20160115

STATE OF NORTH DAKOTA

NORTH DAKOTA SUPREME COURT
****

BRIAN J. SHERMER,
PETITIONER

Vs.

STATE OF NORTH DAKOTA,
RESPONDENT

Supreme Court No:
20160115

Burleigh Co. CR. NO.
08-2015-CR-01562

Burleigh Co. CIV. NO.
08-2015-CV-02479

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JUN 01 2016
STATE OF NORTH DAKOTA

BRIEF IN ADDITION

COMES NOW the Petitioner, Brian J. Shermer, in recognition and per the authotity of RULE 24. (Supplemental Statement of Indigent Defendant.); and provides the following to the North Dakota Supreme Court:

A- Additional Ground One: PROSECUTORIAL MISCONDUCT with Ground Correlation of - [District Court ORDER granting Respondent's Motion for Summary Judgment effectuated OBSTRUCTION of JUSTICE by default.] PAGES 1-9.

B- Substantiating Injury-argument chronology factc; PAGES-10-14.

C- ALL noted referrences already provided to The COURT via Petitioner's attorney Charles Stock. (The RECORD having already been filed with the Court. Thank you.)

D- Petitioner's additional APPENDIX; originally filed with District Court as: "CO-BRIEF AND ARGUMENT OF PETITIONER; ADDRESS TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT." (Filing date 2-5-2016.)

NOTE: Attorney Stock neglected to include for Supreme Court in his own APPENDIX. It IS a referrenced source by both parties, District Court Judge B. Haskell and to ADDITIONAL GROUND ONE.

E- Source Bis. P.D. Material; Det.Johnson and Mathew James; DISCOVERY PAGES: 00008, 00010, 00013 and 00142.

ADDITIONAL GROUND ONE:

[redacted]

PROSECUTORIAL MISCINDUCT.

[GROUND CORRELATION: District Court ORDER Granting Respondent's Motion For SUMMARY Judgment effectuates OBSTRUCTION OF JUSTICE by default.]

POSITION:

Petitioner asserts that he satisfactorally presented and demonstrated a SUBJECT-ISSUE of Prosecutorial Misconduct within and among his Post Conviction pleadings. He provided material facts toward the subject-issue within and among those same pleadings. A cancellation of a schedueled Evidentiary Hearing per a District Court ORDER granting a Motion For Summary Judgment from the Respondent-State - regarding the same Post Conviction Application, initiated a judicial obstruction that precluded a likely evidential SUBJECT-ISSUE elaboration that would have otherwise served to convincingly establish and conclude the afore stated assertion as REVERSABLE ERROR. Because the subject-issue was raised and also discussed matter of factly at the following specific references, the Ruling District Court Authority thus having been shown to be fully aware of the existing subject-issue and, the Court knowing all potential consequences relative to and resulting from said misconduct; an obstruction of justice occurred direct to the ORDER and then so whether intentional or otherwise.

FACT:

A Post Conviction incorporated subject-issue of Prosecutorial Misconduct was identified, outlined, detailed, clarified and thusly presented comprehensively within; CO-BRIEF AND ARGUMENT OF PETITIONER; ADDRESS TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, AT Page-6, Paragraph-3; Page-9, Paragraphs 2&3; and Page 9-B complete.

FACT:

An Evidentiary Hearing regarding the related Post Conviction Application and schedueled for March 14th, 2016, per ORDER of the concerned District Court, (SEE ORDER ON MOTION FOR SUMMARY JUDGMENT, at Page-3, [6].), WAS CANCELLED.

FACT:

The Petitioner/Defendant demonstrated that he had every intention - if need be, of developing the afore stated subject-issue and this process to include SUBPOENAED WITNESS TESTIMONY as was specifically indicated by him, would he have otherwise been provided the opportunity of the same Evidentiary Hearing in which to have done so. (SEE at CO-BRIEF Id.)

FACT:

Prosecutor P.N. was the person who prosecuted the then Defendant's aggravated assault case which conviction he is now appealing from. (SEE Change Of Plea Hearing Transcript at Page-1.)

FACT:

Then Prosecutor P.N. is the person who communicated personally and directly with Lead Detective Johnson, Defense Atty. G.W. and Victim/Witness D.L.S. (SEE Johnson Report discovery page 00008, at ENTRY 1443 Hours.)

FACT:

Then Prosecutor P.N. was personally responsible for and did attest her own signature to any and all medical records and reports, any and all records and reports from law enforcement concerning then Defendant's case No. 08-2015-CR-1562; having been provided to the Defense via discovery. (SEE EXHIBIT SEVEN.)

FACT:

Being in original posession of, and having been responsible directly for supplying the same medical and law enforcement documents, records and reports as afore stated; then Prosecutor P.N. knew the full and complète factual extent of and to the actual injuries suffered by the Victim/Witness.

FACT:

Then Prosecutor P.N. made the decision to initially charge the assault allegation as a Class-B misdemeanor specifically because the V./W. D.L.S. did not have a fractured rib(s) injury and/or

did she suffer any other broken bone injury. Prosecutor P.N. personally communicated this same decision directly to Lead Det. Johnson herself. (SEE CO-BRIEF AND ARGUMENT OF PETITIONER, at Page-3, TITLE: "SUBSTANTIATING ARGUMENT CHRONOLOGY"; Pages 4,5,6& 7 complete for this same, and then ALL subsequent stated FACTS to a conclusive establishment of assertion.)

FACT:

Then Prosecutor P.N. personally provided Discovery page 001-44, a medical exam report dated June 25th, 2015, from the Dakota Eye Institute and signed by DR.Douglas Litchfield, to the Defense.

FACT: MEDICAL

This same DR.D. Litchfield report from the D.E.I. and dated June 25th, 2015, is a THIRD conclusion of no orbital fractures. (SEE Paragraph-1.) FURTHER; the report neither offers or asserts any such diagnostic-prognosis of a "PERMANENT VISION IMPAIRMENT." The words "permanent" and/or "impairment" are found NOWHERE in the language of this document-report.) [NOR IS THE WORD "PERIPHERAL".]

FACT: MEDICAL

Then Prosecutor P.N. was aware that Discovery Page 00052, (EXHIBIT-3), at Paragraph-"SUBJECTIVE"; is a confirmed, irrefuteable contradiction to V./W. D.L.S. testimony that she suffered a "Brain Injury". (SEE C.O.P. Hearing transcript at Page-8, Lines 5&6.) A C.T. scan is a definitive diagnostic tool and a C.T. scan determination of "No Intracranial Pathology" is conclusive both [redacted] in [redacted] it's finding and it's related implication.

FACT: MEDICAL

Then Prosecutor P.N. was aware that Discovery Page 00052, (EXHIBIT-3), at Paragraph-"SUBJECTIVE"; is a confirmed, irrefuteable contradiction to V./W. D.L.S. testimony that she suffered an injury of "fractured ribs." (SEE C.O.P.Hearing transcript at Page-8, Lines 5&6.) Again, a C.T. scan is a definitive modern diagnostic tool and a C.T. scan determination of "Showed no fractured ribs" is conclusive in both it's finding and it's related implication.

FACT: MEDICAL

Then Prosecutor P.N. was aware that Discovery Page 00010, (EXHIBIT-4) at Paragraph-1, Lines2&3; is a confirmed, irrefuteable conclusion that V./W. D.L.S. testimony accusing then Defendant of having bitten her in the eye, was not true and or accurate. (SEE C.O.P. Hearing transcript at Page-8, Lines 8&9.)

FACT: MEDICAL

Then Prosecutor P.N. was aware that the V./W. D.L.S. Change Of Plea Hearing testimony declaring that; "...you went so far as slightly stab me in the back of my neck." (Id. at Page-8, Lines 9 &10.); was/is contradicted by the fact that she complained of no such injury to any medical staff anywhere or at anytime in relation to the subject alleged aggravated assault. Consequently, there exists no medical record-documentation of a stab wound to any part of the body ever being reported, determined, noted and/or treated by medical staff.

FACT:

Then Prosecutor P.N. was aware that the afore stated medical injury facts - 1,2,3&4, were also alleged and present within, an AFFIDAVIT to both a Victim Impact Statement and also an AFFIDAVIT attached to an application for a Protection Order. (SEE Burleigh County Court Clerk Of Court CONFIDENTIAL FILE to Case CR.NO. 08-2015-CR-01562.)

FACT:

Then Prosecutor P.N. did conduct the direct examination of V./W. D.L.S. at Petitioner/Defendant's 9-24-2015 C.O.P. Hearing. (SEE C.O.P. Hearing transcript Pages 1-12.)

FACT:

A conclusion of injury specific perjured testimony being given by V.W. D.L.S. has been credibly implied and/or established to have occurred during the same afore stated C.O.P. Hearing.

FACT:

Then Prosecutor P.N. made no effort to correct and/or [redacted] clarify the V.W. testimony wherin these same afore stated perjured points were thusly permitted to go on record as undisputed facts.

FACT:

Then Prosecutor P.N. knowingly directed the Court's attention specifically to the same afore stated and concluded perjured testimony as being "appropriate" to a fact related determining of a factual basis finding.
(SEE C.O.P. Transcripts Pages-16 & 17, Lines 18-25 and 1-6.)

FACT:

The District Court acknowledged the V.W. perjured testimony concerning the permitted same four specified points of alleged injury extensiveness as a contributing influence to a finding of factual basis. (Id. at Page-16.)

FACT:

The District Court also acknowledged the contributing influence source material of the Victim Impact Statement (Of AFFIDAVIT.)that contains the same afore stated specific points of injury concluded to perjury toward the finding of factual basis.
(Id. at Page-16.)

FACT:

The District Court then determined that a proper factual basis existed to permit - accept then Defendant's guilty plea and in turn, support the Amended charge of aggravated assault and the resulting conviction. (Id. at Page-17.)

ARGUMENT:

Under the heading of ATTORNEY CONDUCT, at N.D.C.C. 27-13-01 (3) & (6); a conduct expectation of an attorney includes that they will: (3)"Perform faithfully the attorneys responsibilites as an officer of the Court and protector of individual rights." Further, at (6): "Employ for purposes of maintaining the causes [redacted] confided to the attorney; those means only as are consistent with

truth and honor, and never seek to mislead the judge or jury by any artifice of false statement of fact or law."

Petitioner argues that his afore stated FACTS as they exist, suffice and provide the necessary solid foundation to his allegation of prosecutorial misconduct. The Prosecutor's actions and behavior as revealed and determined in reference, extend beyond a mere appearance of impropriety and instead translate an irrevocable conclusion that exaggerated and/or intentionally applied false statements (Perjury.), were knowingly, willfully advanced via an artifice of V./W. testimony and a Victim Impact Statement supporting Affidavit towards a contrived effort at procuring a necessary factual basis in order to "legally" establish a criminal conviction against myself.

On the heels of already having directly heard and permitted testimony that included an effort to deceptively establish one element of Serious Bodily injury - specifically, Amended Information of concern aggravating factor Principle Element-A, "A BONE FRACTURE and/or..."; said effort being that the V./W. suffered "fractured ribs"; the Prosecutor continues with a concerted effort to deceptively establish a (The) second element of Serious Bodily Injury - specifically, the Amended Information's aggravating factor Principle Element-B, "...PERMANENT VISION IMPAIRMENT."

The prosecution inquires of the witness: "So are you finished treating for any medical issues?" (SEE C.O.P. Trans. at Page-11, Lines 12-13.)

ANSWER: "No, I'm not. I was just at the eye doctor again today. I have -- I wake up every morning, Your Honor, and am reminded of the attack that we are here today to address. As soon as I open my eyes, I have complete distortion in my eyes."
(CONTRAST - DR. Litchfield report at Paragraph-2.)

(STATE) QUESTION: "And what is the prognosis or diagnosis from your --"

ANSWER: "Posterior visceral detachment due to the significant trauma to my brain."

(STATE.) QUESTION: "And what's the outlook for recovery?"

ANSWER: "So far today -- the last test that they performed showed some significant deficiency in my peripheral vision in my left eye, which was the eye that was traumatized... The prognosis is they should not get any worse. Which is what I was extremely afraid of was, at some point, going blind because of this. It will not get any worse. And eventually, over years, it possibly could get better... but it may or may not -- but it will never get any worse than what it is."
(Id. at Page-11, Lines 19-25 and Page-12, Lines 1-7.)

Petitioner argues that in this specific exchange in particular, the prosecutor is knowingly permitting an extraordinary exaggeration of actual injurious cause, effect and result in what appears to be directed and rehearsed dialogue that seems to be intended to substantiate the same afore stated aggravating factor Principle Element-B. The new EVOLOUTION of the eye injury's purported this just in diagnostic-prognostic pronouncement is absolutely remarkable in the face of the existing EXHIBIT(S) evidence so far provided the defense via discovery. Besides the newly stated source association of the allegation for the lingering eye injury effects, the articulated identity of "trauma to my brain." that here to fore was undiagnosed by any means of a medical/professional diagnostic conclusion; the diagnosis-prognosis intensifies in obvious direct correlation and in proportion to, a prosecutorial evidentiary necessity to demonstrate the idea of serious bodily injury corresponding with the Amended Information's Principle Element-B.

The injury transition simply does not jibe with any existing medical records that could even remotely serve to cooborate and/or support the testimony. Specifically:

* An ER visit diagnosis of a common term "Black Eye." (Respondent EXHIBIT-A, at Discovery Page #00026, Paragraph-1. Assault examination.) 6-13/14-2015.

* NO complaints at all to ER staff or ER attending Physician , DR.Tyler Price, of any visiual disturbances, deficits and/or impairment concerns. (Respondent EXHIBIT-A complete.) 6-13/14-2015.

* Negative CT scan findings; determinations of orbital abnormalities or of any associated, relative cranial pathology (Brain Injury.) Petitioner EXHIBITS #2 & #3 complete. Medical visits from 6-13-2015 and 6-17-2015 respectively.

* V./W."Denies Vision Problems." Petitioner EXHIBIT #3, at Disc. Page-00051. 6-17-2015. Four days after ER visit.

* DR.Litchfield DAKOTA EYE INST. Report: Offers no such prognosis of any "Permanent Vision Impairment" or even an ambiguous reference to such a subject. Not only is this DR.Litchfield report in fact medically innocous - See specific Petitioner EXHIBIT #5 at "NATIONAL EYE INSTITUTE, HANDOUT, SUBJECT: VITRIOUS DETACHMENTS"; but of significant and critical note, V./W. D.L.S. makes no complaint to DR.Litchfield at this time of suffering any deficiency in her peripheral vision and thus, the report makes no mention of any subject related testing as being necessary or any reference to an associated possible diagnosis.(Pet. EX.1.) 6-25-2015.

* Today - the C.O.P. hearing date of Sept.24th, 2015; we have a litteral last minute diagnosis, (From an unidentified Doctor and an unidentified practice, clinic or institute.), of a "Peripheral Vision", "Significant Deficiency", that "may or may not" get better and/or actually be "permanent." (At afore quoted C.O.P. Tran. Id.) And this replete, no less, with the V./W. attempting to associate and attach this same deficiency impairment as well as the actual DR.Litchfield original diagnosis of "floaters", to the - or rather resulting from, "the significant trauma to my brain." Again, the V./W. is purporting a "brain injury" that was not diagnosed and or determined medically and now residual to this alleged brain injury is a visiual impairment predicated on it. This type of intentionally deceptive language construction underscores the V./W. propensity for exaggeration and as well the prosecution's apparent willingness to just let it ride and let it stand before the Court as fact when it most certainly is not.

A FINAL FACT: Then Prosecutor P.N. complicity is apparent in the State's own cleverly constructed language to influence the Court on the idea of injury extensiveness when she specifically alerted the Court's attention in reference to fractured ribs and/or a brain injury when she asked; Question: "Now Mr's Shermer, you had mentioned some injuries to your ribs, injuries to your head. You ended up being significantly injured from this offense." (At C.O.P. Trans. Page-11, Lines 5-7.)

The intent and the act are blatant. This is a facilitation of perjury with an effort to be deceptive. There was prosecutorial misconduct. I'm crying foul here. This is good ole fashioned monkey

business. No one's ever accused me of being the sharpest tool in the shed, but by goodness I am at least in the shed.

PETITIONER PRAYS THIS HONORABLE COURT grant him a true and just remedy to this asserted action of prosecutorial misconduct and the underlying effort of assisted perjury and the subsequent result of OBSTRUCTION of JUSTICE due to the cancellation of a hearing on my related Post Conviction; This is a MANIFEST INJUSTICE and as Petitioner I was prejudiced greatly by the permitting/ assisting of perjured testimony as a means towards a felony conviction and imprisonment.

PLease REVERSE and REMAND my cause.

I have been deprived of my Constitutional rights to: A fair trial and adjudication of a felony charge; Cruel and unusual punishment in that criminal acts of perjury were instigated and permitted (Facillitated.) in order not just to qualify an aggravating factor, but to substantiate a serious felony charge.
I believe this to be a directed prosecution.
Prosecutorial misconduct in and of itsel should be reverseable error in that it results a manifest injustice... Otherwise I do not know what - other than all that I have stated, that is expected from me.

I am currently housed within the State department of mental health special assistance unit at the Jamestown state prison. I do not have the same access to legal material that other prisoner do. I know it is wrong to lie under oath and this is what occured plus the prosecution perpetuating the information knowingly and I did prove this much in the attached PAGES 10-14 "SUBSTANTIATING INJURY ARGUMENT CHRONOLOGY FACTS."

SUBSTANTIATING INJURY-ARGUMENT CHRONOLOGY FACTS.
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THE following information - in a partial sequence, is also found within Petitioner's CO-BRIEF AND ARGUMENT OF PETITIONER; ADDRESS TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, at Pages-3, 4,5, & 6 complete. This CHRONOLOGY is IMPERATIVE to the central, primary GROUNDS, POSITIONS, FACTS and ARGUMENT put forth within this Appeal now before THIS MOST HONORABLE COURT. I would be remiss not to take this opportunity to present the componet seperately as there is so very much that is CONDITIONAL to it. It supplies a primary foundation and premise to Petitioner's GROUNDS by way of material facts and evidence support. Also, this CHRONOLOGY alone serves as an irrefuteable dispute to the Respondent's futile and misleading efforts to deny that these facts exist.

(ALL references to source are specifically directed in the related subsequent GROUNDS as to EXHIBIT location.)

Discovery Page #00032: DENOTES the ER examining Physician's "CLINICAL IMPRESSION" of; "Possible rib fracture (occult.)." The "CLINICAL IMPRESSION" is pending radiological confirmation and thus the use of the word "Possible." ER visit and report date of 6-13/14-2015, 1:33 am. St.Alexius.

The afore stated medical report language was the very same specific understanding related to and then immediately documented by, Officer Matthew James, Bismarck, P.D.; Discovery Page #00013, at Paragraph-3, Lines 2-4, which state: "St.A's Physician advised that D.S. (The Victim/Witness.) more than likely fractured her ribs but the injuries were too fresh and the X-ray could not confirm this." Report date of 6-13/14-2015. Post V./w. discharge.

There is no ambiguity here. Todays modern medicine protocall provides for all radiological surveys of prospective injuries to be CONFIRMED after the fact by a Radiologist for this very reason - medical specialists for specialist determinations.

At some point in time between the Victim's ER visit discharge on the early morning after the incident allegation - approximately

1:45 am of 6-14-2015, and a date and time of 6-15-2015 at 11:06 am; the Victim/Witness, D.L.S., apparently communicated with the St. A's ER attending Physician, DR.Tyler Price or a designee, concerning the actual extent of her rib injury and a final diagnosis. This can reasonably be inferred due to the following statements submitted by Lead Detective Johnson of the Bismarck P.D., in his "FOLLOW-UP CONTINUATION REPORT", Discovery Page 00008 at Paragraph-1: ENTRY "6/15/15 11:06 hours. I was asked to conduct follow-up in this case by the State's Attorney's office. It was requested that I ascertain whether or not (D.S.) received any broken bones as a result of the assault. D.S. stated she had been told by the doctors that she DID NOT HAVE ANY BROKEN BONES..." Herein is incontrovertable documented proof that D.L.S. was first informed by a medical authority and next, that she then knew and was aware of her condition as it relates to a specific rib injury diagnosis.

On this same date, 6-15-15, but at a later time; same Detective Johnson, same "FOLLOW-UP CONTINUATION REPORT" and Discovery page of 00008, at Paragraph-5: ENTRY "14:15 hours. I spoke with D.S. by phone again after receiving a message from her...She was also told that I had spoken with the State's Attorney about the charges and it had been decided the assault was going to be charged as a misdermeaner. This upset her profusely... She was strongly encouraged to go to a doctor for a follow-up appointment and advise me of the results. She stated she would."

A reasonable conclusion of implication is evident by the specific language of this report in that then State Attorney P.N. was aware of the diagnostic fact that Victim/Witness D.L.S. did not have any broken bones and also that, as a result of this particular serious bodily injury aggravating factor, the assault allegation would be - and, in fact was, filed as a Class-B Misdemeanor. (The report and the subsequent conversations taking place to the subject of it, occurred a full three months prior to the Change Of PLea Hearing on Sept.24th, 2015, wherein D.L.S. - while under direct from then Prosecutor P.N., did testify that she did sustain an specific injury of fractured ribs.

D.L.S. did make a follow up medical appointment. The appointment took place at the CENTER FOR FAMILY MEDICINE, Bismarck, on

6-17-2015, and is the subject of Discovery Page 00052, Paragraph-"SUBJECTIVE"; The attending Physician, DR.Betting, notes that: "(D.L.S.)...she was seen at St.Alexus ER and had rib xrays and head CT, showed no fractued ribs, no intracranial pathology. Denies neuropathy, hearing difficulty or LOC." CONTINUED: "denies... parasthesias and vision problems." ********** ********** Notes continued Disc. Page 00052, Paragraph-"ASSESSMENT: Repeated rib imaging that again showed NO FRACTURE. ********** ********** APPENDED by Gary Betting, M.D. on June/18/2015 04:53 pm."

Medical assessment and diagnositic conclusions simply do not get anymore conclusive than this. And, their respective implications do not get anymore significant in relation to the Petitioner Ground, Position(s), Facts and Arguments asserted within his Appeal.

Continuing this chronology - SOURCE: Detective Johnson FOLLOW-UP CONTINUATION REPORT, Discovery Page 00008, at; ENTRY "6/18/15 13:05 hours; I met with D.S. at her residence to take follow up photos of her injuries. During that time (She) explained she had met with her general practioner, DR.Betting, at the U.N.D. Family Practice Center the day before. He did not give anymore diagnosis from which she had heard before..."

This a second confirmation of her (D.L.S.) fact related medical condition as it actually is and also acknowledgment of awareness and understanding to the subject.

ON 6-25-2015 - a full eight days removed from the follow-up examination (Afore mentioned.) conducted by DR.Betting at the U.N D. CENTER on 6-17-2015; Victim/Witness D.L.S. went to the Dakota Eye Institute and was examined by a DR.D.Litchfield, SEE Discovery Page 00144 complete. Petitioner contends that this report concludes the absolute contrary to his Amended Information's Aggravating Factor criteria affix of: "SPECIFICALLY the defendant struck his wife, D.S., causing a bone fracture and/or permanent vision impairment."; and instead correlates directly with the CT scan determination from both the ER visit on 6-13-2015 at St.A's and

[redacted]

the complete U.N.D. Family Practice report from DR.BETTING which includes the notation that the patient "Denies...vision problems!" *** Of peculiar note here is that in the 6-25-2015 DR.Litchfield DAKOTA EYE INST. report, is that DR.Litchfield requests the patient to return for a follow-up examination in 30-days; "in one month for reevaluation." (Id. at Paragraph-3, Lines 4&5.) Something that she chooses NOT to do for three full months. This point is note worthy if not critical, due to the following testimony that she provided before the Court on Sept.24th, 2015:

"I was just at the eye doctor again today...I wake up every morning...as soon as I open my eyes I have complete distortion in my eyes...I was extremely afraid - - at some point going blind because of this."

(See C.O.P. Transcript at Page-11 & 12 complete.)

If a person is truley experiencing this serious extent of injury related complications and the absolute fear that such an effect would carry with it - like the V./W. D.L.S. claimed that she does and she did, it simply stands to reason that a person would follow through with their eye doctor's previous exam's advice and follow through with their instructions directing the patient to return in 30-days or if not, at least at some point prior to 90-days.

Besides the coincidence of the afore mentioned latest appointment being made on the morning of the C.O.P. Hearing date, and apart from the testimony that extends the injury complicationns to occasional complete distorations <u>in-both eyes now</u> and as well associates the condition directly to a brain injury - "due to significant trauma to my brain." (Id. <u>at</u> same.); the V./W. presents the Court with an alltogether new diagnosis-prognosis of significant "peripheral impairment" that is purported to be "permanent" eventhough she states that it "may or may not get any better over years." Meanwhile, the only report provided the defense in relation to any documented eye complaint and the very last document released from the State at all via discovery - Page-00144, the DR.Litchfield report <u>at</u> Petitioner's exhibit-1; shows no such

results from any peripheral test and makes no mention of this being a complaint of the patient or the test ever being provided due to a complaint. Therefore, this purported prognosis is something new and without any medical documentation to confirm the allegation or that the appointment visit ever took place, well, the implication is troubling.

Finally, from a second FOLLOW-UP/CONTINUATION REPORT is this : ENTRY 7/9/2015. "I met with D.S. at the B.P.D. She was upset [redacted] with how the assault was charged as a simple assault and not an aggravated assault. We had previously discussed the reasoning for this and this was reiterated." REPORT signed and dated 7-23-2015. (Disc. Page-00142 at Paragraph -1.)

ALL OF THE AFORE CITED DISCOVERY PAGES DENOTED BY THEIR SPECIFIC DISCOVERY PAGE NUMBERS - UPPER RIGHT HAND CORNER OF THE PAGES, ARE INCLUDED AMONG THE PETITIONER'S EXHIBITS #1, #2, #3, #4 and the RESPONDENT'S EXHIBIT -A.

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PETITIONER ATTESTS THAT ALL INFORMATION CONTAINED HEREIN IS ACCURATE AND TRUE.

DATED THIS 21st day of APRIL, 2016

Brian Skesmer

Petitioner, Pro Se.

SUBSCRIBED AND SWORN TO ME THIS 21st day of April, 2016
IN THE COUNTY OF STUTSMAN, NORTH DAKOTA

NOTARY PUBLIC: Tr Yu

TRAVIS YUNCK
Notary Public
State of North Dakota
My Commission Expires July 28, 2020

[redacted]

Penny L. Miller 6/30/2016
Clerk of the Supreme Court

RECEIVED BY CLERK
SUPREME COURT JUL 06 2016

Dear Penny L. Miller,
The enclosed "Brief In Addition" and it's correlating "Appendix" is all that I can afford to mail at this time.

Said Appendix is exactly every single page that is cited/referrenced within the Brief. They are numbered as they were originally filed and/or published. I took the liberty of stapeling the pages together that are from the same source.

The four pages of police reports titled: "FOLLOW UP/CONTINUATION REPORT", are from the criminal case's initial discovery that was sent to the defense. These four pages are referrenced within the brief according to the original assigned numbering from the prosecution which appears up in the right corner of the pages as; 00008, 00010, ooo13 ~~00X~~ and 00142.

I hope and pray that my efforts are within the boundry of the Rule-25.

Thank you very much for your time and attention.

Sincerely, Brian J. Shermer

Brian J. Shermer

Petitioner attests per signature that a true and correct copy of his RULE 24 ADDITIONAL BRIEF was/ is served upon SUPREME COURT CLERK this same day ___ of _____2016.

petitioner attests that all information contained herein

is accurate and true.

Dated this 15 day of JUNE, 2016

Brian Shermer

Petitioner, Pro Se.

Subscribed and sworn to me this 15 day of June, 2016
In the county of Stutsman, North Dakota

NOTARY PUBLIC

TRAVIS YUNCK
Notary Public
State of North Dakota
My Commission Expires July 28, 2020