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STATE OF NORTH DAKOTA

Francis Ochiti's Appellant Brief

State vs. Ochiti

Supreme Court No. 20150273

Cass Co. No. 2015-CR-00145

East Central Judicial District

Francis R. Ochiti

123 15th Ave St N

Fargo, ND 58102

Table of Authorities

1. Crawford v. Washington, 562 U.S. 344, 369, 131 S.Ct. 1143, 179 L.Ed.2d 93 found on Page 12.
2. Dickerson v. United States, 2000, 530 U.S. 442, 120 S.Ct. 2326, 147 L.Ed.2d 405 found on Page 6.
3. Givold v. Windbreak, inc., 2007 ND 54, 915, 730 N.W.2d 597 found on Page 9.
4. Horton v. California, 496 U.S. 128, 110 S.Ct. 2301, 2308, 110 L.Ed.2d 112, 1990 found on Page 5
5. J.D.B. v. North Carolina, 2011, 564 U.S. 261, 131 S.Ct. 2407, 180 L.Ed.2d 328 found on Page 6
6. Mark Meyer Affidavit in Support of Withdrawal found on Pages 7 and 13
7. Miranda v. Arizona, 1966, 384 U.S., at 470 and 475, 86 S.Ct. 1602, 16 L.Ed.2d 694 found 7
8. N.D.R.Crim.P. 17 and 41(c)(1) and 47(b) found on Page 13 and 4 and 9
9. N.D.R. Evid. 801(a) found on Page 10
10. US v. Connor, 127 F.3d 663, 667 (8th Cir. 1997)
11. State v. Dallmann, 441 N.W.2d 912, 914, 1989,
12. State v. Fields, 2005 ND 15, P5, P7, P 45, 691 N.W.2d 233
13. Maryland v. Garrison, 480 U.S. 79, 1987
14. State v. Schmitz, 474 N.W.2d 249, 252 (ND 1991)
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15. State v. Fields
16. State v. Thieling
17. State v. Woehlhoff
18. State v. Metzner
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19. State v. Ganje, Found on Page 13
20. State v. Gregg, Found on Page 10
21. State v. Serr, Page 11

Statement of the Issues

1. The Search Warrant
2. Outrageous Government Conduct
3. The Motion for a New Trial
4. The Videos
5. Compulsory Process and Confrontation Clause Violations
6. Client, Attorney Conflict

Statement of the facts

[¶1] In the Jury Trial Transcripts Vol. 1 Pg. 7 taken at the Cass County Courthouse in Fargo, North Dakota on the date of August 25, 2015, Mark Meyer, attorney for the Defendant, voiced not only when the motion was made but also why he felt it was necessary and not a strategy to extend or prolong trial.

2. In the Jury Trial Transcript Vol. 3 Pg. 71, taken at the Cass County Courthouse in Fargo, North Dakota on the date of August 27, 2015, Tristan Van de Streek, attorney for the State, without the objection of Defense counsel. Mr. Van de Streek stated along the lines of even if he was there "the charge here is Conspiracy to Commit Robbery."

[¶2] In the Sentencing Transcripts, taken at the Cass County Courthouse in Fargo, North Dakota on the date of February 29, 2016, Pg. 12 Vicky Matthys Court Recorder for the East Central Judicial District at the Cass County Courthouse added points 1-3.

[¶3] Detective Jason Skalick used false testimony in order to secure probable cause at the Defendants Preliminary Hearing. Pages 13, 15, 16, 17, 18, 26, 28, 29. Taken at the Cass County Courthouse in Fargo, North Dakota on the date of March 5, 2015. Also the Jury Trial Transcripts Vol. 2 Pages 136, 137, 167, 168

[¶4] Detective Jason Skalick had no credible source so he sought a Narcotics Search Warrant. Preliminary Hearing Transcripts Pages 18, 19, 26, 27, 28, 29, Jury Trial Transcripts Vol. 2 Pages 166, 167, 168,

[¶5] There was a major breakdown in communication between Mr. Mark Meyer and Francis R. Ochiti, Attorney and Defendant. Jury Trial Transcript Vol. 1 Pages 7, 8, 9, 10, 11, 12, 13, 14, 16, 21, 24, 25, 26, 27, 31, 32, 33, 34, 35, 36, Jury Voir Dire, taken at the Cass County Courthouse in Fargo, North Dakota on the date of August 25, 2015 Pages 60, Jury Transcripts Vol. 3 15, 16, 17, 18, 19, 20, 23, 24, 65, 66, 67,

[¶4] There was a different DVD used at the Defendants trial, it was a 2nd copy not disclosed to the Defense. The DVD is labeled Exhibit No. 22; the Casey's Store video.

Statement of the facts
(Continued)

[¶7] Brendon Belgarde's statements were a central piece in the complaint against the Defendant. His statements were used during the Preliminary Hearing by the State to charge the Defendant and also to add credibility to Elly Blackbird's testimony during the trial. Preliminary Hearing Transcripts Pages 11, 12, 13, 14, 15, 17, 18, 29. Jury Trial Transcripts Vol. 2 Pages 82, 89, 90, 96, 97, 98, 105, 106, 107, 119, 121, 131, 132, 133, 134, 135, 139, 140, 141, 142, 143, 144, 156, 157, 158, 160, 164, 165, 193, 194, 195, 196, 197, 198, 199, 211, 212, 214. Jury Trial Transcripts Vol. 3 Pages 34, 35, 50, 51, 52, 55, 56, 58, 59, 61, 62, 63, 64, 66, 71, 72, 74,

2. Elly Blackbird was given video's before her testimony Jury Trial Transcripts Vol 2. Pages 152

[¶8] The Defendant was not allowed to subpoena witnesses in his favor. Jury Trial Transcripts Vol 1 Pages 8, 11, 12, 13, 14, 16, 21, 31, 32, 36. Jury Voir Dire Page 60, Jury Trial Transcripts Pages 19, 20.

[¶9] The Defendant tried to exercise his Speedy Trial Right numerous times. Nicholas Thornton's Motion and Affidavit for Withdrawal as an attorney, Letter written by the Defendant once filed June 18, 2015. Motion for Dismissal based on Speedy Trial violation denied from consideration by the Clerk of District Court June 30, 2015.

[¶10] Co-Defendant Brendon Belgarde Jr. plead guilty to Conspiracy to Commit Robbery. The prosecution allowed Elly Blackbird to testify knowing she would commit Perjury. Jury Trial Transcripts Vol. 2 89, 90, 91, 92, 94, 96, 98, 103, 104, 105, 106, 116, 119, 120, 121, 123, 132, 133, 134, 135. Jury Trial Transcripts Vol. 3 Pages 34

[¶11] The Defendant made a motion ex parte, Sentencing Transcript Pages 10, 11, 12, 13, 14, 15

[¶12] Detective Jason Skalick is extremely negligent of Court precedents

[¶13] The Defense pretrial suppression motions were denied

The Search Warrant

In the morning of January 9th, 2015, Detective Jason Skalick arrested Elly Blackbird and Brendon Belgard Jr. In the interrogation Blackbird told Det. Skalick, the suspects he was looking for are at 2701 32nd Ave South, Apartment 313. The information from Blackbird was not reliable or credible, so Skalick had to look for other ways to get a search warrant. Skalick then made contact with Officer Larson from the Fargo Police Department, who had been to apartment 313 earlier that afternoon for a loud noise complaint. At the request of Det. Skalick, Officer Larson forwarded a report to Narcotics Detectives of the Fargo Police Department. In the report she indicated a strong odor of Marijuana, came from apartment 313. Using that information the detectives drafted a search warrant for Narcotics. On the evening of January 9th, the warrant was executed and no narcotics, or paraphernalia were found. Instead the defendants college ID, Various grocery items, and a BB gun were seized.

The search warrant had no probable cause and the seizure's were unconstitutional. "Whether there is probable cause to issue a search warrant is a question of law" State v. Fields, 2005 ND 15, P 45, 691 N.W.2d 233. There is probable cause to issue a search warrant if "the facts and circumstances relied on by the magistrate would warrant a person of reasonable caution to believe the contraband or evidence sought probably will be found in the place to be searched." Fields, 2005 ND 15, P5, P7, 691 N.W.2d 233 (quoting State v. Corum 2003 ND 89, P22, 663 N.W.2d 151)

Det. Skalick attempted to circumvent the warrant issuing process. He "Started trying to figure out ways we could possibly get a search warrant out of that residence, since we did haven't any link to the suspects at that address." Jury Trial Transcript Vol. 2 Page. 167, 9-12. Avoiding the particularly requirement, he used the Narcotics warrant as a substitute for the search warrant he wanted to conduct a general search. "The purpose of the particularity requirement is to prevent exploratory rummaging in a person's belongings by a general search. See Maryland v. Garrison, 480 U.S. 79, 107 S. Ct. 1013, 1017, 94 L.Ed. 2d 72 (1987); State v. Dalmlann, 441 N.W. 2d 912, 914 (N.D. 1989) "State v. Schmitz, 474 N.W. 2d 249, 252 (N.D. 1991). Also, N.D.R.Crim.P.41(c)(1) - "magistrate shall issue a warrant identifying the property...to be seized...."

A search warrant cannot be legal if the sole aim is to by-pass the particularly requirement. "A warrant cannot be objectively reasonable: (1) When the issuing magistrate was misled by false information intentionally or negligently given by the affiant". Also, officers must have "an objectively reasonable basis to believe they were complying with applicable law and the Fourth Amendment." United States v. Conner; 127 F.3d 663, 667 (8th Cir. 1997) (citations omitted). Det. Skalick actively looked for a loop hole

Probable cause exist when the facts and circumstances "would warrant a person of reasonable caution to believe the contraband or evidence sought probably will be found in the place to be searched" State v. Fields, 2005 ND 15, P5, P7, 691 N.W.2d 233. A reasonably cautious person would believe there was no probable cause because Officer Larson being a sworn law enforcement officer would have reported smelling marijuana to the Narcotics detectives immediately. But she only reported the incident after she spoke with Det. Skalick. "When Det. Skalick looked for information on apartment 313 "The only information we were able to get was that it was a Michael Bernard that lived there." Jury Trial Transcript Vol. 2 Page 166, 25 to Page 167. 1.

Only when Det. Skalick made contact did Officer Larson, she she report the marijuana smell. See Jury Trial Transcript Vol 2 Page 1-66, 11 to Page. 168, 8. Skalick outlined that "a narcotics dog would have sniffed the door, at which time they produce information to our narcotics detectives regarding possible narcotics in the apartment" Preliminary Hearing Transcript Page. 26 16-19. As procedure, the "information" Larson presented warranted further investigation. The "smell" could have come from across the hall or another room. "When information presented to the judge who issues the warrant causes only suspicion and warrants further investigation, probable cause does not exist." State v. Thieling, 2000 ND 106, 888, 611 N.W.2d 861." More than "bare-bones" information must be presented to the magistrate and that bare conclusions are insufficient to establish probable cause to search." State v. Woehrlhoff, 540 N.W.2d 162, 166(N.D. 1995)..

The search warrant was void of probable cause making the seizures illegal. "A plain view seizure is proper only if the officer's initial intrusion into the constitutionally protected area was proper, and not achieved through violation of the Fourth Amendment." See Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 2308, 110 L.Ed.2d 112 (1990); State v. Metzner, 338 N.W.2d 799, 803(N.D. 1983);

Outrageous Government Conduct

On the morning of January 9th, 2015, Detective Jason Skalick arrested Elly Blackbird. Skalick illegally interrogated Blackbird after Skalick got a search warrant to 2701 32nd Ave South, Apartment 313. At apartment 313 he arrested Francis R. Ochiti, the Defendant, after arresting Francis. Skalick violated Francis's Fifth Amendment *Miranda* rights, Skalick also committed perjury during Francis Ochiti's Preliminary Hearing to secure probable cause.

"Whether the government's conduct is so outrageous that it bar's prosecution is a question of law, fully reviewable on appeal." **United States v. Musslyn, 865 F.2d 945, 947 (8th Cir. 1989).**

Skalick violated Francis and Blackbird's *Miranda* rights, also by lying at the Preliminary Hearing he infringed upon Francis Due Process. Elly Blackbird was forced to give a confession against her free will. "Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his [or her] free choice." **Dickerson v. United States (2000), 530 U.S. 442, 120 S. Ct. 2326, 147 L.Ed.2d 405.** Blackbird was a suspect in a stolen vehicle case, "*Miranda* simply hold that warnings must be given once a suspect is in custody," **J.D.B v. North Carolina (2011), 564 U.S. 261, 131 S. Ct. 2407, 180 L.Ed.2d 328.** Skalick tried to circumvent that requirement by stating that she was not under arrest. "I had asked her if she would be willing to go the police department. She wasn't arrested at that point. I wished to interview her at the police department." Jury Trial Transcript Vol. 2, Page 159. 2-5. But *Miranda* does not require formal arrest, "recognizing that it would simply enable the police to circumvent the constraints on custodial interrogations established by *Miranda*." **Id J.D.B at 261, 131 S. Ct. 2407, 180 L.Ed.2d 328.** Furthermore, Skalick knew she was under arrest because he looked her in connection to the

Outrageous Government Conduct

robbery through the stolen car. He knew she "had a warrant out for running on a PR bond [Public Reconnaissance Bond]." Jury Trial Transcript Vol 2. Page. 112, 6-7.

Skalick violated Francis *Miranda* rights by preceding to ask questions after Francis said "no". Skalick then asked him if he wanted to talk to him, so Francis asked for a lawyer. Even then Skalick continued to talk to Francis trying to invite a response. See Jury Trial Transcript Vol 2. Page. 123. 21 to Page. 129. 14. Francis never waived his right to *Miranda*, but his statement was still allowed to be used in trial. His then attorney allowed the statement to be used, in Mark Meyer's affidavit in support of withdraw. Meyer correctly stated that Francis feel's he [Mark Meyer] was against him. See Mark Meyer Motion for Withdrawal and Affidavit in Support of Motion and Jury Trial Transcript Vol 1. Page. 7, 15 to Page. 14, 12. This is an example of where they conflict. "Miranda said "a valid waiver will not be presumed... simply from the fact that a confession was in fact eventually obtained." *Miranda* 384 U.S., at 475, 86 S. Ct. 1602, 16 L.Ed.2d 694; see *id.*, *id.* at 470, 86 S. Ct. 1602, 16 L.Ed.2d 694 ("No effective waiver... can be recognized unless specifically made after the [*Miranda*] warnings... have been given.")

At the Preliminary Hearing Det. Skalick said "[Elly] she identified him by the first name of Francis at first and then later on was shown a photo lineup containing Mr. Ochiti, at which time she picked Mr. Ochiti out of the a lineup as one of the suspects." Preliminary Hearing Transcript Page 13. 17-19. But because she "I don't know who it is but I think I know who that is" Jury Trial Transcripts Vol 2, Page 137. 11-12. That is not a positive ID, she said the Defendant "seems familiar" Photo 2 Exhibit 202. During the Preliminary Hearing Skalick said he believed the Defendant was the suspect in the multicolored glove. Page 28, Preliminary hearing Transcript, to Page 29, 4.

Q: That's who you believe?

A: Yes.

Q: Okay. But you're not a hundred percent certain?

A: That's based off of what Ms. Blackbird gave us, yes

Q: Okay. So if she gave you information that was untrue, that may or may not be the case here; is that fair to say?

A: Yes, it is

Utterances Government Conduct (Continued)

Q: So we're relying on Ms. Blackbird's credibility?

A: Ms. Blackbird and Mr. Belgarde, yes.

But Ms. Blackbird say Belgarde wasn't there and Mr. Van de Streek later said

"Now, Remember when Elly Blackbird -- Nobody is tell you to believe ~~the things~~ ~~things~~ everything Elly Blackbird says." Jury Trial Transcripts Vol 3, page 73, 22-23. They both had no credibility.

Legal Argument- The motion for a
new trial

[¶1] On February 29, 2016 at the his Stentencing Hearing. Francis R. Ochiti attempted to file a motion ex parte. When he put forth the motion Judge Steven E. McCullough told him as follows:

The Court: If he wants to do it, I'll let him. I mean, you're going to have to make a written motion.

The Defendant: Yeah.

The Court: If you want to put this on the record, I'll let you. Make it easier for Mr. Blumer or whoever is going to help you put this motion together. So go ahead.

The Defendant: It's kind of difficult to flip through the pages that I have here with handcuffs, but I'll try my best.

The Court: You don't have to put it on the record. I'm just giving you an opportunity. You're going to have to file a written motion.

The Defendant: Yeah.

The Court: So if you want to put it on the record, you can; if you don't want to and just put it in your written motion, that's fine .

The Defendant: I'd like to if that's okay with the Court.

The Court: Go ahead. Yeah.

The reason for me put in the motion ex parte was because the case was on appeal. As soon as the hearing was over the Clerk was going to certify my appeal and the 30 day countdown would begin, as me and my attorney told Judge McCullough numerous times before. To simplify the problem I put the motion ex parte not only to have it on the record but to make sure Judge McCullough heard it. As you can tell from my letter to the Clerk of the District Court and my Motion for Dismissal. I have filed motions most have been deleted from the record. N.D.R.Crim.P. 47(b) states: A motion, except when made during a trial or hearing, must be in writing..." There are also real world implications to think about, as soon as I was sentenced I was going to be moved away from my attorney who would be unable to ask. As I said when I waived my right to counsel on this appeal. I refuse to make another mistake like Mark Meyer in short, I don't trust defense lawyers. I stated the grounds on which it was based off and the relief I was seeking. I believe the district courts decision was clearly erroneous..I filed the notice of appeal pro se. The Court did not set a different period or court date for good cause. It was an obvious misinterpretation of the law." A district court abuses its discretion... when it misinterprets or misapplies the law." *Gisvold v. Windbreak, inc.*, 2007 ND 54, ¶5, 730 N.W. 2d 597.

On the Morning of January 8th, 2015, Detectives from the Fargo Police retrieved videos from Wal-Mart, 2701 32nd Ave South Apartment Building and the Casey's in-store video.

This issue was preserved for review by objections made by Mr. Meyer. In Pages 24. 25 to Page 27. 12, Jury Trial Transcripts Vol. 1. Page 75. 13, Jury Trial Transcripts Vol 2. Pages 190. 7-8, Page 191 24 to Page 192. 1, all Jury Trial Transcripts Vol 2. The videos were obtained through an illegal confession by a suspect. "Any evidence obtained as a result of illegally acquired evidence must [also] be suppressed as fruit of the poisonous tree...." State v. Gregg, 2000 ND 154, P 39, 615 N.W. 2d 515.

[¶ 1] The videos mislead the jury and were extremely prejudicial. See Sentencing Transcript Pages 11.5 to Page 14 20. The prejudice from the Wal-Mart video was extreme, the State claimed that was where the suspects got their masks and gloves. It was unfair to use the Wal-Mart video to establish that the supplies were stolen there. When the loss and prevention manager told detectives none were stolen. "The Detective in the case, he talked to the loss and prevention management, and I'm pretty sure that the State would know this, they said that there was no absolutely no mask or gloves that were stolen at Wal-Mart." Sentencing Transcript Page 11. 12-15. The State knew this, so instead they had Elly Blackbird and Det. Jason Skalicik testify on the video. N.D.R. Evid. 801(a) defines a "statement" as (1) an oral or written assertion. 801(c) is defines "hearsay" as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Elly Blackbird has only been to Fargo once, more over she's only been to the Wal-Mart in Fargo once. She went in and ran out quickly, the video allowed her to say "The four boys walking out of the section where the masks, hats and gloves were." Jury trial transcript Vol 2, Page 92. 11-12. Not suppressing the Wal-Mart video allowed the State to establish Blackbird's credibility. Which is also unfair because the only gloves or masks were found in her possession, and she was only in the store for a minute or two. The State used the video to make pure speculation appear to be fact. "All it shows is individuals walking around the store and going in to buy a bag of chips." Sentencing transcript page 11. 17-18. The jury was misled into believing that the suspects are agreeing to a conspiracy, there stealing gloves and masks, and that Elly Blackbird was a credible witness. This video allowed the truth to be distorted.

[¶ 2] The 2701 32nd Ave South Apartment building video was also prejudicial because it used for hearsay. It allowed Blackbird, who was not there, to say that this is that person when she was not even present, also in the video it does not show which apartment the suspects go to or what floor their on. None of the items found in the apartment were on the video. There is no gloves, no masks, no bags, no B.B. guns or anything used in the robbery.

The Videos (Continued)

[¶ 3] The Casey's in-store video was distorted, the State in the Preliminary Hearing based their case on the word of Elly Blackbird. Because Elly was unbelievable, See Preliminary Hearing transcripts. Det. Skalicky was willing to commit perjury to get the Defendant indicted. But trial is different, you cannot depend on hearsay. See Sentencing transcript Page 12. 25 to Page 14.2.

[¶ 4] The videos misled the jury into believing an agreement was made which is an essential element a conspiracy. "an agreement" is not supplied by mere knowledge of an illegal activity... let alone by mere association with other conspirators or mere presence at the scene of the conspiratorial deeds." State v. Serr, 1998 ND 66 / ¶ 14, 575 N.W.2d 896. Because there is nothing done in the Wal-Mart and Apartment video illegally. It was just there to boost the State's case, the videos caused more speculation than proven facts.

[912] On August 27th, 2015, Francis Ohibi was denied calling witnesses to testify in his favor.

See Jury Trial Transcript Vol 3. Page 19. 17, to Page 20. 20. Brendon Belgard Jr. was a central figure in establishing probable cause during the Preliminary Hearing. Mr. Belgard was injured the night of the robbery and his clothes were supplied as well. The other individuals, See Jury Trial Transcript Vol 1. Page 16 5-15. Were all ~~relevant~~ relevant. Sarah Patrick was there ~~at~~ at 2701 apartment 313 the night of the robbery. She would have testified to anyone in the apartment and if anyone came in, Patrick Jaden was present during the robbery, he would have testified to the Defendant not being with at the time of the robbery. Brendon Belgard would testify that he knew details from inside the store and to being in the Camouflage Coat. Emmanuel Adams would testify that ~~he~~ ~~was~~ the Defendant was not at the robbery but with him. Darlene Putnam would testify that Elly Blackbird is a compulsive liar.

[912] I was unable to cross-examine Brendon Belgard, he not Elly was the one who made most of the statements against the Defendant. He made a story and pick ~~me~~ the Defendant out of a lineup. All Elly did was give police the location to apartment 313 and Wal-Mart information. Elly committed perjury when she said he was not there, Belgard plead guilty to this conspiracy waiving his right to self incrimination. Crawford sought to bring our application of the Confrontation Clause back to its original meaning, which was to exclude unconfessed statements made by witnesses, statements that were testimonial "Crawford v. Washington, 562 U.S. 344, 369, 131 S. Ct. 1143, 179 L. Ed. 2d 93.

Client, Attorney Conflict

On August 24th, 2015, Mr Meyer filed a Motion to Withdraw. After some agreements from Francis Ochiti and Mr. Meyer that they cannot work together the Motion was denied on August 25th, 2015

[QT1] The Defendant and the attorney had no communication or trust. He was as far as to the his lawyer, he felt he was against him and the State. See Mark A. Meyer Affidavit of Withdrawal in support of the Motion, also July Trial Transcript Vol 1, Page 7 to Page 14, 12.

[QT2] He never subpoenaed the witnesses & asked him to, Mr. Meyer told the Defendant on August 24th that he would not call witnesses. Under N.D. R. Crim. P. 17, a subpoena must be served within a reasonable time before the witness's scheduled appearance, and whether service is with a reasonable time depends on the circumstances of each case. State v. Gornje, 481 N.W. 2d 227, 228-29 (N.D. 1992)

Conclusion

I believe that an overturned verdict is the remedy sufficient enough to combat the injustice that was created through prosecutorial misconduct, gross negligence, and reckless disregard for the truth. I know this case exhibits time and time again the governments willingness to disregard the system. When I say government I include the States Attorney's office, "The prosecutor's office is an entity and as such it is the spokesman for the Government." *Giglio v. United States*, 405 U.S. 154, 31 L. Ed. 2d 104, 92 S.Ct. 763 (1972). Facts are, the Preliminary Hearing is for establishing probable cause not guilt, the case agent committed perjury. Not only that he omitted important details that would have resulted in the appellant being released. Not allowing the verdict to be overturned would make this disregard for the system a method for establishing probable cause, it creates an almost unmovable barrier for defendants. The overturned verdict would mandate the prosecutor to encourage other government agents to be truthful, the ones who are not. "The Supreme Court has clearly established that a prosecutor's knowing use of perjured testimony violates the Due Process Clause." *Schaff v. Snyder*, 190 F. 3d 513, 530 (7th Cir. 1991). It's also a "Due Process violation when the State, although not soliciting false evidence, allows it to go uncorrected when it appears," *Napue v. Illinois*, 360 U.S. 264, 3 L. Ed. 2d 1217, 79 S.Ct. 1173 (1959)

The Government, encouraged perjury, knowing full well Brendon Belgard Jr. plead guilty and said he was a part of the robbery, Let Fly Blackbird testify that he had nothing to do with the conspiracy, this directly relates to my defense because the Camo coat was Belgard's, had the Court granted the motion for substitution, the next attorney would have been able to communicate with the Appellant, and timely subpoena witness's, and set up a defense. The Appellant's Due Process rights were clearly violated, as was the integrity of the Court. A new trial would do nothing for the misconduct at the Preliminary Hearing. The defendant must show that the government's conduct is "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." *United States v. Russell*. The level of outrageous conduct necessary to prove a due process violation is quite high and must shock the conscience of the court. *State v. Hoverson*, 2006 ND 49, P 6, 710 N.W.2d 895. Every action by the government in this case was a violation of rights, this case started with illegal police action it ended with illegal prosecutorial misconduct. An overturned verdict in this case is necessary, anything less would be a miscarriage of justice.

I, Francis Robert Ochiti, the undersigned mailer, being of sound mind and under no duress, do hereby certify, attest and affirm that the following facts are true and correct, to wit:

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SUPREME COURT JUN 22 2016

1. That on June 3rd, 2016, on behalf of Myself, the undersigned personally mailed the following document and transmitted them via United States Postal Service, A motion and affidavit for extension of time.

2. That one complete set of originals of the documents, as described above, was addressed to the Supreme Court of North Dakota. At 600 E BOULEVARD AVE, Bismarck, North Dakota 58505-0530.

3. Proof of service has been delivered

State of North Dakota, County of Cass

On this 18th day of June 2016


undersigned