

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,

**FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT**

OCT 20 2011

STATE OF NORTH DAKOTA

Supplemental Brief of Appellant

**Appeal from Order Denying Subpoena Duces Tecum
March 28, 2011
South Central Judicial District
Burleigh County Case No.08-06-K-1026
Judge Bruce Romanick**

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

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Issue Presented: I Tilmer Everett had filed a Subpoena Duces Tecum (motion) along with an Affidavit as legal support for Issuance of that Subpoena Duces Tecum dated March the 15th, 2011 addressed and made out to clerk of court Debra Simenson (District Court). Requesting that the Bismarck Police Department provide to me the Defendant with a copy of a 911 call complaint recording and or transcript dated May 30th, 2006 from 1240 Riverwood Drive made by a Sharon Wheeler about a 20-year-old woman asking for help and to call the police. *As: Bismarck police looking for “suspects” in one report of a gross sexual imposition. About a 20-year-old woman reporting to police that two guys had sexually assaulted her. With “No arrest” having been made to this day!*

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The truth will set me free!!

Table of Authorities

Cases:

Brady vs. Md,
373 U.S. 83,87 (1963).

Pyle vs. Kansas,
317 U.S. 213, 215, 216, 87 L ed 214, 216, 63 S Ct 177, phrasing this rule

in broader terms: "*Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. Mooney vs. Holohan, 294 U.S. 103."*

Alcorta vs. Texas,
355 U.S. 28.

.....
Statutes:

N.D.C.C. 29-32.1-08. Discovery Request Made.

N.D.R.App.P. 3(a)(1) Appeal as of right, and (d) Serving the Notice of Appeal.
.....

Other Authorities:

Black's Law Dictionary Eighth Edition stated in page 1467 *subpoena duces tecum*- A subpoena ordering the witness to appear and to bring specified documents, records, or things.

Subpoena- To order the production of (documents or other things) by subpoena duces tecum.

Due Process Clause. The constitutional provision that prohibits the government from unfairly or arbitrarily depriving a person of life, liberty, or property.

Statement of the Issues

This is the presentation of the District Court's order denying request for subpoena duces tecum and the District Court's refusal to file the Notice of Appeal dated April 1, 2011 as issues for review:

- I District Court judge Bruce Romanick erred with prejudice when "he" intentionally distorted the facts made in Defendant Tilmer Everett's affidavit requesting for a subpoena (the 911 call) dated March 15th, 2011 as addressed against the Bismarck Police Department. Order denying the request for a subpoena duces tecum dated March 28th, 2011.**

- II The Clerk of Court's Office erred with prejudice and violating my Due Process Rights, to a fair right to an appeal, when they (the clerk of court) followed the instructions not to process my notice of appeal made by District Court judge Bruce Romanick.**

- III Trial court judge name Bruce Romanick erred with extreme prejudice when "he" ordered and told the Clerk of Court's Office Burleigh County not to have my Notice of Appeal dated April 1, 2011 process against his ruling made in March the 28th, of 2011.**

Nature of the Case

March 15, 2011 I Tilmer Everett had filed a subpoena duces tecum along with an Affidavit for issuance of that subpoena, as legal support, to the District Clerk of Court Debra Simenson against the Bismarck Police Department. Requesting for a copy of a 911 call and report (Case No.06-9417) made at or around 5:00 a.m. from 1240 Riverwood Drive about an 20-year-old woman name K.WT. asking for help and to call the police. With K.WT. stating to Bismarck police that *she* had been sexually assaulted by “two guys” in May the 30th, of 2006. With advisement in my request made to the District Court that the 911 document and or recording is relevant material, and admissible evidence with Case No.06-9442. As it is this evidence (the 911 call), that is in fact being illegally withheld from me Tilmer Everett by both the Bismarck Police Department and also the Burleigh County State’s Attorneys Office. Under Rule 16 of the N.D.R.Crim.P. dated June 1, 2006 as requested for all discovery to the State’s Attorneys Office and also Court Order made by Judge Donald Jorgensen dated July 31, 2006 as stated against the State’s Attorneys Office. See; Supreme Court No.20110189 Appendix volume 2 pages #11-17.

Then in March the 28th, of 2011 I Tilmer Everett had received a court order back from District Court judge name Bruce Romanick with prejudice denying me my request for that subpoena duces tecum (the 911 call and report), that I had requested for. As made out towards and against the Bismarck Police Department.

- With judge Bruce Romanick stating this in his order; “*This Court does not find Defendant’s request to be material or relevant to this case.*” = *Wrong!*

- Also with judge Bruce Romanick stating this in his order; “Defendant continues to allude to his being illegally accused of the crime for which he is serving time. The Defendant argues because police were not initially looking for him as a suspect and stumbled upon the victim of his crime while investigating a different crime he should not be held accountable for his crime.” = Wrong again!

As judge Bruce Romanick than order and told the clerk of court to send back my paperwork to me Tilmer Everett that I had submitted. Stating in his order: “If the Defendant desires is subject to open records request he should attempt to obtain the information through open records requests.” See; Supreme Court No.20110189 Appendix volume 2 pages #18-19.

And in April the 1st, of 2011 I Tilmer Everett than had filed a notice of appeal against judge Bruce Romanick’s order denying me my request for that subpoena duces tecum. See; Supreme Court No.20110189 Appendix volume 2 pages #20-21. As this Notice of Appeal that had been served on the District Court, at that time, had never been processed and or had never been served to you the Supreme Court as required under N.D.R.App.P. 3(d) until I the Appellant had addressed it within my appeal(s), as violating my due process rights. To a fair right of an appeal! See; Supreme Court’s letter made out to Clerk of Court Debra Simensen dated September 9, 2011. See also; Deputy Clerk of Court Christine Harmon’s Affidavit dated September 16, 2011 explaining the facts surrounding my Notice of Appeal dated April 1st, 2011 as: “The file was returned to this office by judge Romanick on June 20th 2011, with instructions by the judge to file the Notice of Appeal but not to process the Notice of Appeal.” Now See; Supreme Court’s response

letter again made out to Clerk of Court Debra Simensen dated September 22, 2011.

Which now brings me Tilmer Everett the Appellant to you the North Dakota Supreme Court with my appeal of that denial of the request for a subpoena duces tecum with prejudice and also “why” my Notice of Appeal dated April 1, 2011 was not filed (processed) and or properly served to you the North Dakota Supreme Court as required under N.D.R.App.P. 3(d) until September the 30th, of 2011. (At least six months later.)

As this would be the Nature of the Case!

Statement of the Facts

1. June 1 of 2006 after the fact that I Tilmer Everett had been wrongfully accused and illegally arrested by the Bismarck Police Department from one investigation into the other and than also illegally processed and charged by the Burleigh County State's Attorneys Office for just only one of those defiled cases. The District Court of Burleigh County had received a motion (a request for all discovery) from my public defender in my defense under N.D.R.Crim.P. Rule 16 made within my Case File No.06-K-1026 against the Burleigh County State's Attorneys Office. As this motion requested the Burleigh County State's Attorneys Office to produce and or permit the Defendant to inspect all evidence (material) by exercise of his due diligence. See; Supreme Court No.20110189 Appendix volume 1 pages #83-85.

2. Then in July 31 of 2006 a District Court Judge name Donald Jorgensen Ordered the Burleigh County State's Attorneys Office (Cynthia Feland) 45 days and or until September 15th. 2006 to produce and give me Tilmer Everett "all discovery" as to the facts and circumstances that led up to my being arrested by the Bismarck Police Department in May the 30th of 2006. Which meant that I was entitled to both Cases. (Case No.06-9417 and Case No.06-9442.) *This Court Order made by Judge Jorgensen has never been honored and or that court ruling made by the Judge Donald Jorgensen has never been followed through at all, to this day, by the prosecution's side for my trial.* See; Supreme Court No.20110189 Appendix volume 1 pages #103-108.

3. In March the 11th of 2011 I Tilmer Everett had filed and served the District Court with an application for post-conviction relief under 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; and (e) Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice. *New Evidence! (With three (3) grounds addressed also.)* As this request made and served on the District Court had been denied by judge Bruce Romanick dated June 20th, of 2011. Of which I Tilmer Everett then had filed a Notice of Appeal against dated June 23, 2011. See; Supreme Court No.20110189 Appendix volume 1 pages #1-33.

4. March 15, 2011 after the fact that I Tilmer Everett had filed that post-conviction relief request with the District Court in March the 11th, of 2011 I had requested and served the Clerk of Court Debra Simensen with a subpoena duces tecum and a affidavit as legal support against the Bismarck Police Department requesting for a copy of a 911 call recording and or transcript dated May 30th, 2006 received by Bismarck police made from 1240 Riverwood Drive. Since I Tilmer Everett had real good reason to believe that this request made would have helped me in proving “Ground Two” as to what evidence was being withheld from me illegally by the Burleigh County State’s Attorneys Office. Of which again had been denied by judge Bruce Romanick dated March 28th, 2011. As I Tilmer Everett soon then had filed a Notice of Appeal against that Denial of Order on Request for Subpoena Duces Tecum dated April 1, 2011. As I had addressed my concerns in my brief(s) as to why that Notice of Appeal had not been processed to you

the North Dakota Supreme Court in August the 29th of 2011. See; Supreme Court No.20110189 Appendix volume 2 pages #11- 21.

5. September 9, 2011 I Tilmer Everett had received a copy of a letter made out to Clerk of Court Debra Simenson received from Chief Deputy Clerk Petra H. Mandigo Hulm of the North Supreme Court requesting the Clerk of District Court to file an affidavit with the North Dakota Supreme Court explaining the facts surrounding the filing, the gap in time between the date of the Notice of Appeal and the filing of the Notice of Appeal, and why the Notice of Appeal was not served as required by N.D.R.App.P. 3(d) and not forwarded to the Supreme Court. See; Supreme Court of North Dakota office of the clerk's letter dated September 9, 2011.

6. September 16, 2011 I Tilmer Everett had received a copy of an affidavit made out by Deputy Clerk of Court II Christine Harmon stating under oath that on or about April 5th, 2011 the District Court received a Notice of Appeal from me Tilmer Everett. Stating that the Notice of Appeal along with the case file had been forward to judge Bruce Romanick for review. In this affidavit Christine Harmon, Deputy Clerk II stated that the file was returned to the clerks office by judge Bruce Romanick on June 20th 2011, with the instructions by the judge to file the Notice of Appeal but not to process the Notice of Appeal. Which in fact is now evidence (that affidavit) that shows and also proves prejudice by that *Judge* I had requested to have recused and or removed from my case file. See; The Affidavit that was filed Electronically with the North Dakota Supreme

Court dated September 16, 2011 and also received and filed by the Clerk of Court.

7. September 30, 2011 I Tilmer Everett had than received a letter from Chief Deputy Clerk Petra H. Mandigo Hulm informing me that a copy of my Notice of Appeal from the denial of a subpoena duces tecum, which was filed in the trial court on April 1, 2011 had been finally processed by the District Court. That the appeal issue will be considered with the current appeal. That if I felt additional briefing is necessary to address this issue, that I must submit a written request. See; Supreme Court of North Dakota office of the clerk's letter made out to me Tilmer Everett dated September 30, 2011.

8. October 4, 2011 I Tilmer Everett then had mail the North Dakota Supreme Court a letter with interest to file a brief against that denial of a subpoena duces tecum. Also with my request made I Tilmer Everett the Appellant of Supreme Court No.20110189 had filed a motion with the District Court requesting the District Court to order and or compel the Burleigh County State's Attorneys Office to give me all discovery of Case No.06-9417. See; Appellant Everett's request made to the District Court dated October 4, 2011 and certificate of service by mail sent out October 5, 2011.

9. October 7, 2011 I Tilmer Everett then had received a response back from Chief Deputy Clerk Petra H. Mandigo Hulm informing me that my letter dated October 4, 2011 was received. Stating that I was interested in filing a brief against the issue of the denial of the subpoena duces tecum. That my Brief must be filed by October 21, 2011. And if the

Appellee had any response to my brief filed that they would have 15 days to do there brief. **See;** Supreme Court of North Dakota office of the clerk's letter dated October 6, 2011 to me Tilmer Everett.

10. October 7, 2011 I Tilmer Everett then had received a letter from Chief Deputy Clerk Petra H. Mandigo Hulm advising me the Appellant that the matter of appeal Supreme Court No.20110189 will be called for oral argument on November 28th, 2011 at 9:30 a.m. or as soon thereafter as the case(s) may be heard. **See;** Supreme Court of North Dakota office of the clerk's letter dated October 6, 2011 addressed to me Tilmer Everett.

* As this would be the statement of the facts addressed to you the North Dakota Supreme Court in regards to my Notice of Appeal against the order denial of the request for Subpoena Duces Tecum and also against the prejudicial instructions made by judge Bruce Romanick telling the clerk of court's office not to process my Notice of Appeal dated April 1, 2011 with you the North Dakota Supreme Court. Violating my right to an fair appeal.

Arguments:

I District Court judge Bruce Romanick erred with prejudice when “he” intentionally distorted the facts made in Defendant Tilmer Everett’s affidavit requesting for a subpoena (the 911 call) dated March 15th, 2011 as addressed against the Bismarck Police Department. Order denying the request for a subpoena duces tecum dated March 28th, 2011.

March 15th, 2011 a subpoena duces tecum along with an affidavit for issuance of that subpoena had been drafted to the District Court by Tilmer Everett towards and against the Bismarck Police Department. In this request I Tilmer Everett did explain under oath to the District Court that the 911 call and report made (Case No.06-9417) dated May 30th, 2006 is relevant material, and admissible evidence within Case No.06-K-1026/06-9442. And that both the Burleigh County State’s Attorneys Office and the Bismarck Police Department were in violations of an court order made dated July 31, 2006 and also under Rule 16 of the N.D.R.Crim.P. motion dated June 1, 2006. (By law!) As I Tilmer Everett had specifically stated in an affidavit to the District Court that I had been illegally accused as a named suspect to a witness by a Bismarck Police Detective name Roger Marks within Case No.06-9417. Which in return caused this witness (18-year-old) to file an false report against me to next. Snow-balling into more false accusations from that point on! As Bismarck police than named and accused me Tilmer Everett as being there prime suspect to each of those defiled cases. See; Supreme Court No.20110189 Appendix volume 2 pages #11-17.

March 28th, of 2011 District Court judge name Bruce Romanick then ordered and denied my request for a subpoena duces tecum. With judge Bruce Romanick completely distorting and also manipulating (taken out of context) those facts and circumstances that

I Tilmer Everett had explained to him about Case No.06-9417 first and Case No.06-9442 second in my affidavit dated March 15th, 2011. Judge Bruce Romanick's prejudicial statements made against me Tilmer Everett in page 1 of his order dated March 28th, 2011 stated as; *Defendant continues to allude to his being illegally accused of the crime for which he is serving time. "The Defendant argues because police were not initially looking for him as a suspect and stumbled upon the victim of his crime while investigating a different crime he should not be held accountable for his crime."* That's a straight-out lie! Never have I Tilmer Everett ever stated anything like that at all in my affidavit dated March 15th, 2011 when requesting to the District Court for the 911 call and report made in May the 30th of 2006 against the Bismarck Police Department. As judge Romanick's states prejudicial claims against me Tilmer Everett in his order dated March 28th, 2011 so lacking in factual support, from what was actually stated in my affidavit dated March 15th, 2011. Making his statement made against me Tilmer Everett in the ruling of no legal basis as to be frivolous.

See; Supreme Court No.20110189 Appendix volume 2 pages #18-19.

Another serious issue to address to you the North Dakota Supreme Court in that regards to my request for that 911 call and report made in May 30th, 2006 and the order denying my request for a subpoena duces tecum against District Court judge Bruce Romanick would be made in page 2 of the Order dated March 28th, 2011 stated as: *"If the information the Defendant desires is subject to open records request he should attempt to obtain the information through open records request."* As I Tilmer Everett did file for a request for that 911 call recording and or transcript dated May 30th 2006 under the North Dakota Century Code 44-04-18 Freedom of Information Act as addressed to the

Bismarck Emergency Management Building 21 dated June 10, 2011. **See;** Supreme Court No.20110189 Appendix volume 2 pages #123-127. And guess what? I Tilmer Everett even called the Bismarck Emergency Management Building 21 at phone #701-222-6727 and talked with a Gary Stockert who than transferred my call to a Michael Dannenfelzer. As Mr. Dannenfelzer had than informed me Tilmer Everett in our conversation that he had “destroyed” and “erased” that 911 call and report two years ago. So I told him that I would like him to state that in writing, from what he was telling me. Then in July the 5th. of 2011 I Tilmer Everett had finally received a response back in writing (a letter) from the Combine Communications Center a Manager name Michael Dannenfelzer dated June 30th, 2011. Informing me Tilmer Everett that the record (the 911 call and report dated May 30th, 2006) that I had requested for does not exists. Completely leaving-out the information about destroying and erasing the recording two years ago of what we had talked about on the phone when I had talked with him. (That he destroyed and erased that 911 call and report two years ago.) **See;** Supreme Court No.20110189 Appendix volume 2 pages #128-129.

And so, I Tilmer Everett will now declare within my appeal to you the North Dakota Supreme Court that “my rights” have been in fact violated by both the Bismarck Police Department and also the Burleigh County State’s Attorney Office. As they are unabling (preventing) me the Defendant within Case No.06-9442 from proving my innocence. By destroyed evidence (the 911 call and report made from 1240 Riverwood Drive) in my favor for my appeal that had been illegally withheld from me Tilmer Everett for my trial. **The crime that I Tilmer Everett had gotten illegally accused of by Bismarck Police to a witness!**

II The Clerk of Court's Office erred with prejudice and violated my Due Process Rights, to a fair right to an appeal, when they (the clerk of court) followed the instructions not to process my Notice of Appeal made by District Court judge Bruce Romanick.

It is the Burleigh County Clerk of Court's Office responsibility by law to respect understand the appeal rights of an individual's request made as filing a Notice of Appeal under the N.D.R.App.P. 3(a)(1) and (d). And in my Case (06-K-1026), the Clerk of Court's office erred with prejudice against me Tilmer Everett when they forwarded my Notice of Appeal dated April 1, 2011 back to judge Bruce Romanick instead of filing it as required by law on or about April 5, 2011. Then in June the 20th of 2011 (at least 2 and a half months later), when judge Bruce Romanick returned my Notice of Appeal dated April 1, 2011 back to the Clerk of Court's Office, with the instructions to file the Notice of Appeal but not to process the Notice of Appeal. And that "they" followed his instructions made by judge Bruce Romanick, then this means that they also had violated my due process rights with prejudice from a fair right to an appeal. See; Affidavit dated September 16th, 2011 stated by Christine Harmon, Deputy Clerk II.

1. Because I Tilmer Everett **never** received that filing of my notice of appeal at that time (June 20th, 2011) to this day! (?)
2. And because I Tilmer Everett had *never been* informed by the clerk of court's office at that time (June 20th, 2011) what the judge Bruce Romanick instructed them to do!

Therefore this establishes and proves to you the North Dakota Supreme Court that the clerk of court's office erred with prejudice against me Tilmer Everett stated above.

III Trial court judge Bruce Romanick erred with extreme prejudice when “he” ordered and told the Clerk of Court’s Office Burleigh County not to have my Notice of Appeal processed dated April 1, 2011 against his ruling made in March the 28th of 2011.

Judge Bruce Romanick completely erred with extreme prejudice against me Tilmer Everett within my Case File No.06-K-1026 when he told the clerk of court’s office not to have my Notice of Appeal processed against his order dated March 28th, 2011 in June the 20th of 2011. As a matter of fact judge Bruce Romanick had no business making an order against me Tilmer Everett with denying my request to compel discovery of Case No.06-9417 against the Burleigh County State’s Attorneys Office in September 3, 2011. When I specifically told him that evidence of Case No.06-9417 had been withheld from me Tilmer Everett illegally for my trial. (In that request made!)

- Read; Supreme Court No.20110189 Appendix volume 1 pages #83-85.
- Read also; Supreme Court No.20110189 Appendix volume 1 pages #103-108.

Making judge Bruce Romanick’s Orders made and stated against me Tilmer Everett in September the 3rd of 2011 and also in March the 28th of 2011 as being illegally and prejudicial within my Case File No.06-K-1026. Judge Bruce Romanick does not have the right or authority to deny a Defendant or anybody for that matter the right to his Due Process Rights. As an affidavit signed by Deputy Clerk of District Court Christine Harmon dated September 16, 2011 had been addressed and informed to you the North Dakota Supreme Court in regards to those circumstances concerning judge Bruce Romanick’s instructions to the clerk of court’s office not to have my Notice of Appeal dated April 1, 2011 processed in June 20, 2011. (As evidence against him!) As judge Bruce Romanick erred with extreme prejudice against me Tilmer Everett violating my Due Process Rights...

Conclusion

Based upon the foregoing, Appellant Tilmer Everett strongly requests that the order denying request for subpoena duces tecum dated March 28th, 2011 made by judge Bruce Romanick be overturned and or reversed against the Bismarck Police Department. Evidence that I am entitled to have! Due to the fact that judge Bruce Romanick again attempted to violate my due process rights. As it is this evidence (the 911 call and report made May 30th, 2006), that is illegally being withheld from me Tilmer Everett by both the Bismarck Police Department and also the Burleigh County State's Attorneys Office within my Case File No.06-K-1026. As it is the *District Court* who is preventing me Tilmer Everett the named suspect in Case No.06-9417 from telling the whole story with Case No.06-9442. I want my life back...

Dated this 17 day of October, 2011.



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