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**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

APR 28 2015

State of North Dakota,
Plaintiff- Appellee,

STATE OF NORTH DAKOTA
SUPREME COURT NOS. 20140468

Vs.

20140469

Jonathan Horvath,
Defendant- Appellant,

20140470

Criminal Nos. 53-2013-CR-00607
53-2013-CR-00608
53-2013-CR-00669

ON APPEAL FROM THE CRIMINAL JUDGMENTS,
ENTERED DECEMBER 24, 2014
WILLIAMS COUNTY DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT
STATE OF NORTH DAKOTA
THE HONORABLE DAVID W. NELSON, PRESIDING

APPELLANT'S SUPPLEMENTAL BRIEF

Jonathan Horvath
NDSP No. 40779
Box 5521
Bismarck, ND. 58506-5521

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TABLE OF AUTHORITIES

1. MOONEY v. HOLOHAN, 294 US 103,55 S. Ct. 340, 79 L. Ed. 791
2. NAPUE v. State of Illinois, 79 S. Ct. 1173, 3 L. Ed. 2d 1217
3. UNITED STATES v. BAGLEY, 473 US 667 (1985)
4. NDCC 12.1-11-01 PERJURY
 1. A person is guilty of perjury, a class c felony, if, in an official proceeding, the person makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a false statement previously made, when the statement is material and the person does not believe the statement to be true.
 2. Commission of perjury need not be proved by any particular number of witnesses or by documentary or other types of evidence.
5. ND CODE OF CONDUCT
Rule 3.3 (a) (1) “ A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

Statement of the Issues

1. Perjury by the prosecutor, Nathan Madden, in his closing argument.
2. Perjury by the witness, Brittney Montee.

Statement of the Facts

During Brittney Montee's (hereafter Ms. Montee) testimony her story changed three times.

Page 176, lines 13-15; Nathan Madden (hereafter Mr. Madden) on direct;

Q. When you got in the truck, was there anyone in there with you?

A. Yes. Jonathan Horvath

Page 189, lines 7-10, 15-17, 22 & 23 Steven Mottinger (hereafter Mr. Mottinger) on cross;

Q. When you got back to the pickup, was anybody in the pickup?

A. Kevin was in the front passenger seat and he, kind of, slipped out; and Jonathan Horvath was in the back.

Q. And once you got in the truck, was anybody else in the truck?

A. No

Q. So you were the only one in the front seat?

A. Correct

Video evidence from prosecution's exhibit # 152, No Place Bar surveillance video (hereafter prosecution's exhibit 152) shows the factual story, as Mr. Madden points out frequently.

At time stamp 12:56:59 Ms. Montee and petitioner, Jonathan Horvath, arrive at the passenger side of the pickup. Movement on the front passenger side can be seen and will later prove to be one Kevin Kallio (hereafter Mr. Kallio). Ms. Montee must crawl over Mr. Kallio to get into the pickup

At 12:58:14 Ms. Montee is helped from the front driver's door and petitioner exits the rear passenger door.

At 12:58:48 a lone male exits the front passenger door . That man is Mr. Kallio.

When Mr. Madden shows this video to the jury he stopped it at approximately 12:58:15.

Mr. Kallio was not subpoenaed.

Mr. Kallio does make a video statement with Detective Nickoloff in March 2013, at Williston PD.

During a discussion, without the jury present, at Mr. Madden's request, questions regarding that statement were allowed by the court.

Page 295, lines 24, 25; page 296, lines 1-15, Mr. Mottinger on cross;

Page 297, lines 13-25; page 298, lines 1-9, jury excused;

Page 303, lines 4-20, Mr. Mottinger on cross, resumed.

During Mr. Madden's closing argument, he again denies Mr. Kallio's presence in the pickup. Mr. Madden also instructs the jury in how to perceive exhibit 152 and the statement taken by Det. Nickoloff.

Page 576, lines 23-25; page 577, lines 1-12.

Note specifically, on page 577, lines 5,6 and 7,8, Mr. Madden, closing,

"He wasn't even there inside that truck."

"He wasn't there"

Argument

Prosecution exhibit 152, time stamp 12:58:48, clearly shows that Mr. Kallio was in that pickup the entire time. This indicates that not only did Mr. Madden perjure himself, and allow Ms. Montee to perjure herself, he has no desire to find the truth but rather seeks only the conviction.

This is further evidenced by Mr. Madden not showing the entire prosecution's exhibit 152.

Petitioner was the defense's only witness and Ms. Montee's testimony and Mr. Madden's closing statements fatally undermined petitioner's credibility on the stand.

Pursuant to the holdings of *Mooney v. Holohan* and *Napue v. State of Illinois*, petitioner was denied a fair trial due to false testimony/ perjury being allowed by the state. A violation of due process as set forth in the 14th amendment of the US Constitution.

In *US v. BAGLEY*, Supreme Court held that, "a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and Must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury."

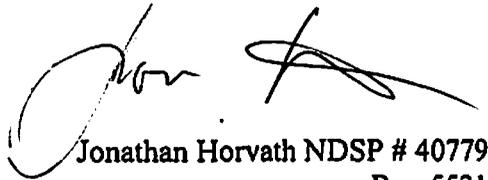
In *MOONEY v. HOLOHAN*, "The denial by a state of any judicial process by which a conviction obtained through the admitted or proved use by the state, knowingly or unknowingly, of perjured testimony, and the suppression of impeaching evidence, may be set aside, is a deprivation of liberty without due process of law in violation of the 14th amendment."

NAPUE v. ILLINOIS also holds that the prosecution has a duty to correct false or perjured testimony.

Further, the Prosecution Function Standard 3- 1.1 (c) The duty of the prosecutor is to seek justice, not merely to convict.

Therefore Jonathan Horvath's conviction should be overturned.

Dated this 23rd day of April, 2015.


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CERTIFICATE OF SERVICE STATE OF NORTH DAKOTA

I hereby certify that on this 4-28 day of April, 2015 the Appellant's Supplemental Brief was served via US mail to the following parties:

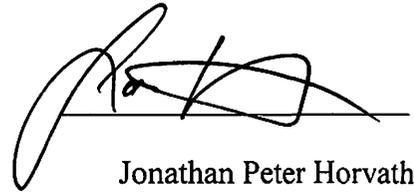
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Signed before me on 28th day of April 2015

ERIC HASBY
Notary Public
State of North Dakota
My Commission Expires May 14, 2018