

RECEIVED BY CLERK
SUPREME COURT

JUL 05 2022

IN Supreme Court

North Dakota

Benter

Appellant

VS:

20 21 01 99

State of North Dakota

Appellee

Comes now the Appellant pro-se and hereby petitions the court for a rehearing, and request a continuance to file same. And states to wit:

1 Appellant was not given advance / prior knowledge of the appeal hearing

2 At 16:45 hours on May 26, 2022 Appellant was given a legal letter by his attorney of record; Benjamin Pulkrabek. Said letter informing Appellant:

- His Appeal was heard on May 12th, 2022

- Appellant had until May 26th, 2022 to file for a new (rehearing) See enclosures

- Appellant had until May 19th, to contact his attorney, ^{if} ~~the~~ he intended to dispute the decision of the court, and request a new hearing

- 3 Appellant Sent his Counsel & record a letter on May 27, 2022 informing his attorney, that he did not receive said attorney's letter (notice of, and outcome of hearings) until after the dead line. In said letter, Appellant:
 - ' informed his attorney, he would like to petition the court for a new hearing
 - " Asked his attorney to file for a continuance.
- 4 Appellant did not hear from his attorney, until June 6th, 2022 instructing his client, (Appellant) to call, or write him (PulKrabek)
- 5 Appellant called his Attorney, on June 8th, 2022. In so called phone conversation Appellant's Counsel, MR PulKrabek, basically informed his client to "F" off; --- he (PulKrabek) wasn't gonna do nothing, --- because I (Appellant) ^{Failed} ~~tried~~ to get ahold of, and contact him, by May 19th, 2022
 - ' It is impossible for me to contact my attorney, meet a court deadline; --- when I am not informed of said, until after the fact.
- 6 wherefore, Appellant duly prays that the court grant him an extension of time, to request a new hearing. And

appoint new (competent) counsel to represent him. Appellant further amends, and goes on to state; that in said new hearing, Appellant desires to present the facts to the court, that Appellant raised for the basis of his appeal, in his prose appeal filing; July 2nd. Before Counsel Pulkrabek was appointed to represent him.

1. Illegal Search Warrant
2. Denied right to make legal arguments
3. Search warrant was not signed by a detached judge; one not prior / previously involved in the case
4. Presiding judge, was same judge issued Plaintiff search warrant. Per findlaw.com (?) if the search warrant don't list 5 things; --- it is an invalid / illegal search warrant
 - list address to be searched
 - list which ^{state} buildings can, cannot be searched
 - has to be signed by judge
 - has to be issued by a detached magistrate / judge
 - Cannot be issued by judge assigned to hear / try the case
 - I have legal right to see / inspect the search warrant, before granting law enforcement access / entry into my house, ^{or} my property

- 5 I had [have] civil litigated law suits naming presiding judge as a Defendant. (State and Federal)
- 6 The State Fabricated (planted) evidence against me. And the judge wouldn't let me testify to / against this; --- or present this to the court. When presenting my own case
- 7 The judge picked, and selected the jury he wanted. When I didn't know how to properly proceed in the "jury illumination process."
- 8 I was denied my right to speedy trial
- 9 I was denied to present, and call witnesses. After having, or requesting that they be subpoena'd
- 10 I was denied right to have my own forensic expert examine evidence used against me
- 11 I was denied to have, or call expert witness(es) to testify to my mental stability. To determine whether or not, I understood the charges against me. And knowingly knew that said was illegal.
- 12 I was denied to present evidence which could /

would have proved my innocence in said matter.

' somebody hacked (ing) into my computer (internet)

' evidence supporting / proving my internet was accessed from a location other than my residence

13 I was denied to cite past ~~supreme~~ ^{similar} supreme court rulings, in cases where supreme court ruled in favor of Defendant, dismissing all charges

14 I was denied right to adequately present my case, and give testimony to the best of my ability, and knowledge

15 I was denied right to present character witness statements, which is an essential element, in defending a charge (es) as this. According to lawyer, at findlaw.com

16 I was denied my constitutional right to know, and meet my accuser face-to-face, at trial

' If nobody can point me out, and identify me at trial, --- charges have to be dismissed!

17 I never received a copy of my charges, before my trials. And never got a formal copy of my charges at, or during my trial

- 18 I never received a copy of the evidence to be used against me. And didn't know what said was, until the State introduced it.
- 19 I was denied right to its^(object) introduction
- 20 State's witness(es) were allowed to give incriminating evidence against me. To something I wasn't charged with. And wasn't a part of the evidence.
I wasn't allowed to object to its introduction
- 21 State submitted items of evidence that State's own expert witness testified that they were not illegal to own, have, possess. And were not clp
- 22 The State has Burden of Proof, to prove that:
I am guilty of a crime
Knowingly, willfully, ^{wantoningly} ~~wantoningly~~, Committed an illegal act
Being better educated, and having / possessing social graces (not being speech impaired) is not evidence of a crime
- 23 The fact that the items in question were obtained, Viewed over 10 years ago, and were done outside of the state of North Dakota, is more than sufficient grounds for dismissal

- lack of jurisdiction
- expiration of statute of limitations

- 24 Images deemed illegal here, ^(NN) are legal to own, have, possess, view, in other states. And places of origin. If charges are to be brought / filed; they need to be filed in the state of origin
- 25 I was wrongly accused, and convicted of a felony; when North Dakota Century code — clearly states this is a Misdemeanor offense
- 26 State confiscated all my documentation, online research, and copy of N.D. statute, proving that this is (would of been) a Misdemeanor offense
- 27 State introduced evidence of video's of somebody touching minor, --- claiming it to be me. But state didn't produce said victim, to testify against me; that I touched her, molested her, coerced her into taking pictures / videos against her will
- 28 State failed to prove (provide any evidence) that it was me in any of the video's they introduced into evidence.
- BCI Agent's testimony (word) that he believes it

to be me, -- is not proof beyond a reasonable doubt.

• No Voice analysis was done / conducted

Q9 I was not allowed the right to prove (present evidence) that the items of evidence used against me were not on any of my devices

30 I was denied right to make any mention on errors of the court, or violations of my Due Process Rights; by law enforcement

31 State took / confiscated all my legal research, exhibits, needed to present my case. And defend myself, after my trial was over. So I wouldn't have them for my appeal, or Post Conviction Relief Action

• If I had an Attorney at trial, -- state wouldn't have gotten away with this

• If I had an Attorney at trial, -- state wouldn't have took / confiscated said items of legal research, documents, exhibits, court cases, legal statutes, from said Attorney

• State also took all my correspondence, phone calls, emails, to my attorney (3) Doctor's, etc

32 I was denied right to present any evidence, or documentation of any kind proving / supporting my innocence

33 Whenever I objected to the State's introducing evidence, on the grounds that:

- I didn't know what it was
- Didn't have chance to review it before its' being introduced
- wasn't made aware of its' existence

All my objections were overruled. And same was permitted

34 I was never given copies of the State's exhibits / evidence, to be used against me before, during, or after trial. After filing a motion with the clerk of court, on May 4, 2022 "Request of Interrogatories", 48 hours before my trial date (May 6, 2022) Due Process Violation

Requesting that:

- The state provide me with a list of the names of all witnesses they intended to call.
- Itemized list of what each witness was gonna testify for.
- Disclose (make known to me) any, and all evidence / exhibits, they intended to introduce at trial

35 The state failed to respond to demand for interrogatories
(Due Process violation, and grounds for dismissal)

The state failed to make known, present / show me
their evidence against me; before trial; And before
submitting, and introducing it to the court. (into
evidence)

- The state showed all their evidence to the judge,
and jury. Even provided juror's copies of the
evidences. - But didn't show anything to me;
or provide me with any copies

36 The state didn't produce any of my devices at trial.
And prove that illect imagery was in fact, on them.

Due Process Violation; "Burden of Proof"

- Whenever one is charged with offence of
possession (illegal drugs) or murder, etc.,
the drugs, or the murder weapon are passed,
and introduced as evidence, and present in the
court room

- If state can't prove, and show that illect
imagery was in deed / in fact on my device (s)
the state has failed to meet it's burden of proof
and charges have to be dropped / dismissed

- 15

#13 Continued

The Judge ruled: citing of past court cases is (was) inadmissible in court... But he allowed the State to cite old / pass cases

Wherefore Appellant duly prays that the Court see, and recognize the enormous error of the lower court. And grant said Appellant this extension of filing; and grant him a new hearing. ^{exhonorat-} And dismiss the charges against him; on the errors of the state, and District Court, if nothing else.

Respectfully submitted this 22nd day of June, 2022

37 The state tampered with, and suppressed evidence, that would have proved my innocence

38 North Dakota Century Code states possessing of nudes images of minor (s) is legal if:

- You have the child's written consent / permission
- You have the written permission of the child's parent, or legal guardian

I have (had) such permission / consent from both child, and parent

In Supreme Court

North Dakota

State of North Dakota

VS:

02-2021-CR-00089

Benfer

Comes now the Defendant / Appellant and hereby appeals
District Court's ruling, And States as Follows:

- 1 Appellant originally filed an appeal with the District Court, on
_____ ²⁰²¹ but the court refused to file it; and hear the
appeal.
- 2 The Court's relied upon tainted evidence (perjured testimony)
as a means of their finding of guilt.
 - State's witness testified that I (Appellant) made
an actual, verbal threat ^{of ~~her~~ physical harm} against her
- 3 Appellant produced an audio, and video recording, of the entire
conversation; --- recording commencing from outside the
building, before conversation taking place. And ending,
after I exited the building. And not once, did I
"Defendant / Appellant":
 - make any verbal threats
 - make any threatening gestures

* raise my voice; or use any foul language
At times my voice appears louder; but that's only due to
my moving my phone around

- 4 The only bit / piece of evidence the state had to go
on / by, was hearsay testimony. Hearsay, is inadmissible
in a court of law

Wherefore Appellant duly prays that the Court reverse
the ruling of the lower court, and dismiss this conviction
and all charges
from my file

Respectfully submitted this 22nd day
of June, 2022

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58505-053098

