

ORIGINAL

20090009

Before the Supreme Court of the State of North Dakota

North Dakota	(Appeal of Cass County
	(East Central Distric Court
v.	(09-07-K-3531
Joe R Blurton	(
	(2009009 Supreme Court No.
	(

NDRAppP Rule§32(a)(2):

- (A) Supreme Court Case Number 2009009
- (B) East Central Distric Number 09-07-K-3531
- (C) North Dakota vs. Joe R. Blurton
- (D) Appeal of Judgement
- (E) Prepared Pro Se
- (F) Joe R Blurton
JRCC #33767
2521 Circle Drive
Jamestown North Dakota

NDRAppP§Rule 31(b)(1)(C):

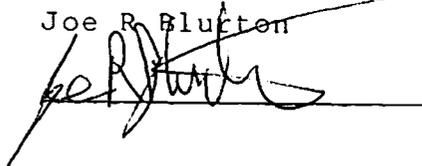
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NDRAppP§Rule31(b)(B):

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Prepared by:

Joe R. Blurton



March 15, 2009

STATE OF NORTH DAKOTA

MAR 15 2009

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CLERK OF SUPREME COURT

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NDRAppP Rule 28(b)(2) Table of Authorities

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(J)	State v. Bates 2007 ND 15, at 15-17 726 NW 2d 595	8	4,14
(Y)	Berger v. United States 295 US 78 88, 55S. Ct. 629	24	5
(S)	State v. Bertram 2006 ND P42 208 NW 2d 913	20	5
(DD)	Brady v. Maryland 373 US 83 10L Ed 2d 215, 83S. Ct. 1194 (1963)	29	2
(Q)	Brady, supra 373 US at 87, 83S Ct. at 1196-97, 10L Ed. 2d at 218	19 22 26 27 29 30	12 8 14 16 17 24
(L)	Disciplinary Board v. Britton 484 NW 2d 110 (ND 1992)	9	3
(M)	State v. Damran 432 NW 2d 554 (ND 1998)	11	2
(T)	State v. Drader 432 NW 2d 554 (ND 1988)	21	22
(Z)	State v. Fashing 461 NW 2d 612 (ND 1992)	27	10
(X)	State v. Fiest 2006 ND 21 708 2d 870 2006	23 31	18 22
(G)	Kaiser v. State 417 NW 2d 175 (ND 1987)	3	2
(AA)	State v. Lemons 2004 ND 44 P18 NW 2d 148	27 28	20 15
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(R)	State v. Schneider 270 NW 2d 787 (ND1987)	19	26
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(GG)	NDCC§12.1-20-03	7 11 12	17, 23, 25 27 5
(H)	NDCC§29-06-25	4 14	4 2
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(BB)	NDRCrimP§Rule 7	28	8, 15
(D)	NDRCrimP§Rule 11		Inclusive
(A)	NDRCrimP§Rule 52		Inclusive
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(V)	NDREvidP§Rule 803(4)	22	18
(EE)	NDREvidP§Rule 802	22	14

1. NDRAppP Rule 28 (b)(3) Jurisdiction
2. The Appealant ask that NDRCriP Rule 52(b) be made appli-
3. cable through NDRCriP Rule 35(a). That an obvious error
4. manifested in the May 05, 2008 Change of Plea and has
5. substantially impaired the rights of the appealant. That
6. NDRCriP Rule 35(a) allows correction of a sentence imposed
7. in an illegal manner up to 120 days after sentence. Here
8. the Defendant was sentenced Oct. 03, 2008 and filed appeal
9. on Jan 09, 2009.
10. That NDCC 29-23-11 allows "any error committed by the court
11. in or by any decision, ruling, instruction or other act,
12. and appearing in the action may be taken advantage upon
13. a motion for a new trial or in the Supreme Court on an
14. Appeal."

1. ND AppP Rule 28 (b) (4) Issues Involved
2. Blurton has waived his rights, plead guilty and agreed to
3. an ambiguous "factual basis" for a "promise" of plea bargain.
4. This misunderstanding was caused by a failure of the Trial
5. Court to fully implement ND CriP Rule 11. As a result the
6. defendant has been convicted by an uninformed and involuntary
7. plea he never would have made if he fully understood the
8. charges and sentencing involved.
9. Blurton's plea is wholly dependant upon assistance of coun-
10. sel, ambiguous due to errors in descriptions and citations.
11. Defendant's counsel, for whatever reason, made no effort
12. to protect and defend his clients rights. Blurton removed
13. counsel 6-10-08 and has recieved limited counsel since,
14. regardless of ND CriP Rule 44. Prior to the 8-25,2008
15. original sentence date, Blurton filed a pro se motion for
16. relief in attempt to demonstrate why judgement should not be
17. pronounced as allowed by NDCC 29-26-11. Present issues
18. of obvious errors, transcriptional errors and illegal sen-
19. tence are based in these previous issues not addressed
20. prior to sentencing or addressed by assistance of counsel
21. either pre-plea, pre- sentence or post conviction.treat-
22. ment required by the court.
23. "Before accepting a guilty plea, the court must follow the
24. requirements of this rule; these procedures are mandatory
25. and binding upon the Court, because guilty pleas result in a
26. waiver of the priviledge of self-incrimination, the right to
27. a jury trial and the right to confront witnesses."

1. NDRAppP Rule 28(b)(4) Issues Involved (cont. 2)
2. Kaiser v. State, 417 N.W. 2d 175 (N.D.1987)
(G)
3. These issues presented are "self-evident" in terms of
4. ND R CrimP Rule 11. That other Issues have been presented
5. "pro se" to the trial court and wholly ignored.
(2)

1. NDRAppP Rule 28(b)(5) History of Case

2. The defendant, Joe Blurton, was arrested in a warrantless
3. arrest in Ramsey County on Sept. 02, 2007. Ramsey County did
4. not invoke NDCC§29-06-25 and bring the accused before the
5. nearest magistrate^(H) for review of the Sept. 03, 2007 Affidavit
6. of Probable cause. (5)

7. Blurton hired attorney Lindsey Haugen in a non-refundable
8. retainer. Being unknowing of criminal defense procedure and
9. just passing through Fargo for the first time, he was heavily
10. dependant upon assistance of counsel. On Oct 4, 2007 and upon
11. assistance of counsel's advise, Blurton waived his right to
12. preliminary trial. On Oct. 18, 2007 and Dec. 11, 2007 Counsel
13. entered Joint Stipulations to Continue. The Jan. 23, 2008
14. dispositional trial was delayed until Mar. 19, 2008. It
15. appears counsel waived the motions trial as well as any out-
16. standing motions. (6)
(7) (8)

17. Counsel insisted that Lab/DNA results were worth waiting for
18. and Blurton agreed. There would be no incriminating evidence
19. taken from Blurtons fingernails and any DNA would be that of
20. unknown suspects. Blurton noted irregularities in the evidence
21. collection documentation and "chain of possession". Counsel
22. made no effort to contest these issues or prepare any
23. pre-trial motions or communicate a stratagey of defense. (9)
(2) (4)

24. The State reported Laboratory testing completed by "faxed"
25. results on Mar. 28, 2008; however these results were done
26. on Jan. 04, 2008. Blurton sees prosecutorial misconduct
27. in these actions and others his attorney refuses to acknowledge. (10)

1. NDRappP Rule 28(b)(5) History of case (cont. 2)
2. Blurton lost all confidence in his attorney making any effort
3. for trial. The State offered a plea agreement that "capped"
4. recommendations for sentence at 3 years. Blurton "gave up"
5. and accepted the offer as described by counsel and also out
6. of respect for the pregnant complainant. The terms did not
7. include any guarantee, however the defendant was led to
8. believe his productive and crime free life would bring a
9. light sentence and a very early ability to return home.
10. After the defendants plea on May 05, 2008 it became apparant
11. by reading accounts in the newspapers and through ND DOCR
12. John Knutson; Blurton had been entirely misled by Haugen.
13. Blurton complained to the court and requested Haugen "just
14. go away". Haugen was removed on June, 10, 2008.
15. Imediately the State filled a motion to prevent the defend-
16. (1) (57) dant from withdrawing his plea. The defendant did not file
17. any formal motion to rescind his plea, was without counsel
18. (1) | and had no idea what to do. Later the Court assigned Mr.
19. Monty Mertz as an attorney. The defendant wanted justice and
20. (59) due process in his plea, and felt there was significant
21. reason to rescind the plea. Mr. Mertz refused to consider
22. Blurton's request, to give an opinion of evidence used or
23. to talk to associates of Blurton who knew of activities at
24. the hotel that would influence statements of character. Mr.
25. Mertz made no effort to gain this information and took it
26. upon himself to speak for Blurton.
27. (11) As allowed by NDCC§29-26-11 and prior to the original
(F)

1. NDRAppP Rule 28(b)(5) History of Case (cont.3)
2. Aug. 25, 2008 sentence date Blurton filed "Defendants pro
3. (12) se motion for Reduction of Sentence per NDCC§12.1-32-04".
4. (I) This motion was to show a defense stratagy of multiple
5. assailants, corrupted evidence and very beneficial witness
6. statements that did not identify Blurton. The court made
7. no response, other than to continue to delay sentencing.
8. Presently Blurton files this appeal "pro se" because he has
9. had all of his property stolen while incarcerated and
10. (13) has no funds to hire legal counsel. Blurton feels any
11. court appointed attorneys from Cass County would not make
12. any attemp to defend him just as Mr. Mertz did himself. That
13. despite being charged with a AA felony and not having any
14. criminal record, Blurton has been denied due process since
15. arrest.

1. NDRAppP Rule 28(b)(6) Issue One

2. The defendant waived his rights in the May 05, 2008 Change

3. of Plea hearing in a misunderstanding of the charges and

4. maximum penalties involved. That the plea was not vol-

5. untarily and knowingly made. Specifically, NDRCrimP Rule §

6. 11(b)(1): "[the] trial Court may not accept a plea of (D)

7. guilty without first, by addressing the defendant person-

8. ally in Open Court informing the defendant of and deter-

9. mining the defendant understands the following...

10. [(F)] The nature of each charge the defendant is pleading;

11. (G) The maximum possible penalty, including imprisonment

12. fine, and mandatory fee."

13. Transcript from the May 05, 2008 Change of Plea, page 4

14 at 7-10; the defendants counsel explains to the court:

15. "[a] change of plea to an amended Count 1. Count 1 is

16. currently listed as a Gross Sexual Imposition under 12.1-

17. 20-03(1)(a). That would be amended to subdivision (1)(c), (GG)

18. and that takes out the compulsion force..."

19. To this statement the State adds an ambiguous statement:

20. "[And] we would ammend on the defendant's plea of guilty

21. to that amended charge,"

22. That amended to the amended charge in the May 05, 2008 in-

23. formation is a violation of NDCC Section 12.1-20-03(1)(c) (GG)

24. & 3(c); however the description of the elements of the

25. charge is that of 12.1-20-03(1)(b). It is apparant the (GG)

26. ambiguous and capricious nature of the Plea Hearing has

27. produced a charge that those whose govermental responsibility

1. NDRAppP Rule 28(b)(6) Issue One (cont. 2)
2. require they understand, and do not; let alone the def-
3. endant at time of Change of Plea. The defendants under-
4. standing of the maximum penalty, NDRCrimP Rule§11(b)(1)(G),
5. is not found at all within the transcripts. Where ^(D) NDRCriP
6. Rule 11: "[provides] an analytical framework for assesing
7. whether the plea is entered into voluntarily and knowingly."
8. State v Bates, 2007 ND 15, at 16-17, 726 N.W. 2d 595.
9. ^(J) Therefore it can be stated the defendant did not fully
10. understand the nature of the charges or the maximum possible
11. penalty.
12. The defendant's plea is his agreement to a promise, made
13. between assistance of counsel and the States Attorney.
14. NDRCrimP§Rule 11(b)(2) states: "[The] Court must also in-
15. ^(D)quire whether the defendant willingness to plead guilty
16. results from discussion between the prosecuting attorney
17. and the defendant or the defendants attorney."
18. Here the issue is not what the plea agreement was, the
19. defendant plead guilty in a promise, and never would have
20. done so if he was not decieved by a "promise". It is also
21. stated that if not for the assistance of counsel description
22. and his lack of asserting his clients rights, this plea
23. would never have happened. This event alone establishes
24. ineffective assistance of counsel:
25. "[To] establish an ineffective assistance of counsel claim,
26. the defendnat must show the representation fell below an
27. objective standard of reasonableness and the is a reasonable

1. NDRAppP Rule 28(b)(6) Issue One (cont.3)
2. probability, but for the counsel's unprofessional errors,
3. the result of the proceeding would have been different."
4. State v Palmer 2002 ND 5P11 638 N.W. 2d 819.
5. (K) Unprofessional errors and diligence are defined:
6. " NDR Prof. Conduct 1.1, 1.4, 1.5 and this rule [1.3]
7. require competent, diligent and informed representation and
8. fairly compensated representation. Those requirements are
9. at the core of an attorney's duty to zealously and faith-
10. fully pursue a client's interest." Disciplinary Bd. v
11. Britton, 484 N.W. 2d 110 (ND 1992). (L)
12. That on May 05, 2008 at the Change of plea hearing the
13. Court allowed a plea of guilty to be accepted without
14. determining the defendant understands and is knowing of the
15. Offense Charge and the maximum penalty. That Joe R.
16. Blurton entered a plea in response to a promise of plea
17. bargain agreement.

1. NDRAppP Rule 28(b)(6) Issue Two

2. The Factual Basis as required by NDRCrimP§ Rule 11(b)(3)

3. is recorded on page 6 at 11-25 and page 7 at 1-11^(D) in the

4. May 05, 2008 Change of Plea hearing transcript. This

5. factual basis is not supported by testimony available in

6. the case record. Information presented here is for the

7. first time.

8. Specifically two items: (1)"her and her boyfriend met,

9. they went around to several--various hotels." Found at

10. line 15-16 of page 6. And (2) "She then went to the bar

11. where she admittedly had too much to drink." From lines

12. 20-21 of page 6.

13. The complainant's accompaniment by her boyfriend is in

14. direct contrast to Officer Abel's FPD 7-11541-01 and -02.

15. The complainants intoxication is not supported by any⁽¹⁴⁾

16. physical or medical evidence, trained officers make no

17. notice of intoxication or the smell of whiskey. On

18. page 7 lines 4-5 of the same document; "We have witnesses

19. from the second floor of Motel 6 that saw all of this going

20. on." No recorded statements are submitted of these witness

21. or results of pre-trial identification. The factual basis

22. is wholly dependant⁽¹⁵⁾ upon the States Attorney knowledge of

23. events from undisclosed discussions with the complainant

24. and the police officers. (See page 5 at 9-11 for example.)

25. The Sept. 03, 2007 Affidavit of Probable Cause is based

26. upon⁽⁵⁾ Fargo Police Reports 7-11541-01 through -04. These

27. reports are dated Sept. 04,⁽¹⁶⁾ 2007, the next day. In the

1. NDRAppP Rule 28(b)(6) Issue Two (cont.2)

2. case: State v. Damran 1998 ND 71 P7 575 NW 2d 912 "[P]rob-

3. (M) able Cause is the sum total of layers of information and

4. the synthesis of what the police have heard, what they know

5. and what they observed as trained officers...which is not

6. weighed in individual layers but in the 'laminated' total."

7. Here the Officer is a layer of one, as his report does not

8. correspond to Officer Getz FPD 7-11541-03 and does not

9. (17) even include Officer Cruz. Statements from witness by

10. (18) Officer Getz identify unknown males and actions not in

11. support of "fighting or arguing with each other"; let alone

12. (19) forced oral sex and strangulation. The "excited utterances"

13. have not been tested in any Court. State v. Whalen520

14. (N) N.W. 2d 830 ND 1994; "[The] proponet of the evidence has

15. the burden of establishing the fundamental facts to make a

16. statement as an 'excitable utterance' exception to the rule."

17. Of interest is the States Attorney's input to this situation,

18. "she's highly intoxicated, unable to really control what

19. she's doing or the situation." The Complainant is tres-

20. passing, DUI, public intoxication among other possible

21. crimes and not really cognizant. Is her story credible

22. or is she trying to elude Police?

23. Therefore it can be clearly stated the "factual basis"

24. given is composed of contradictory and unconfirmed state-

25. ments. An ambiguous and undefined element of the charged

26. offense, the Complainant's Voluntary Intoxification, does

27. not match NDCC§12.1-20-03(1)(b). There is no proven fact

(GG)

1. NDRAppP Rule 28(b)(6) Issue Two (cont.3)
2. that Blurton "impaired the victim's power to appraise or
3. control the victims conduct by administering or employing
4. without the victims knowledge intoxicants..." The severity
5. of NDCC§12.1-20-03(1)(b) is based upon the premeditated act
6. that did not occur. There is no statement or proof that
7. Officer saw the complainant as unable to evaluate her sit-
8. uation. Her presence in the parking lot at 3:00am is
9. suspicious by it own, the reasons to be there even more
10. suspicious. The complainant has given Police an elusive
11. address compared to the address given the Hospital.
12. Her ⁽²⁰⁾ listed address is less ⁽²¹⁾ than six blocks from the Motel
13. Six. The only "proof" to the factual basis is that the
14. defendant agreed as a "promise" to plea bargain, he was
15. deceived.
16. Therefore it can be reasonably stated that the State has
17. withheld information of events. That the Police reports of
18. Officer's Getz and Abel are not consistent with each other.
19. Witness statements exist that are not 'laminated' into Abel's
20. Sept. 03, 2007 Affidavit of Probable Cause. And last; the
21. complainant is reported intoxicated of her own fault, was
22. creating a public nuisance and trespassing on hotel prop-
23. erty. That exact cause of intoxication, either by alco-
24. hol or drugs could be determined by Medical evidence taken.

(22)

12

1. NDRAppP Rule 28(b)(6) Issue Three
2. A letter dated Sept. 06, 2007 from States Attorney Delorme
3. addresses the defendant via counsel. Prior to any initial
4. plea, an arraignment, or even Cass County Incarceration;
5. States Attorney Delorme threatens with two possible options.
6. In constrast to NDCC§12.1-01-03;⁽⁶⁾"[1.] No person may be con-
7. victed of an offense unless each element of the offense is
8. proved beyond a reasonable doubt. An accused is presumed
9. innocent until proven guilty. The fact that the accused has
10. been arrested, confined, or charged with the offense gives
11. rise to no inference of guilt at the accused trial."
12. Here the States two options: 1.) plead guilty, be considered
13. amenable to treatment or 2.) seek trial and "risk assesment
14. determines no amenability to treatment" resulting in a
15. recommended lengthy period of incarceration.
16. Clearly this is a threat to the defendant at such an early
17. stage of proceedings, and the State has the power to control
18. any outcome. Disclosure of Investigation to the Court as
19. well as factual disclosure to the ND DOCR is a responsibility
20. of due process. Even after conviction this is still a
21. threat by conditions set forth for parole: "[You] shall attend
22. participate in, cooperate with and successfully⁽²⁴⁾ follow and
23. admit responsibility for your offense as part of the treat-
24. ment requirements."
25. State Attorney Delorme basis for a presumption of guilt is
26. Officer Abel's Sept. 03, 2007 Affidavit of Probable Cause.
27. Upon arrest in Ramsey County there was no imeadiate judicial
⁽⁵⁾

1. NDRAppP Rule 28(b)(6) Issue Three (cont.2)
2. review as prescribed by§NDCC 29-06-25. There has never been
3. any review of the credibility of FPD 7-11541-01 and -02,
4. which poses as Probable Cause, Offender Assesment and a basis
5. for Court required treatment. FPD 7-11541-01 and -02 is not
6. comparable to State Attorney Clark's "factual basis", Officer
7. Getz FPD 7-11541-03, Officer Abel's own FPD 7-11537 or the
8. Sexual Assult Nurses Examination.
9. In Officer Abel's FPD 7-11541-01 and -02 the defendant is said
10. to have; "[grabbed] her by the throat and began to choke her."
11. There is no corrobaborating medical evidence, witness state-
12. ments, victim statements, triage reports, parking lot sur-
13. vailance video, recorded victims testimony by Abel's squad
14. car video, or even a signed victims statement. The only
15. evidence to this statement is that Officer Able, who comitted
16. perjury in his Affidavit of Probable Cause wrote these words
17. down. States Attorney Clark, on page 7 lines 4-5 states,
18. "We have witnesses from the second floor of the Motel 6 that
19. saw all of this go on." Officer Getz's FPD 7-11541-03 re-
20. ports of these statements,"[the] two did not appear to be
21. fighting or arguing with each other it just looks like they
22. were talking." Credible witness evidence exist, the State
23. knows of this evidence, that it does not support Counts 1,
24. 2, or 3 and it describes a man not comparable in appearance
25. to Blurton.
26. Fargo Police waste time chasing rabbits and clutching at
27. straws as Investigator Stanger spends hours listening to

1. NDRAppP Rule 28(b)(6) Issue Three (cont. 3)
2. Blurtons phone calls as described in FPD 7-11541-15. The
3. Investigator does prove ont thing with FPD⁽²⁸⁾ 7-11541-15.,
4. ll summary reports exist and have been withheld since FPD
5. 7-11541-04, dated Sept 4, 2007.
(29)
6. "A findōing of fact is clearly erroneous if it is induced
7. by an erroneous view of the law, if it is not supported by
8. the evidence, or if, although there is some evidence to sup-
9. port it, a reviewing court is left with a definite and firm
10. conviction that a mistake has been made." Syvertson v. State
(I)
11. 2005 ND 128, P4, 699 N.W. 855
12. There are two findings of fact here the Court is asked to
13. review. One is States Attorney Clark factual basis of the
14. "element of offense". The other is Officer Abel's FPD 7-11541
(O) (16)
15. to be used as the basis of court required sex-offender
16. treatment.
17. The defendant contends that he was decieved by "plea bargain'
18. and "forced" by overly agresive prosecutor techniques into
(6)
19. a capricious and ambigious offense by statue. Then in order
20. to satisfy Court ordered treatment must admit to the capric-
(24,30)
21. ious and ambigious charges (whatever verision is agreed upon)
22. in order to return to his home state where he has a history
23. of law abiding and productive life.

1. NDRAppP Rule 28(b)(6) Issue Four

2. Blurton filed a NDRCrimP§Rule 35(b) motion for sentence
(B)

3. correction and has communicated to the court to make rec-

4. ord of discrepancies in discovery and investigation. Prior

5. to the original Aug. 25, 2008 sentence date the defendant
(31)

6. made known these issues as allowed by NDCC§29-26-11. The
(32)

7. Courts response to the Rule 35 Motion:
F

8. "[Here] the information that the defendant is submitting to
(B)

9. the Court is not new. All of these arguments had been pre-
(33)

10. sented to the Court at times before sentencing and cer-

11. tainly was in the Courts mind at the time of sentencing."

12. Blurton contends an adversely and involuntary position

13. of ineffective representation allowed issues to be intention-

14. ally distorted. In light of a AA felony charge the defendant

15. recieved dismal efforts toward due process of law or due

16. diligence by police in investigation. For Example:

17. State withheld disclosure of Officer Abel's FPD 7-115377
(25)

18. discovered five months after Blurton's arrest, impeaded a

19. factual investigation by not revealing the complainant's boy-

20. friend was indeed at the scene. Robert Wenzlof III is report-

21. ed in Abel's FPD 7-11541-01 & -02 as being left behind at
(14)

22. the bar, however he was clearly involved in an accident at

23. 2:06 AM in the same Motel 6 parking lot. Able's report

24. claims the complainant "accidentally drove to the wrong hotel"
(34)

25. and goes into detail of verifying this story. Abel appears to
(35)

26. be covering up for Wenzlof, and the criminal activities at

27. the hotel.

1. NDRAppP Rule 28(b)(6) Issue Four (cont. 2)

2. The State also fails to make timely release of the VHS
3. security tape reported in FPD 7-11541. A repeated request
4. for disclosure was made on Oct. 16, 2007. Dilitary response
5. was made Nov. 27, 2007 in a DVD copy of the VHS tape. For
6. whatever reason defendant's counsel did not review this
7. recording until Jan. 01, 2008. Regardless of poor copy,
8. it was able to date this copy as being recorded on Sept. 02,
9. 2007 starting at 7:00 AM and continuing until Sept 3rd at
10. 7:00 am, it was indeed the next's days tape. A repeated
11. request for the correct tape was made Jan. 10, 2008 and
12. this issue was never resolved or Motion ruled upon by the
13. Court.

14. Limited initial disclosure was made of Investigator
15. Stanger's interviews and pre-trial identification efforts.
16. A second request was made Oct. 03, 2007 in which the State
17. only replied with CD's of photographs used. The photographs
18. used in compairson were not of the same age, race, hair-
19. style, height, clothing or weight compaired to the defendant.
20. Blurton was shown in jailhouse orange, photographed by
21. Stanger imeaditly after Blurton denied to talk with the
22. Police without an attorney present. This photograph was
23. then distributed to the press.

24. FPD 7-11541-01 also gives reference to Officer Cruze
25. and her CSI work. There is no discovery of this noted re-
26. port or logging of evidence items (1) through (6) even
27. though items (2) and (4) are sent to the State Lab. There

1. NDRAppP Rule 28(b)(6) Issue Four (cont 3.)
2. is no corresponding Chain of Possesion for any Fargo Police
3. Items (1) through (6) despite Able's statement he "logged in
4. as evidence". (43)

5. Counsel waived Blurton's right to a speedy trial to
6. await Lab/DNA evidence that should have exonerated him.
7. Lab results were released on Mar. 28, 2008 however they are
8. dated Jan. 04, 2008; indeed they are intentionally delayed. (45)
9. Items (2), (4), (7) and (8) are reported "sealed" in the (46)
10. Lab reciept as when collected, in particular items (7) and (47)
11. (8) sealed by Ramsey County Deputy Smith. Lab report show
12. items illogically placed, item 3C and 3D, a bra and skirt (48)
13. have been added since Blurton's arrest. Other items such (49) (49)
14. as rectal swabs for the defendant and unknown swabs of
15. "dried secretions" are evidence of tampering and Obstruction (49)
16. of Justice. DNA results have been tampered with however Item (49)
17. 1A is prima facie of an unidentified male's semen.

18. It should be of record the defendant's counsel actions:
19. There was no record of counsel's attempts to question Lab/DNA
20. results or lack of Chain of Possesion or CSI report. In (50)
21. preparation for trial the State subpoenaed Officers Abel, (51)
22. Cruze and Stanger but not Getz. Defendant's counsel failed
23. in any pre-trial motion or communicated any defense stratagy (52) (53)
24. to question witnesses or Officer's use of "excited utterances," (P)
25. Counsel failed to persue testimony of defendant's boyfriend.
26. Counsel failed to request disclosure of EMT reports, ambul-
27. ance records, hospital or Doctor reports, discharge reports

1. NDRappP Rule 28(b)(6) Issue Four (cont. 4)
2. or SANE examiner's statements that would confirm "no trama"
 (42)
3. confirm no marks upon neck nor petikula hemmorage ect.
4. Counsel failed to request pictures of the defendants clothes
5. or to even investigate their whereabouts. Defendant's cell
 (54)
6. phones (with certain numbers stored and photographs) and his
7. clothing are missing from Cass County property and defend-
 (54)
8. ant's counsel does nothing to regain this valuable evidence.
9. The court is asked to consider Issue Four as dual
10. issues. One of Brady evidence misconduct and one of ineffec-
11. tive assistance of counsel to assert defendant's rights.
12. Citing Brady, supra 373 US at 87, 83S Ct. at 1196-97,
 (Q)
13. 10L Ed. 2d at 218; the Supreme Court ruled:
14. "[T]hat suppression by the prosecution of evidence favorable
15. to an accused upon request violates due process where the
16. evidence is material to guilt or to punishment irrespective
17. of the good faith or the bad faith of the prosecution."
18. Repeated flagrancy of police and prosecutor misconduct
19. can not be ignored in it's effect to "force" Blurton to plea
 (23)
20. guilty to have some hope of a future life. That counsel made
21. no verifiable attempt in pre-trial motion that can be found
 (55)
22. to assert the defendants rights.
23. The Court is asked, "Before a federal constitutional error
24. can be held harmless, court must conclude beyond a reason-
25. able doubt that the error did not contribute to the verdict".
26. State v. Schneider, 270 N.W. 2d 787 (ND1987). Here the
 (R)
27. error "forced" a plea of guilty.

1. NDRAppP Rule 28(b)(6) Issue Five

2. On May 27, 2008 at a pre-sentence investigation by John
3. Knutson of the ND DOCR, it became apparant to Blurton he
4. had been decieved at the Change of Plea. News to him was
5. issues as sex-offender registration and treatment require-
6. ments for eventual parole/probation were never explained by
7. Counsel or by the Court. One overwhelming factor in Blurton's
8. decision to plea was to return home before his mother
9. passed. Upon agreeing to the ambiguous charges and factual
10. basis that did not occur in exchange for a plea bargain
11. the never produced as promised; it is now impossible to
12. satisfy treatment requirements of Item "6" of sentencing:

13. "That while incarcerated in the North Dakota Penitent-
14. iary the Defendant shall enroll in, attend and seccessfully
15. complete any available sex offender program."

17. Notwithstanding is Appendix "A" item 24. (I), the parole/
18. probation requirements for treatment, and which ammendment
19. takes presidence. Inceed, the Trial Court has created an
20. ambiguity surrounded in uncertainty, which surely the defend-
21. dant did not understand at the Change of Plea.

22. Citing State v. Drader 432 N.W. 2d 554 (ND 1988) :
23. (T)

24. "[T]here is a great value in making all conditions of release
25. clear and capable of being understood by the offender in
26. that he knows exactly what is expected of him."

27. At the Change of Plea it was clearly stated by both the
State and the defendant's counsel of the offense at Page 4

1. NDRAppP Rule 28(b)(6) Issue Five (cont 2)
2. line 10-13:
3. "...and that takes out the compulsion force and the threat
4. of imminent death or [serious--and--bodily injury.]"
5. John Knutson is using the FPD 7-11541 police report as his
6. source of information. As ⁽¹⁶⁾ previously stated in Brady v.
7. Maryland, a violation of due process occurs when prosecution
8. withholds "evidence [that] is material to guilt and punish-
9. ment." ^(Q) Clearly evidence used in a pre-sentence investigat-
10. ion is material to punishment and clearly the State is with-
11. holding evidence. Primarily the SANE report which confirms
12. "no trama" and secondly; States Attorney Clark source of ⁽⁴²⁾
13. information for her "factual basis".
14. No where in the record is sustainsive evidence for Abel's
15. Probable Cause statements such as, "she stated he grabbed
16. her by the throat and began to choke her." Abel's statements ⁽²⁶⁾
17. have not been challanged by any Judicial review as NDREvidP
18. Rule 802 allows for hearsay; however NDREvidP 803(4) makes ^(U)
19. the SANE report undeniably acceptable as medical evidence. ^(V)
20. The State Attorney does make record of her opinion on
21. page 5 lines 9-10:
22. "We think we could have proved the other case, however,
23. in talking with the Police Officer, as well as the victim,
24. this is the best resolution."
25. The States Attorney is expressing reasonable doubt,
26. and verifies the existance of undisclosed conversations
27. This evidence along with Stangers statements from eyewitness ⁽¹⁵⁾

1. NDRAppP Rule 28(b)(6) Issue Five (cont.3)
2. and pre-trial identification results has been withheld.
3. (15) This issue is "material to guilt or punishment" and
4. becomes evident in Questions 5 & 6 of the MNSOST-R. John
5. Knutson includes "force" in his evaluation and scores (56)
6. accordingly. Repeatedly Blurton attempted to contest this
7. factual inaccuracy as allowed by NDRCrimP Rule 32(c)(F).
8. (W) It should be apparant Blurton was seeking solutions,
9. evident by letters to the Court, Mr. Knutson and SE Services.
10. The State responded with a "preemptive attack" by filing
11. "States response to defendants motion to withdraw guilty
12. (57), plea. No official motion had been filed and Blurton had only
13. just "~~fired~~" counsel in order to get a second opinion.
14. (1) The State seeks only to "win" and attacks a defendant without
15. counsel to prevent a relative easy solution be developed.
16. The resultant injustice from the ambigious Change of Plea
17. then manifest into sentence, treatment and parole/probation.
18. Citing State v. Fiest 2006 ND 21, 708 N.W. 2d 870 (2006):
19. (X) "Because the record showed that the Distric Court did not
20. substantially comply with the requirements of NDRCrimP 11(c)
21. as the Distric Court did not ask whether defendant's
22. guilty plea was the result of plea negotiations and there
23. was ambiguity apparent on the record as to whether a plea
24. agreement existed between the parties, pursuant to NDRCrimP
25. 32, the withdrawal of defendant's guilty plea was necessary
26. to correct a manifest injustice."
27. In the States desire to "win" they are overlooking Witness

1. NDRAppP Rule 28(b)(6) Issue Five (cont.4)
2. statements, questionable DNA results of a semen not ident-
3. ified as Blurton and a history of domestic violence between
4. Complainant and her boyfriend. (58)
5. Citing Berger v United States 295 US78,88,55Sct429:
6. (Y)
7. "[T]he representative not of an ordinary party to a con-
8. troversy, but of a sovereignty whose obligation to govern
9. impartially is as compelling as its obligation to govern
10. at all; and whose interest therefore, in a criminal prosecu-
11. tion is not that it shall win a case, but that justice shall
12. be done."

12. Mr. Mertz was then duly appointed by the Court, "to
13. (59)
14. be sure that Mr. Blurton has had a chance to talk with Mr.
15. Monty Mertz to see if withdrawing his guilty plea would be
16. in his best interest." Blurton had visited with Mr. Mertz
17. around July 15th; issues of evidence suppression, witness
18. statements and DNA results along with Wenzlof's involve-
19. (58)
20. ment were discussed. Mertz stated he may have a conflict
21. of interest issue with Wenzlof. Without a doubt, Blurton
22. (58)
23. sought resolution of his ill-informed plea. Mertz did not
24. answer phone calls or fully explain the charges facing
25. Blurton, the Defendant was led to believe the plea agree-
26. was intact. Notwithstanding there continued a problem with
27. pre-sentence investigation that Mertz also fails to assist
28. Blurton with. Dr. Benson's record, as compared to a Letter
29. (60)
30. from the Court Recorder dated July 23, 2008 makes this
31. (61)
32. evident.

1. NDRAppP Rule 28(b)(6) Issue Five (cont 5)
2. Dr Benson of the Southeast Services makes note in the Risk
3. (60) Assessment: "Mr. Mertz states that at the current time
4. [July 17th, 2008] Mr Blurton was entering a plea to withdraw
5. his guilty plea. His attorney stated that once this issue was
6. resolved, if the guilty plea was not allowed to be withdrawn
7. he would be encouraging his client to participate fully in
8. the evaluation, but that given the current legal status it
9. was probably best for the evaluation to be placed on hold
10. until the court has made the determination. On July 17, 2008
11. I contacted Mr. John Knutson with that information and the
12. evaluation was placed on hold."
13. However; July 23, 2008, Court Action #93 the court rec-
14. (61) ord clearly enters Mr. John Knutson's Pre-sentence report and
15. addendum. The Joint Motion to disclose this Pre-sentence
16. report and addendum is then Dated Aug. 15, 2008. Included
17. (62) within this set of documents are articles dated later than
18. the July 23, 2007 date of Action #93.
19. (61) The evaluation was not placed on hold and Mr. Mertz
20. did not make any effort to either rescind the defendant's
21. plea or to assert his rights as earlier explained as to the
22. issue of force. Mr. Mertz allowed Blurton to sit in jail
23. until finally Oct 3, 2008, 122 days go by after the May 05,
24. 2008 Change of Plea and 400 days go by since the Sept. 02,
25. 2007 incident and neither defense attorney makes any effort
26. to defend Blurton. Clearly States Attorney Clark says, "We
27. have witnesses from the second floor of the motel 6 that saw

1. NDRAppP Rule 28 (b)(6) Issue Five (cont. 6)
2. all of this go on." Can no one get a statement from these (15)
3. witnesses?
4. As stated earlier in Issue Three, States Attorney
5. Delorme's letter is percieved as a threat. Not only can (23)
6. the State manipulate evidence as shown in Issue Four, the
7. State can manipulate medical statements and offender (60) (61)
8. assesments. That Blurton is threatened with criminal proceed-
9. ings that could lead to falsified documents for civil com-
10. mitment.
11. The Offender Evaluation was not presented to the Court, (60)
12. as there is no record. The recommendations of Dr. Benson
13. were completely ignored. Critical evidence was withheld,
14. "material to guilt and punishment" and DNA evidence is (Q) (41)
15. "inconsistant". That on Oct 03, 2008 Mr. Monty Mertz led
16. Blurton into a courtroom with rose colored glasses and a
17. belief Blurton would recieve a sentence of "time-served".

1. NDRAppP Rule 28(b)(7)(A) Appealant's Contentions

2. NDCC 12.1-01-03, 1. "No Person may be convicted of an offense
(O)

3. unless each element of the offense is proved beyond a reason=

4. able doubt. The fact that the accused has been arrested,

5. confined, or charged with the offense gives rise to no in-

6. ference of guilt at the accused trial."

7. "To successfully challenge the sufficiency of evidence on

8. appeal, defendant must show that the evidence, when viewed

9. in the light most favorable to the verdict, permits no

10. reasonable inference of guilt." State v. Fasching, 461 N.W.
(Z)

11. 2d 612 (N.D. 1992)

12. "[that] suppression by the prosecution of evidence favorable

13. to an accused upon request violates due process where the

14. evidence is material to guilt or punishment irrespective

15. of the good faith or the bad faith of the prosecution."

16. Brady, supra 373 US at 87, 83 S Ct. at 1196-97, 10L Ed.
(Q)

17. 2d at 218

18. "A District Court abuses its descretion only when it acts

19. in an arbitrary, unreasonable or capricious manner, or

20. misapplies the law." State v Lemons 2004 N.D. 44 P18 675
(AA)

21. N.W. 2d 148.

22. At the May 05, 2008 Change of Plea hearing the Appealant

23. argues that he was "decieved". These arguments are self-

24. evident, as NDRCrimP Rule 11(e) gives it's own argument in:
(D)

25. "...[If] there is a plea of guilty, the record must include

26. the court's inquires and advice to the defendant required

27. under Rule 11(b) and (c).⁴

1. NDRAppP Rule 28(b)(7)(A) Appealant's Contentions (cont 2.)

2. The court has allowed the information to be amended
3. after the Change of Plea : "And we would amend on the
4. Defendant's plea of guilty to that amended charge." Page 4
5. at 16-17 (CoP transcript). That the defendant was not pre-
6. sented with an amended information prior to the Court's
7. acceptance of the plea of guilty.

8. Citing NDRCrimP Rule 7(e): "Unless an additional or
9. (BB) different offense is charged or a substantial right of the
10. defendant is prejudiced the court may permit an information
11. to be amended at any time before the verdict or finding."

12. A second amended information is stamped " Filed-Clerk
13. of Court" Feb. 18, 2009 and a third Motion to amend the
14. (64) Information was filed Feb. 19, 2009. The court has allowed
15. (67) misapplication of NDRCrimP Rule 7(e) and is acting "in a
16. (BB) arbitrary, unreasonable or capricious manner." (AA)

17. Distric Court Register of Actions 126, 127, 128, 129
18. (63) (64) (65) (66) and 132 represent a collusional effort of Former counsel
19. (67) Mr. Mertz and States Attorney Clark to "...amend on the def-
20. endants plea of guilty to that amended charge." in order to
21. make the record correspond to States Attorney Clark's
22. factual basis. The factual basis is unsupported by the record
23. of NDRCrimP Rule 16 Discovery and based upon private con-
24. (CC) versations as "...in speaking with the victim..." Page 5 at
25. 6 and 7 and again same page at 10 and 11 "...in talking with
26. the police officer, as well as the victim..." disclosed
27. by the State at the Change of Plea hearing.

1. NDRAppP Rule 28(b)(7)(A)Appealant's Contentions (cont3)

2. Citing Brady vs. Maryland 373 US 83 10L Ed 2d 215,
(DD)

3. 83S. Ct 1194 (1963):

4. To establish a Brady Violation the defendant must prove;

5. "(1) the goverment possed evidence favorable to the defen-

6. dant (2) the defendant did not posses the evidence and could

7. not have obtained it with reasonable diligence (3) the

8. prosecution suppressed the evidence (4) reasonable probabi-

9. lity exist that the outcome of the proceedings would have

10. been different if the evidence had been disclosed."

11. Citing NDCC§12.1-01-03 requirements: "[E]ach element
(O)

12. of the offense...[to be proven]...beyond a reasonable

13. doubt." In this situation there is no first person complain-

14. ant's statement, the complainant exist in Officer Abels

15. Affidavit of Probable Cause.

16. The credibility of Abel's statements and the prosecutor

17. use of these statements "material to guilt or punishment"

18. are questionable. There should be "squad car video" that
(O)

19. is available, imeadiate medical attention was provided by
(6,8)

20. ambulance, eyewitness testimony exist but is undisclosed,

21. the complainant's boyfriend was present and no statement
(19)

22. is available, the "front-desk" VHS is mysteriously the

23. wrong date, there is no CSI report or DNA/Lab report sub-
(38)

24. mitted to the record...the list goes on.
(18) (41)

25. There is without a doubt a clear corruption of the

26. truth finding process. There is also a claim of ineffective

27. assistance of counsel to assert the defendants rights.

1. NDRAppP Rule 28 (b)(7)(B) Discussions
2. The Appealant has presented five issues in detail to the
3. best of his layman's abilities.
4. That Joe R Blurton ask the Court to consider the Issues
5. presented and review of the record within the provisions of
6. NDRAppP Rule 35(b).
(EE)
7. BRIEF REVIEW OF ISSUES PRESENTED:
8. Issue One: The defendant did not understand the nature of
9. the "element of offense" or the maximum possible penalty.
10. per NDRCrimP Rule 11(b)(1)(F) and (G)
(D)
11. Issue Two: An ambiguity exist in a factual basis not sup-
12. ported by the record, and in contrast to reports by witness
13. recorded by other officers involved in investigation.
14. Issue Three: That a capricious and ambiguous Information
15. and element of offense developed from a failure of NDRCrimP
16. Rule 11 to be fully implemented. This failure has manifest
17. into injustice of parole/probation and treatment require-
18. ments of sentence.
19. Issue Four: Flagrancy of Police and prosecutor misconduct
20. as well as a claim of ineffective assistance of counsel have
21. impinged defendants rights of due process. These issues
22. presented would develop with a full evidencuary hearing
23. as allowed by Post Conviction NDCC§29-32.1.
(FF)
24. Issue Five: Relevant evidence "material to guilt and
(Q)
25. punishment" in the form of PSI and Offender Evaluation
26. as well as physical evidence has been manipulated to
27. leave the defendant no option but to plea guilty.

1. NDRAppP Rule 28(b)(8) Relief Sought
2. The Court is asked to review the record, to employ
3. NDRAppP Rule 10 and make available suppressed documents. The
(HH)
4. Court is asked to review the Trial Courts implementation
5. of NDRCrimP Rule 11. In particular page 3 and page 4 as there
(D)
6. is no colloquy between the defendant and the Court. The
7. NDRCrimP Rule 11 analytical framework emphasized by the US
(D)
8. Supreme Court in the Federal Version of this rule has been
9. rendered meaningless. Just as meaningless as the expost facto
10. amends made prior to the transmittal of the record.
(126, 127, 128, 129, 132)
11. That on May 05, 2008 Joe R Blurton entered a plea of
12. guilty that was uninformed, forced due to a withholding of
13. evidence manipulated by the State to leave but no option.
14. A Injustice then manifest into an impossible provision of
15. sentence required treatment. The failure of treatment will then
(30)
16. manifest into injustices of parole/probation and deferred
(24)
17. sentence.
18. The appealant had made effort proceeding the Change of
(1)
19. Plea hearing. Being overwhelmed by prosecutors who act cap-
(57)
20. riciously with the public defender to deny any attempt to
(11)
21. to correct the plea; " pursuant to NDRCrimP Rule 32, the
(X)
22. withdrawl of the defendants plea was nessesary to correct
23. a manifest injustice "
24. That any chance to confront the complainant, to subpoena
25. witnesses, to confront witnesses, for a fair jury trial; all
26. of these rights have been prejudiced by actions allowed in the
27. Trial Court.
(57)

1. NDRAppP Rule 28(b)(8) Relief Sought
2. NDRAppP Rule 35(b)(1) allows the Supreme Court upon
(EE)
3. direct appeal from a verdict or judgement to reverse the
4. judgement. That to remand the case for trial places the appeal-
5. ant into a prejudiced position where irreversable damage has
6. been allowed by the Trial Court.
7. The Appealant Joe R. Blurton ask the Supreme Court to
8. reverse the Judgement entered against him on Oct. 03, 2008
9. and effect his imeadiate release from DOCR Custody.