

IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
MAY 25, 2010
STATE OF NORTH DAKOTA

State of North Dakota,)	
)	Supreme Court No. 20090387
Plaintiff/Appellee,)	
)	
v.)	
)	Williams Co. No. 53-05-K-1170
Art Tibor,)	
)	
Defendant/Appellant,)	

PETITION FOR REHEARING
OF NORTH DAKOTA SUPREME COURT OPINION AND JUDGMENT DATED
MAY 11, 2010 AFFIRMING DISTRICT COURT ORDER DENYING THE MOTION
FOR NEW TRIAL

MYHRE LAW OFFICE
By: Mark T. Blumer
Attorney at Law
ND Bar ID#: 04669
341 Central Ave. North, Suite 3
P.O. Box 475
Valley City, ND 58072
Telephone: (701)845-1444

TABLE OF CONTENTS

Table of Contents.....	p.2
Table of Authorities.....	p.3
Statement of the Issues.....	¶1
Statement of Petitioner.....	¶2
Conclusion.....	¶5

TABLE OF AUTHORITIES

STATUTORY MATERIALS AND RULES OF PROCEDURE

N.D.R.App.Pro. 40.....	¶3
------------------------	----

STATEMENT OF THE ISSUES

[¶1] It is the Petitioner/Appellant's opinion that the Supreme Court overlooked or misapprehended the importance of Ms. Condol's testimony at trial as factual and not scientific evidence and the trial court's failure to hold a hearing on his Motion for New Trial.

STATEMENT OF THE PETITIONER

[¶2] On July 30, 2009, Art Tibor filed a motion for acquittal or new trial which specifically attacked Ms. Condol's testimony regarding "The Child Sexual Abuse Accommodation Syndrome" ("CSAAS"). On November 18, 2009, the District Court denied Mr. Tibor's motion without first holding a hearing on the matter. Mr. Tibor contends the district court incorrectly denied his motion and that a hearing should have been held at which time he could provide testimony and/or legal argument in support of his motion.

[¶3] Pursuant to Rule 40 of the North Dakota Rules of Appellate Procedure, Art Tibor requests the undersigned attorney file this Petition for Rehearing of the North Dakota Supreme Court opinion and judgment dated May 11, 2010, which affirmed the lower courts denial of Tibor's Motion for New Trial. It is the opinion of Mr. Tibor that the Supreme Court overlooked, or misapprehended, the importance of the fact that Ms. Condol's testimony was factual and not scientific and that Mr. Tibor did not become aware of conflicting articles to attack Ms. Condol's testimony, referred to in his appeal, until after trial. Mr. Tibor argues that Ms. Condol's testimony was given immediately after the alleged victim testified and that the Supreme Court overlooked, or

misapprehended, the importance of how the jury would have received this inadmissible “factual” testimony, given by Ms. Condol to explain the alleged victim’s testimony.

[¶4] Lastly, Mr. Tibor argues that the Supreme Court overlooked, or misapprehended the importance of the fact the district court failed to hold a hearing on his motion for new trial at which time he, or his court appointed attorney, could present testimony and/or legal argument in support of his motion and in support of the newly discovered evidence.

CONCLUSION

[¶5] Art Tibor respectfully requests a rehearing of his appeal.

Respectfully submitted this 25th day of May, 2010.



Mark T. Blumer, ND ID# 04669
Attorney for Defendant/Appellant
Myhre Law Office
341 Central Ave., Ste. 3
P.O. Box 475
Valley City, ND 58072-0475
Phone # (701)845-1444
Fax # (701)845-1888