who the other DNA is. See; Supreme Court No.20110189 Appendix volume 1 pages #154-168.

19. June 10, 2011 I Tilmer Everett had filed a N.D.C.C. 44-04-18 freedom of information act request to an Gary Stockert of the Bismarck Emergency Management Center at 2301 University Drive Building 21 in Bismarck, North Dakota. Requesting that I Tilmer Everett am in need for a copy of a 911 call recording report and or transcript dated May 30th, 2006 received by the Bismarck Police Department at or around 5:00 a.m. made from 1240 Riverwood Drive by a Sharon Wheeler stating that she had a young female at her door asking for help and to call the police. (*Case No.06-9417 about two guys!*) I Tilmer Everett must remind you the North Dakota Supreme Court that "if" you would please go back and reread my motion and Affidavit that I had filed to the clerk of court Debra Simenson dated March 15th, 2011 along with judge Bruce Romanick's order on the request for a subpoena is denied stated against me dated March 28th, 2011 in Supreme

Court No.20110189 Appendix volume 2 pages #11-19. Than you (the court) will see in page 2 of that order judge Romanick states to me Tilmer Everett as: *“If the information the Defendant desires is subject to open records requests he should attempt to obtain the information through open records request.”* And so that is exactly what I Tilmer Everett had done in June the 10th, of 2011. **See;** Supreme Court No.20110189 Appendix volume 2 pages #123-127.

20. Then in July 5, 2011 I Tilmer Everett had than received a response back in a letter dated June 30th, 2011 from the Combined Communications Center Manager name Michael Dannenfelzer about the 911 call and report that I had requested for in June 10, 2011. *“I will note for the record that I Tilmer Everett did have the opportunity to call and talk with Mr. Dannenfelzer about the request that I had made. As Mr. Dannenfelzer had informed me Tilmer Everett that he had destroyed and erased that 911 call and report two years ago. I then proceeded to ask him “why” would your office do that? And also I had asked him that I wanted to know “who” told him to do that? Mr. Dannenfelzer than told me the name of a lieutenant of the Bismarck Police Department did, but I do not recall the name that he gave me.”* **Sorry!** And so what this means “if” true, is that I am being denied a fair right to an appeal, because somebody is attempting to withhold evidence (cover-up) from me Tilmer Everett that proves my innocence. **As this is illegal!** But let’s not be fool because there was a report and call that was made as evidence dated May 30th, 2006 stated by witnesses and a lot of paperwork (paper-trail) to prove it within Case No.06-K-1026/06-9442. And if it is true that this 911 call has been destroyed then this definitely means my appeal proceedings have been violated. **See;** Supreme Court No.20110189 Appendix volume 2 pages #128-129.

21. August 11, 2011 I Tilmer Everett had just received a letter back from the judicial conduct commissions dated August 8th, 2011 informing me Tilmer Everett with some bad news, stating that my complaint File No.380-JC-1105 has been dismissed. Telling me that the information that I had sent-in to them does not implicate judicial misconduct or incapacity. In other words what the judicial conduct committee is telling me Tilmer Everett, is that, it is not judicial misconduct for a judge (Bruce Romanick) to illegally withhold and or obstruct evidence from me that proves my innocence. *Of which I am in complete disagreement with!* Because the evidence that I am requesting for is all stated within Case No.06-9417 of which Bruce Romanick is refusing to give to me Tilmer Everett for my Appeal process of requests made this far. I feel that he is hindering that Discovery from me because Cynthia Feland is in trouble. As it will be my mission and full interest in taking this individual to federal court. *Why would this judge name Bruce Romanick refuse to give me Tilmer Everett a 911 call dated May 30th, 2006 as evidence that could and would prove that Bismarck police did illegally accused my name (Tilmer Everett) as a named suspect to a witness of that investigation?* That's because he is "bias" and wants to only think one way about every thing and that's what I've been saying along. Concerning both those Cases. **See;** Supreme Court No.20110189 volume 2 page #130.

And this would be my statement of the facts addressed to you the North Dakota Supreme Court in regards to my appeal denying that post-conviction relief stated June 20, 2011 with new evidence addressed (that letter received from Susan Hoffer dated July 2nd, 2010 and about the weather data.), and also in regards to my appeal denying that motion to recuse or remove judge stated June 20, 2011 by Judge Bruce Romanick.

Arguments:

I Tilmer Everett would like to point out a couple of serious issues to you the North Dakota Supreme Court. First of all, by the Burleigh County States Attorneys Office “not” responding at all to my application for post-conviction relief, they than are conceding to the claims that I the applicant had addressed. And second, when the District Court made that *Order* dated June 20, 2011 against my petition dated March 11, 2011 before any reply-response was ever given or made by the prosecution, this than “also” shows biasness against the claims that I had addressed and favoritism towards the prosecution of that illegal conviction.

Here's the reason's why:

That letter that I Tilmer Everett had received in July the 6th, of 2010 from clerk of court Susan Hoffer dated July 2nd, 2010 with those documents attached to it about what the “weather” really was like in the State of North Dakota on November 28th, 2006 stated by the Director Thomas R. Karl of the National Climatic Data Center in my petition dated March 11, 2011 requesting relief does constitutes as being considered New Evidence. Only to be denied and disregarded as material facts. The fact that I Tilmer Everett never knew and or never had any of this information until then, than this then gave me Tilmer Everett the defendant within my case file, every right to attack that issue the Continuance dated November 28th, 2006 with an argument again with my appeal to the District Court and establishing that my rights were in fact violated with prejudice. **Except**, the Court did not elect to see or address that issue at hand properly because that court knows that this will and would have allowed me Tilmer Everett the defendant to prove on record that the

Continuance was a straight-out lie in the end about the weather. Which in fact was the soul reasoning (*due to bad weather*), as to why the Continuance was granted by the Court in the first place. What does that tell you. Biasness and Favoritism by the court towards the State or what? See; Supreme Court No.20110189 Appendix volume 1 pages #1-30. specifically the court's ruling.

Ground One: *denial of effective assistance of counsel by public defender Susan Schmidt.*

* I Tilmer Everett would like to state this for the record, when a preliminary hearing was set and scheduled for June 19, 2006 by the District Court. Attorney at law Susan Schmidt my public defender never informed and or told me Tilmer Everett for that matter at all, that "she" was going to waive my preliminary hearing. *Never!* As you can tell, it is quite evident, because I had to ask Judge Sonna Anderson "What's that?" As a matter of fact prior to this hearing being held, I had told my attorney (Susan Schmidt), that I was being framed by Bismarck police for this case and charge (06-9442) and also that I Tilmer Everett wanted to have a fast and speedy trial. And the ugly response that I got back from public defender Susan Schmidt was to be quiet instead!

As you the North Dakota Supreme Court can tell in those transcripts of my arraignment hearing dated June 19, 2006 in front of Judge Sonna Anderson stated in Appellant's Appendix of Supreme Court No.20110189 volume 1 pages #42-48. This evidence as circumstances clearly establishes how Susan Schmidt my public defender failed to say anything in my defense in that hearing and instead she had me Tilmer Everett processed for that illegal case and charge (06-9442), because the only thing that she stated for me Tilmer Everett in my defense on record to Judge Sonna Anderson was;

Judge: And will there be a waiver?

"Transcript of Case No.06-K-1026 page 5.line, 9."

Susan Schmidt's answer: ***We will waive the preliminary hearing.***

"Transcript of Case No.06-K-1026 page 5.lines, 10-11."

Judge then asking me Tilmer Everett a question: And was that your intention, Mr. Everett, to waive that preliminary hearing?

"Transcript of Case No.06-K-1026 page 5.line,17-18."

Tilmer Everett's answer: ***What's that?***

"Transcript of Case No.06-K-1026 page 5.line, 9."

Judge then asking Susan Schmidt a question: Ms. Schmidt, will your client waive verbatim reading of the Information?

"Transcript of Case No.06-K-1026 page 6.lines, 3-4."

Susan Schmidt's answer: ***Yes, Your Honor.***

"Transcript of Case No.06-K-1026 page 6.line, 5."

Judge then asking me Tilmer Everett a question: Okay. And how do you plead to this charge?

"Transcript of Case No.06-K-1026 page 6.lines, 16-17."

Tilmer Everett's answer: ***Not guilty.***

"Transcript of Case No.06-K-1026 page 6.line, 18."

Judge then asking Susan Schmidt a question: All right. Your presentence - - or excuse me, your dispositional conference will be July 31, 2006. Anything further, Ms. Schmidt?

"Transcript of Case No.06-K-1026 page 6.lines, 19-22."

Susan Schmidt's answer: ***No, Your Honor.***

"Transcript of Case No.06-K-1026 page 6.line, 23."

Judge: All right.

"Transcript of Case No.06-K-1026 page 7.line, 1."

{As this demonstrates my public defender name Susan Schmidt's lack of interest in regards to those proceedings and also her lack of representation (ineffectiveness) as an effective attorney in my defense. Because in that "arraignment hearing" my attorney Susan Schmidt could have requested the District Court at that time to have the State

proceed with that preliminary hearing on record, by questioning witnesses to the charge and challenging the States insufficient (made-up) evidence, stated against me Tilmer Everett by Bismarck police to that case and charge(s). As Susan Schmidt my attorney did nothing and also failed to do any of this in my defense! This would have been a crucial time in my defense by my attorney, to have that case and charge dismissed by the court. "Because this could have proven to the court at that time that fraud was being staged by Bismarck police and the State."}

Constituting her ineffective assistance of counsel.

* Also when my attorney name Susan Schmidt again failed to make an proper objection against the prosecution's motion made after August 10th, 2006 with the Court in my defense. Because of this Susan Schmidt my attorney failed to expose those lies stated and made by Cynthia Feland the prosecutor to the Court about was she stated in her motion concerning Honorable Judge Donald Jorgensen. See; Appendix volume 1 page #110 as Ms. Feland's untruthful statement made in her request, "*the Honorable Donald Jorgensen has not ruled on any material matter pertaining to this proceeding.*"

{As this demonstrates her lack of competence and with her ineffectiveness of assistance of counsel, because Susan Schmidt this attorney, had allowed the State to than manipulate an judicial order made against them dated July 31, 2006. As which in fact allowed the State to prejudice me Tilmer Everett the defendant in the end. As this prevented "me" (the defendant) from receiving all that discovery (about both cases), that I Tilmer Everett was entitled to have by law for my trial. All this evidence (the

information) as facts and circumstances stated by Bismarck police would have allowed me to prove that I Tilmer Everett had been in fact illegally accused (06-9417) and wrongfully arrested (06-9442) by Bismarck police from one investigation into the other. As this then prejudiced “me” the defendant, from using all that evidence in my defense with telling the jury during my trial the whole story. As this allowed Case No.06-9417 to be defrauded and covered-up by Bismarck police and the prosecution.}

Constituting her ineffective assistance of counsel.

* Again when my attorney name Susan Schmidt failed to make another proper objection against the prosecution’s motion made after August 10th, 2006 to the Court in a motion as my defense. What my attorney Susan Schmidt again could have simply stated in her motion to the court with an objection in my defense, was that the motion filed by the prosecution (State) to have Judge Donald Jorgensen disqualified was improper (illegal) and an abuse of process. Yet she did nothing!

{As this demonstrates her incompetence again and with her ineffectiveness of assistance of counsel as my attorney. Due to the fact that she failed to do this in my favor and state to the court that the request made by the prosecution was illegal under #3 of the N.D.C.C. 29-15-21. As Susan Schmidt (my attorney) failed to make this proper argument in my defense, by stating in her motion to the court, that the statute (29-15-21) that was being used by the prosecution’s side, did in fact prohibit them (the State), from making such a request in the place. Because she Susan Schmidt had this evidence stated on record that proves that Judge Donald Jorgensen did in fact making a ruling within my case file. And since my attorney Susan Schmidt failed to state this with her

objection to the District Court than this demonstrates her lack of competence. As #3 of 29-15-21 of the N.D.C.C. states: “In any event, No demand for a change of judge may be made after the judge sought to be disqualified has ruled upon any matter pertaining to the action or proceeding in which the demanding party was heard or had an opportunity to be heard.” As Ms. Schmidt failed to argue in my defense as my attorney to the court; that the statute being used by the State was prohibited by law because the demanding party was Cynthia Feland who was heard in front of Judge Donald Jorgensen the judge that she had sought to be disqualified.}

Constituting her ineffective assistance of counsel.

* When my attorney name Susan Schmidt than had requested the Court to withdrawal from my case and charge in September 6, 2006 after the fact that she (Susan Schmidt), had allowed State’s Attorney Cynthia Feland (the State) to get away with an deceitful motion made to the Court dated August 10th, 2006. This request made stated on record dated September 6th, 2006 by my public defender Susan Schmidt will be used as evidence against her (in regards to proving her ineffectiveness as failing to expose those lies made by the State in August 10th, 2006), that establishes her incompetence when she could have at least put up one last argument again in my defense.

{As when Susan Schmidt made that request to the court to withdrawal in front of judge Bruce Romanick, she stated something to him (the judge) on record about the ruling Judge Donald Jorgensen had made. (See; Supreme Court No.20110189 Appendix volume 1 page #122.) Now what this means is that, since Susan Schmidt did state on record that she acknowledges that Judge Donald Jorgensen did place an order

on the prosecution and gave them (the State) until September 15th, 2006 to provide me Tilmer Everett with all discovery concerning both cases in my pretrial.}

[As those circumstances stated by my attorney can definitely be used as evidence against her (Susan Schmidt), because will establish her ineffectiveness of assistance of counsel.]

When she failed to put up an proper “objection” and or an proper “argument” in my favor as my attorney, against the prosecution’s request made, with the court in September the 6th, of 2006. Instead she (Susan Schmidt) at that time had manipulated the situation about Judge Donald Jorgensen with judge Bruce Romanick by stating; “*it was just on the record.*” When judge Bruce Romanick asked; “*Is there an order on the court or is it on the record?*” The fact that she Susan Schmidt my attorney did acknowledge on record that “**she**” was aware of Judge Donald Jorgensen’s order made about all discovery was to be given to me Tilmer Everett. Than this does in fact clearly demonstrates her ineffectiveness of assistance of counsel as my attorney, since she failed to expose those lies in the States motion filed on August 10th, 2006 in that hearing dated September 6, 2006. **See;** Supreme Court No.20110189 Appendix volume 1 pages #113-124 for those stated details. *(Specifically transcript page 11.lines, 12-22., and line, 25.)* **Constituting her ineffective assistance of counsel.**

*[It is obvious that judge Bruce Romanick should have never allowed Susan Schmidt my attorney to withdrawal from my case and charge altogether because as “he” being the officer of the court, it is his responsibility to see to it that, all the rules of court are followed properly. They were not! When Judge Donald Jorgensen’s name was addressed and brought up by my attorney name Susan Schmidt in that hearing to judge Bruce Romanick, this should have been an **serious issue**, stated by my attorney to judge Bruce Romanick. As this would have allowed the judge to rule on that day that proved the prosecution did lie about Judge Donald Jorgensen making the motion dated August 10th, 2006 Demand for change of Judge illegal. But this was never addressed.]*

That's why I was so frustrated with her but instead she Susan Schmidt had manipulated the situation and used my emotions to her advantage. As this public defender left "me" Tilmer Everett hanging to expose all this injustice and corruption...

Ground Two: *conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.*

* In June 1, 2006 a rule 16 N.D.R.Crim.P. motion was requested and made against the Burleigh County State's Attorneys Office with the District Court. Which meant that the prosecution had to provide me Tilmer Everett with all discovery by law. Give me all evidence as facts and circumstances that led up to my being illegally accused and wrongfully arrested by Bismarck police from one investigation into the other. Since I Tilmer Everett knew that I was being set-up by Bismarck police and then only being charged for just only one of those defiled case's. **See;** Supreme Court No.20110189 Appendix volume 1 pages #81-85.

* Then in July 31, of 2006 I Tilmer Everett still haven't received all discovery from the Burleigh County State's Attorneys Office pertaining to both cases when requested June 1st, 2006. On this day, District Court Judge Donald Jorgensen did place an Order against the prosecution and told them that they had to provide me Tilmer Everett with all the discovery by September 15th, 2006. Which meant everything! Evidence in my favor concerning both those cases, that proves Bismarck police, were in fact naming me Tilmer Everett their prime suspect. **See;** Supreme Court No.20110189 Appendix volume 1 pages #103-108.

* In August 10th, of 2006 the Burleigh County State's Attorneys Office then plays fraud upon the District Court. "As this demonstrates their criminal intent of withholding a lot of evidence from me Tilmer Everett." Now the evidence that I Tilmer Everett do have that can prove this, is that *they* had fraudulently stated in a motion to the District Court under N.D.C.C. 29-15-21 requesting for a Demand For Change Of Judge that they wanted my trial judge who was Judge Donald Jorgensen disqualified. Deceitfully filing a motion dated August 10th, 2006 to the District Court stating that; "Judge Donald Jorgensen has not ruled on any material matter pertaining to this proceeding." Which is a straight out lie. Stating that the under signed (Cynthia Feland), has the permission of the Burleigh County State's Attorneys Office. Because as of to this day (August 2011), the Burleigh County State's Attorneys Office has never followed through and or never honored that Court Order made by Judge Donald Jorgensen in July 31, 2006. Therefore this establishes the prosecutions criminal intent and reasoning why they wanted my trial judge (Donald Jorgensen) disqualified from my case file. Because they wanted to withhold all that discovery from me Tilmer Everett pertaining to Case No.06-9417. The investigation that was being covered-up by Bismarck police! Now you the North Dakota Supreme Court know the reason why I Tilmer Everett am being denied all that evidence stated and made within Case No.06-9417 by the prosecution. It all has to do with helping the Bismarck Police Department cover-up there mistakes stated and made against me Tilmer Everett with that case. Which means that I was prejudiced by the prosecution since they intentionally and maliciously withheld all evidence of Case No.06-9417 from me the defendant for my trial. As this prevent me (defendant) from using that evidence, as exhibits, while questioning witnesses and telling the jury the

whole story as to the circumstances of my ordeal. (An illegal motion was requested by the prosecution and granted by the Court.) **See;** Supreme Court No.20110189 Appendix volume 1 pages #110-112.

I will state for the record, that since that request (demand for change of judge) was made by the prosecution is illegal by law and this also demonstrates the intent and reasoning why they (the State) wanted my trial judge disqualified. *So that they would have an advantage to withhold evidence!* And this has now been addressed to you the North Dakota Supreme Court with my appeal, I Tilmer Everett am now declaring in this appeal (post-conviction) that all “judgments” made by judge Bruce Romanick are considered void. **Read;** *The People of the State of Illinois Vs. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934)* (“*The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions.*”). As it is a fact that there is evidence of **fraud** that has been intentionally played upon the Court and also against me Tilmer Everett (defendant) within my case file by the State (the prosecution) and Bismarck police, as evidence has been submitted and addressed in my Appendix establishing this.

Therefore making my conviction illegal by law, because it is a fact that all discovery of Case No.06-9417 had been intentionally withheld from me Tilmer Everett for my trial by the prosecution. As those stated records in Case No.06-K-1026 demonstrates that an injustice was being staged. As the law states that you can not do this! **See;** Supreme Court No.20110189 Appendix volume 1 page #38 stated by the defendant’s requesting for discovery of Case No.06-9417. As the State refuses to answer my motion

that I filed in July 5, 2011. Why? This now constitutes that I Tilmer Everett am being denied evidence that I am entitled to have that proves my innocence. See: Brady vs. Md, 373, U.S. 83,87 (1963).

(Case No.06-9417)

- Discovery withheld:**
1. The 911 call and report made from 1240 Riverwood Dr at or around 5:00 a.m. dated May 30th, 2006.
 2. The RN and physician report from the ER dated May 30th, 2006 stated by the St's hospital.
 3. The SANE nurse Lisa Watkins and AARC advocate Tracie Freadrich interview reports made dated May 30th, 2006 received from K.WT.
 4. Bismarck police Sgt. Solemsaas supplemental report made dated May 30th, 2006 about call received from Bismarck police officer Scheuer requesting that "he" notify a Detective on call to respond to the complaint.
 5. Bismarck police Sgt. Solemsaas supplemental report made dated May 30th, 2006 about the call to Detective Roger Marks to response to the hospital about the victim and two guys.
 6. Bismarck Detective Roger Marks supplemental report dated June 23, 2006 of his interview with F.L. about his investigation. (That "he" illegally accused my name and Brian Alberts name of as suspect to Case No.06-9417.)

See; Supreme Court No.20110189 Appendix volume 1 pages #59-69., as factual elements in those reports about Two Investigations (Case No.06-9417 first; Case No.06-9442 second), that proves that I Tilmer Everett had been in fact named the **prime suspect** to both cases by Detective Roger Marks and Detective Dean Clarckson.

*{Page #59 states: **Detective Clarckson and Detective Marks stated they would "coordinate their investigations" and since they were apparently at least somewhat related.}**= Both Cases!*

*{Page #62 states: **Det. Marks is investigating an incident involving Everett, and our victims would be witnesses in each of the cases. We talked about Kari Whitetail and Brian Alberts first, which is the case Det. Marks is investigating.}**= Tilmer Everett and Brian Alberts are Det. Marks named "suspects" to his investigation!*

Ground Three: conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

* June 2nd 2006 it was in fact illegal for the Burleigh County State's Attorneys Office and the Bismarck Police Department to request the District Court for a search warrant against me Tilmer Everett in obtaining my DNA. Because I Tilmer Everett was never given the opportunity to properly contest this request made with an objection as my right. *See; Frank's Vs. Delaware, 438 U.S. 154, 164-171 (1978)*. The fact that I Tilmer Everett did object to a Bismarck police officer while I was being interviewed as a suspect about both those Cases at the Bismarck Police Department, states volumes of my objection being noted in that regards. See; Appendix volume 1 page #70. Especially when I could have contested this again on record in that hearing dated June 2nd, 2006 to the court and used it for my trial and appeal later on in establishing that my DNA had been taken from me Tilmer Everett illegally by Bismarck police with the District Court. *See; Supreme Court No.20110189 Appendix volume 1 pages #86-93.*

{Because during my trial in December 6th, of 2006 a Burleigh County State's Attorney name Cynthia Feland had used that evidence (my DNA) against me Tilmer Everett to her advantage with an expert State witness named Hope Olson to make her Case. The presence of only one individual's semen was being staged against me at that time. When in fact there were two individuals semen found and detected on F.L. That just goes to show how those tests were manipulated against me Tilmer Everett by the prosecution. *But guess what?* F.L.'s boyfriend (C.J.) did testify in my trial that he and F.L. did have sex that same morning of May 30th, 2006. C.J. stating that she (F.L.) was the one who wanted to have sex. Then after that there was a knock on the door, as a

Bismarck police officer was looking for F.L. to ask her some questions about a different investigation.) *Case No.06-9417!* And that's when all my troubles started, as I had been falsely accused by Bismarck police officer to a Witness name F.L. and that's when she started her lying also against me Tilmer Everett. **See;** Supreme Court No.20110189 Appendix volume 1 pages #154-168.

{The fact that my DNA had been taken from me Tilmer Everett illegally under "Fraudulent Circumstances" by the Bismarck Police Department and the Burleigh County State's Attorneys Office does not make everything alright. As a matter of fact this makes it a very prejudicial situation against me Tilmer Everett because this only shows that law enforcement knew full well what they were doing and that they were going to frame me an innocent man at any cost. Because that's exactly what Hope Olson and State's Attorney Cynthia Feland did with those tests during my trial.}

And also:

When I Tilmer Everett had requested the District Court to have judge Bruce Romanick recused or removed from my case file dated June 3, 2011 due to his prejudice and bias rulings and orders made against me Tilmer Everett the defendant. I was straight-out denied this simple request. **Please read thru;** Supreme Court No.20110189 Appendix volume 2 pages #1-128 for details of my being prejudiced by judge Romanick.

Because it is illegal (unethical) and also against the law, for a judge, to allow the prosecution's side to play fraud against me Tilmer Everett within both those cases of Case No.06-9417 and Case No.06-9442. (As Case No.06-K-1026 proves it) Because that

is exactly what had happened here within those proceedings. Therefore “fraud upon the court” makes void the orders and judgments of that court! It stated under Federal Law; when any officer of the court has committed “*fraud upon the court*”, the Orders and Judgments of that court are void, of no legal force of effect. As there has been evidence with circumstances stated on record by me Tilmer Everett as Affidavits have also been addressed against judge Bruce Romanick. As he is in fact attempting to “hinder” an illegal continuance that he granted on the day of my trial. (Criminal fraud.)

[The United States Supreme Court held that “Disqualification is required if an objective observer would entertain reasonable questions about the judge’s impartiality. If a judge’s attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is likely, the judge must be disqualified.”] *Emphasis added See; Liteky vs. U.S., 114 S.Ct. 1147, 1162 (1994).*

Also it is quite evident that with those records stated by judge Bruce Romanick to me Tilmer Everett the defendant in each of those Appendices states and shows that “he” will not allow me a fair and impartial hearing. *(As judge Romanick refuses to disclose and or give me evidence of Case No.06-9417 that proves my innocence within Case No.06-9442, also he refuses to give me an evidentiary hearing when there has been material facts as documents addressed to him in my post-convictions.)*

Here are a few examples of prejudicial issues made by judge Bruce Romanick

If you the North Dakota Supreme Court would please refer back to Supreme Court No.20110189 Appendix volume 2 pages #106-107 of Case No.06-K-1026 as court transcripts page 13.lines, 10-25. and on thru page 14.lines, 1-10. dated November 28th, 2006 as circumstances stated about the continuance made by judge Bruce Romanick to all members of the jury pool, when the States main witness did not show-up for my trial.

“When going back into the courtroom from his chambers after he had granted the Continuance that I Tilmer Everett had objected to.” As evidence that he judge Bruce Romanick was in fact intentionally attempting to deceive and misguide all those members of my jury pool, as to why he was granting a Continuance on the day of my trial, when the States main witness (F.L.) did not show. *(she was the only person!)*

Mr. Romanick stating: “Members of the jury pool, we’re a couple of minutes late. We just had an in-chambers conference, and I guess I have to apologize. What I’m going to tell you is what might be good news/bad news for all of you more than anything. Not good news for me. But due to weather, we have certain witnesses that can’t get into town. And I could start the trial and see if those “witnesses” were able to get here, but with North Dakota weather, I don’t want to gamble that the weather is going to clear or the highways are going to clear. And because of that, I’m ordering a continuance of the trial. They’re essential witnesses that need to be here and “they” just can’t make it. Possibly, they could make it tomorrow, but there is no guarantee...” (p 13.lines, 18-25. thru p 14.lines, 1-6.)

As this is evidence stated on record that demonstrates his “prejudice” against me Tilmer Everett within my case file as District Court judge Bruce Romanick shows his favoritism towards the prosecution’s side. As he (the judge) is in fact misinforming all those members of the jury pool on the day of my trial, as to why he was releasing them from my trial. Misleading them *(those jury pool members)* to believe, that there really was “bad weather” and also that there was more than “one witness” who couldn’t make it to my trial on that day. *Which is not true at all!* Because if you would please go back and reread Appendix volume 1 pages #4-20 and Appendix volume 2 pages #95-105 then you will see what I Tilmer Everett am talking about. What does that tell you?

Also refer to Supreme Court No.20110189 Appendix volume 2 page #120 of my pretrial conference transcript page 15.lines, 1-25. dated December 4, 2006 held in front of judge Bruce Romanick in regards to those circumstances addressed above (11-28-06). When I Tilmer Everett had the opportunity to ask Bruce Romanick a couple of questions about the "Continuance" that he granted that I had objected to a week prior. As I had asked him judge Bruce Romanick "if" I Tilmer Everett would be able to have a witness name Lori Steele called and subpoenaed for my trial? (Who would be the Burleigh County State's Attorneys Office Victim Witness Advocate.) As I wanted to ask her (Lori Steele), a few questions about the continuance that I had objected to and that I wanted to confirm if it really was true or not if she Lori Steele the victim witness advocate, really had been in contact with F.L. on November 28th, 2006 like the Affidavit had stated." (?) Since my objection had been noted on record by the court, I felt that I did have every right at that time to check if what Cynthia Feland (the prosecutor), was telling me the defendant in her request made in front of judge Bruce Romanick was really true or not. As my trial strategy in proving if my rights were in fact violated or not. Except District Court judge Bruce Romanick straight-out denied me Tilmer Everett my request that I made. Read; pretrial transcript of page 15.lines, 10-15.) Again what does that tell you?

Here's why:

Now refer to Supreme Court No.20110189 Appendix volume 2 page121 of my trial transcript page 273.lines 19-25. dated December 6th, 2006 and you will see as evidence that proves judge Bruce Romanick did prejudiced "me" Tilmer Everett when he denied me from asking those questions that he said that I could ask F.L. about who talked to her and why she didn't show for my trial. As stated in the pretrial transcript page 15.lines,

10-15. dated December 4, 2006. "As this shows he judge Bruce Romanick prevented me Tilmer Everett from establishing on record a lie about if it really was true or not if F.L. did talk with those names (Ms. Feland, Detective Roger Marks, and Lori Steele), stated in lines, 26-28 of that Affidavit signed and dated by Lori Steele on November 28th, 2006." Therefore establishes that judge Bruce Romanick did violate the confrontation clause and also the due process clause within my Case No.06-K-1026. Read; Supreme Court No.20110189 Appendix volume 2 pages #95-122.

Conclusion

Appellant Tilmer Everett has addressed “New Evidence” and also established three (3) legitimate issues to you the North Dakota Supreme Court showing that my conviction is in fact illegal and prejudicial. Therefore I am requesting that an evidentiary hearing be granted for the first time and sent back to the District Court and or that this case and charge (06-9442) be dismissed with prejudice in the interest of justice.

Please read again; Those documents stated in Supreme Court No.20110189 Appendix volume 1 pages #125-153. as circumstances stated on record dated November 28th, 2006 in regards to the Continuance that should have *never* been granted by the court. Because that New Evidence submitted and addressed in the Appellant’s Appendix volume 1 pages #4-20. of my petition’s Affidavit proves it dated March 11, 2011 requesting relief.

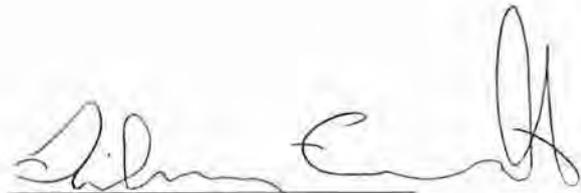
[I Tilmer Everett will also address some concern on record in regards to my Appeal. I still have not received a response back from either the State’s Attorneys Office or the District Court in regards to the motion that I had filed requesting discovery of Case No.06-9417. Is this not prejudicial? As Appellant Everett is seriously in need of those documents to prove “Ground Two”.]

Since there has been as information (documents), submitted and shown to you the North Dakota Supreme Court in Supreme Court No.20110189 Appendix volume 1 of pages #52-71 as factual elements (circumstances), proving that I Tilmer Everett had been in fact illegally accused and wrongfully arrested by Bismarck police for both cases.

As this by law, then entitles me Tilmer Everett to “all discovery” of both those Cases!

Therefore I Tilmer Everett am strongly requesting that District Court judge name Bruce Romanick be recused and removed from Case No.06-K-1026 as soon as possible. Please I only want to get to the truth and receive all discovery of Case No.06-9417 that had been Illegally withheld from "me" by the prosecution and vacate judge Bruce Romanick's Order and refusal to give me Tilmer Everett that discovery. As court records stated in transcripts of Case No.06-K-1026 do show that judge Bruce Romanick has been a very prejudicial and bias individual (judge) against me the defendant within those proceedings...

Dated this 29 day of August, 2011.

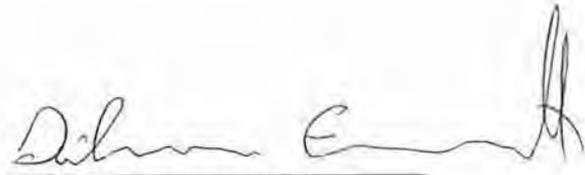


Tilmer Everett; Pro Se.
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Bismarck, North Dakota
58506

Certificate of Mailing

I certify that 1 original Brief of Supreme Court No.20110189 order denying post-conviction relief and order denying motion to recuse or remove judge with 7 copies were deposited in the united states mail for delivery to Clerk of Court Penny Miller 600 East Boulevard Avenue Bismarck, North Dakota 58505-0530 and also 1 copy of that Brief was sent to the Burleigh County State's Attorneys Office at 514 East Thayer Avenue Bismarck, North Dakota 58501 by mail from Tilmer Everett at the North Dakota State Penitentiary in Bismarck, North Dakota P.O. Box 5521 58506-5521 on August 29, 2011. I further certify that the Brief was correctly addressed and postage. *I Tilmer Everett am unable to file an electronic copy of the appeal brief to you the Supreme Court as this institution prohibits us from doing so.*

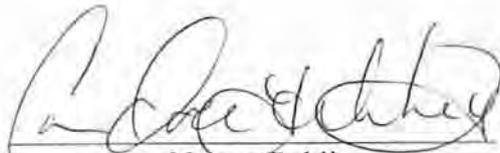
Date this 29 day of August, 2011.



Tilmer Everett; Pro Se.
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58506

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State of North Dakota)
) SS. Verification
County of Burleigh)

Subscribed and sworn before me on this 29 day of August, 2011.
In the County of Burleigh, Bismarck, North Dakota.


Notary Public.

CANDACE TELEHEY
Notary Public
State of North Dakota
My Commission Expires December 15, 2016