20180408
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JANUARY 22, 2019
STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA **IN THE SUPREME COURT**

Edward Reynaldo Morales,)
)
Petitioner-Appellant,)
) N.D. Sup.Crt. No.: 20180408
vs.)
)
State of North Dakota,) Dist. Crt. No.: 53-2017-CV-00031
)
Respondent-Appellee,)
)

APPEAL FROM THE SEPTEMBER 14, 2018 ORDER DISMISSING POST-CONVICTION APPLICATIONS, THE HONORABLE JOSH B. RUSTAD, PRESIDING

BRIEF OF THE RESPONDENT – APPELLEE, STATE OF NORTH DAKOTA

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Statement of the Issues

[¶1] The District Court correctly dismissed Morales' post-conviction applications.

Statement of the Case

[¶2] Morales entered a conditional plea of guilty to D.U.I. causing death on October 31, 2014. Morales subsequently filed a notice of appeal, and appealed the District Court's denial of his motion to suppress Blood Alcohol Content (B.A.C.) evidence. Morales lost on appeal in State v. Morales, 2015 ND 230, 869 N.W.2d 417, with this Court finding that exigent circumstances allowed for the warrantless drawing of his blood.

[¶3] Following his loss on appeal, Morales then filed an N.D.R.Crim.P. 35(b) motion for reduction of sentence. (53-2013-CR-02819 Doc. Nos. 70 & 71). The District Court denied the motion for reduction of sentence. 53-2013-CR-02819 Doc. No. 76).

[¶4] On January 11, 2017, Morales filed his *pro se* application for post-conviction relief. (R.O.A. Doc. No. 1). After which, there is a large gap in time while various attorneys were appointed to represent Morales. From there, the Register of Actions has a series of entries with the State initially moving to dismiss the application and filing a response on February 26, 2018.

[¶5] On March 28, 2018, Morales filed an amended application with various attachments including an "affidavit" of Morales. (R.O.A. Doc. Nos. 34-38). The State then moved to dismiss the combined applications on May 9, 2018. (R.O.A. Doc. Nos. 42-44). Morales then filed a response to the motion to dismiss. (R.O.A. Doc. No. 45). The

applications for post-conviction relief were ultimately dismissed on September 14, 2018. (R.O.A. Doc. No. 48). The instant appeal followed the dismissal.

Statement of the Facts

[¶6] On November 28, 2013, Morales was driving a Honda Odyssey mini-van while under the influence of alcohol. At the time of a blood draw done after the fatal crash, Morales had a B.A.C. of 0.209 percent, or slightly more than 2.5x the legal limit of 0.08% under N.D.C.C. §39-08-01.

[¶7] While Morales was driving the mini-van in what used to be Fox Run RV park, he struck a loaded goose-neck trailer with sufficient force to move the trailer. The hitch portion of the goose-neck trailer gouged a trench across the top part of the mini-van's hood on the passenger's side, and cut through the windshield of the vehicle. (53-2013-CR-02819 Doc. No. 17). The hitch then struck Morales' wife who was in the front passenger's seat, causing her death, while continuing through the mini-van and destroying the roof and rear hatch. (53-2013-CR-02819 Doc. No. 1). The head rest for the decedent's seat wound up in the back area of the mini-van. (53-2013-CR-02819 Doc. No. 18).

[¶8] Morales was subsequently arrested for D.U.I. causing death, and he eventually entered a conditional guilty plea to the same prior to trial. Prior to trial, the State had received a certified copy of a criminal judgment from Florida that would result in a ten (10) year minimum mandatory sentence under N.D.C.C. §39-08-01.2. As a result of the conditional guilty plea, Morales was sentenced to less than the minimum mandatory 10 year sentence, and was able to avoid 24/7 testing as a condition of probation.

[¶9] Morales then appealed the District Court's decision on the admissibility of his B.A.C. testing, asserting a violation of his Fourth Amendment rights based on the warrantless blood draw. This Court found that exigent circumstances existed which allowed for the warrantless draw.

[¶10] Morales filed a *pro se* post-conviction relief application alleging violation of his rights under Birchfield v. North Dakota, 136 S. Ct. 2160 and ineffective assistance of counsel for not gathering "any type of evidence or investigate what really happened that very night or the day's[sic] before the accident." Morales asserted ineffective assistance of counsel based on a failure to investigate who he did the days/night before the crash. (R.O.A. Doc. No. 1).

[¶11] Later, counsel filed an amended post-conviction relief application alleging that Atty. Foster failed to properly advise Morales as to how the D.U.I. statute operates, and lied to him about his chances on appeal.

[¶12] Morales filed an "affidavit" alleging that: 1) his current counsel told him that he would likely serve more jail time if he lost at a trial; 2) that "justice" is more important to him that "convenience" even if it means additional incarceration for him; 3) that he does not believe he committed a crime, and that what happened was an "accident"; 4) that Atty. Foster was totally unprepared for trial, and did nothing on his case that "[he] could see"; 5) that Atty. Foster lied to him causing him to plead guilty to something that "[he] did not do" and that Atty. Foster lied to him about the results of a successful appeal; 6) that he wanted to plead "no contest" because pleading guilty would be like lying to him; 7) that Atty. Foster failed to hire investigators or experts; 8) that

Atty. Foster tried to withdraw from the case; 9) that he filed a disciplinary complaint against Atty. Foster; and 10) that Atty. Foster was disbarred.

Law and Argument

[¶13] In his filings before the District Court and before this Court, Morales has ignored the required showings for assertions of ineffective assistance of counsel following a change of plea and sentencing pursuant to an agreement between the parties. In such a scenario, the post-convictioning defendant must show that he either had some type of realistic defense, or that he could have reasonably expected a lesser sentence had he taken the matter to trial. See. Bahtiraj v. State, 2013 ND 240, 840 N.W.2d 605.

[¶14] Instead of addressing those issues, Morales elected to present a series of self-serving claims such has he did not believe that he committed a crime. Instead of presenting legal defenses, he claims that he received ineffective assistance of counsel because he wanted to plead "no contest" to the charges, something that does not exist in North Dakota, and Atty. Foster would not let him do it. Instead of presenting either rational defenses or evidence of a reasonable expectation of a better sentence following trial, Morales presented the same generic claims that but for the malfeasance of counsel he would have insisted on going to trial that have been rejected by this court. Booth v. State, 2017 ND 97, 893 N.W.2d 186.

[¶15] Instead of addressing those issues, Morales elected to attack Atty. Foster. Indeed, Morales is asking this Court to disregard the actual requirements of ineffective assistance of counsel, and find *de facto* ineffective assistance of counsel due to her later disbarment and his filing of a disciplinary complaint against her.

Morales expressed no concerns about Atty. Foster's representation during the change of plea and sentencing hearing

[¶16] Now, Morales seeks to ride the coat-tails of the disciplinary action against Atty. Foster by asserting that her performance was deficient. During the change of plea and sentencing hearing, Morales was asked about his attorney's performance. He responded with the following:

> No, I don't have any problems with her representation, Your Honor, the thing is that - - it was such a short time, I mean, I knew I had to go to court but I - - to wait til the last minute, you know, the last 48 hours before the case not - - excluding Saturday and Sunday … (C.O.P. Trans. 4:14-19).

[¶17] Morales did not ask for the hearing to be reset, or the trial to be moved to allow him more time to address recent developments which appear to have consisted of the State receiving a certified copy of Morales' conviction for a qualifying prior offense. He informed the Court that he was ready to proceed and to get the matter over with because he was concerned about taking up the Court's time. (C.O.P. Trans. 8:5-14).

[¶18] It appears that Atty. Foster was initially placed on interim suspension on May 8, 2015. Disciplinary Board of the Supreme Court v. Foster, 2018 ND 1, 905 N.W.2d 114. This was approximately seven (7) months after he entered his guilty plea. During that period of time, Morales filed a motion for reduction of sentence on December 29, 2015. (53-2013-CR-02819). Morales then waited until January 1, 2017 to file the original application for post-conviction relief. There has been no explanation for why, in Morales' striving for "justice" over "convenience," he waited so long to file his post-conviction application.

[¶19] Following the matters involving Atty. Foster, Morales now claims to have had a revelation shortly after the change of plea and sentencing that Atty. Foster only wanted him to plead guilty to cover her lack of trial preparation. Morales then supports this revelation with a series of subjective and self-serving contentions.

[¶20] The record shows nothing indicating that Morales is licensed to practice law, or indeed, had any type of legal training. Despite this, he placed statements in his "affidavit" about how Atty. Foster had railed to adequately prepare for trial, or that she "did not do any work that I could see on my case." The assertion of conclusory statements is insufficient. Bell v.State, 1998 ND 35, 575 N.W.2d 211.

[¶21] Ineffective assistance of counsel is an objective standard, it is not a subjective one. Garcia v. State, 2004 ND 81, ¶5, 678 N.W.2d 568. Here, Morales is claiming that Atty. Foster did nothing on the case that "he could see." There is no affidavit from any of the records custodians for Atty. Foster's firm, or any other objective material supporting this claim. The "that I could see" standard is simply a subjective standard that changes with the interests of the post-convictioning defendant.

Morales' new argument that the law relating to ineffective assistance of counsel should be set aside for Atty. Foster's former clients should be denied

[¶22] Nowhere in the filings before the District Court does Morales make the claim that his assertions should be granted simply because his former counsel was Atty. Foster. Here, Morales asserts that: "It should be noted that this matter is not an ordinary ineffective assistance of counsel case, as the attorney in question was Nicole Foster." (Appellant's Brief at ¶25).

[¶23] Morales has cited no authority for this position of *de facto* ineffective assistance of counsel simply because an attorney was later disbarred. Instead, Morales simply argues that: "Her conduct in other matters should have led credence to the testimony of Mr. Morales in his affidavit, but for some reason it did not. Mr. Morales is one of Ms. Foster's many victims. His allegations should have been taken more seriously."

[¶24] What is most interesting about this new "victim" argument is that Atty. Foster got Morales out of the minimum mandatory sentence through the conditional plea, and got rid of the 24/7 testing condition as part of probation that he did not want. This is against taking the matter to trial, taking the inevitable loss due to the B.A.C. and catastrophic damage/injuries, and then losing on appeal with Morales having a ten-year non-discretionary sentence. In light of Bahtiraj and Booth, it seems incredulous that Morales would assert that he was a "victim" of Atty. Foster where he received a significantly beneficial plea agreement given the amount of evidence stacked against him.

[¶25] In any event, as this argument for special treatment was not before the District Court, it is newly raised on appeal, and should be denied as such. See. Moe v. State, 2015 ND 93, 862 N.W.2d 510.

[¶26] If the Court wishes to address this new claim, the State notes matters involving Atty. Steven Light. See. Middleton v. State, 2014 ND 144, 849 N.W.2d 196. The fact that Atty. Light later had issues with his practice did not create a bypass for Middleton for purposes of ineffective assistance of counsel claims. Middleton was still required to show both objectively unreasonable performance and resulting prejudice. A similar path was followed in Chisholm v. State, 2015 ND 279, 871 N.W.2d 595 wherein

the defendant had to meet the requirements for ineffective assistance of counsel despite alleging Atty. Light's issues. As such, the State respectfully requests that this Court decline to accept Morales' invitation to give special treatment to those post-convictioning defendants who wish to ride on the coattails of their former attorney's later misfortunes.

Morales' subjective belief that he committed no crime is not sufficient to survive summary judgment

[¶27] The basic gist of Morales' claims is that he subjectively did not commit a crime when he did the following: 1) consuming alcohol to the point of reaching a B.A.C. approximately 2.5x the legal limit; 2) driving Honda Odyssey mini-van containing his wife in the front passenger's seat while at a B.A.C. of approximately 0.209%; 3) striking a stationary goose-neck trailer loaded with lumber hard enough to move the trailer; and 4) nearly decapitating and therefore killing his wife. In his mind, it was an "accident" and not a "crime." In his mind, he committed no criminal offense whatsoever. This belief is obviously both self-serving and subjective in light of N.D.C.C. sections §§39-08-01 and 39-08-01.2, which relate to driving under the influence of alcohol and causing death while doing so.

[¶28] This self-serving subjective belief shows up in his "affidavit" dated January 16, 2018. Morales notes: "I want to have my day in court and to be able to explain what happened to my wife was an accident, not a crime." (R.O.A. Doc. No. 35 at ¶6). He also notes: "I pled guilty to something that I believe I did not do based on Ms. Foster's lies." Id. at ¶7. Simply stated, Morales is claiming that he subjectively believes killing somebody as a result of a drunk driving crash is not a crime in North Dakota; that is not the law. State v. Montplaisir, 2015 ND 237, 869 N.W.2d 435 (D.U.I. causing injury).

[¶29] Morales was placed on actual notice by the North Dakota Century Code that driving a vehicle while under the influence of alcohol with a B.A.C. of more than 0.08% and causing the death of another person is a crime. State v. Jones, 418 N.W.2d 782 (N.D. 1988).

[¶30] Allowing a defendant's self-serving and highly subjective claim that he believes he did not commit a crime to create a successful ineffective assistance of counsel claim would be as detrimental to the criminal justice system as requiring the finder of fact to believe a criminal defendant who takes the stand.

North Dakota Century Code section 39-08-01 places Morales on actual notice of North Dakota's D.U.I. law

[¶31] In his amended application, Morales claims that Atty. Foster was ineffective for not accurately telling him that North Dakota's D.U.I. statute allows for convictions based on evidence of intoxication as well as B.A.C. evidence. In essence, it is an extension of the "did not know" claims in Jones, 418 N.W.2d 782. It is also an argument that has no relationship to the actual events in this case; the issue of providing intoxication without B.A.C. did not arise in this matter.

[¶32] As with Jones, 418 N.W.2d 782, the options are clearly spelled out in N.D.C.C. §39-08-01(1)(a) and (1)(b). In Jones, this Court noted that the presence of the material in the Century Code places a defendant on actual notice of the contents of that material. In effect, this removes a defendant's ability to claim that he "didn't know" that something was a crime.

[¶33] Further, the issue behind this claim never came up as Morales lost on the B.A.C. value in his appeal. Morales could not show any genuine issue of material fact

regarding the prejudice prong as whether Atty. Foster did, or did not fail to tell him about the alternative means of providing a D.U.I. did not matter.

The fact that Morales lost on appeal was not sufficient to survive summary judgment

[¶34] One of Morale's contentions was that Atty. Foster had told him that he would win his appeal on the B.A.C. issue and then be a free man. Setting aside the obvious self-serving nature of the claim given the wide variety of crimes that can be charged for vehicular homicide that do not involve B.A.C., the State notes that a defendant receiving an unfavorable outcome does not automatically result in a finding of ineffective assistance of counsel.

[¶35] Here, the question on appeal was whether or not the warrantless drawing of Morales' blood violated his Fourth Amendment rights. On appeal, this Court determined that exigent circumstances existed sufficient to support the warrantless blood draw. In essence, the conditional plea to avoid the ten (10) year minimum mandatory sentence in the face of overwhelming evidence while still retaining the right to appeal on the B.A.C. issue was a matter of case strategy. The mere fact that the strategy was ultimately unsuccessful does not translate into ineffective assistance of counsel. See. Breding v. State, 1998 ND 170, 584 N.W.2d 493. As a benefit to Morales, under the plea agreement, he avoided the minimum-mandatory sentence he would have faced had he gone to trial and lost.

Morales' failure to hire expert witnesses claim was not sufficient to survive summary judgment

[¶36] In his "affidavit," Morales claims that Atty. Foster was ineffective for not hiring any expert witnesses. Morales did not even indicate what field the expert should

be retained to address. Automobile maintenance? Medical? Crash reconstruction? Not only are the State, the District Court, and this Court left in the dark as to what field the expert(s) should have been retained in, Morales failed to attach any affidavits or similar evidence showing what the expert(s) would have testified to. The District Court correctly rejected this unsupported allegation. See. Matthews v. State, 2005 ND 202, 706 N.W.2d 74.

Morales' failure to hire investigators claim was not sufficient to survive summary judgment

[¶37] Similarly to the "expert" claims, Morales claims that Atty. Foster was ineffective for not hiring "investigators" for his case. Again, there is no indication as to what these persons were supposed to investigated, and absolutely no affidavits or other evidence filed by any investigator in support of the allegation. It is worth noting that Morales believed Atty. Foster should have investigated such things as who he was doing the day of the fatal crash, and who/what he was doing days before he killed his wife. (R.O.A. Doc. No. 1 at pg.2). As with the "expert" claims, Matthews requires actual evidentiary support from the purported witness(es) in order to survive summary judgment.

Morales' nolo contendre/no-contest plea claim was not sufficient to survive summary judgment

[¶38] Morales claims that he wanted to plead "no-contest" to the D.U.I. causing death charge because he believed that pleading guilty would "sound like I am lying." Such a plea does not exist in North Dakota, with the closest being an Alford plea.

Morales' desire to enter a "no contest" plea appeared in the change of plea and sentencing hearing. (C.O.P. Trans. 3-4).

[¶39] He now complains that Atty. Foster was ineffective for not arguing that he be allowed to enter this non-existent plea type. He has presented no evidence showing how not pursuing something that does not exist under North Dakota law is objectively unreasonable, and he cannot show that there would have been a different outcome, i.e. a "no contest" plea entered had Atty. Foster followed the course of conduct now demanded. Morales would not receive that which is impossible for the court to do. Booth, 2017 ND 97, 893 N.W.2d 186 (court cannot compel defendant to follow religious dogma).

Morales failed to show any reasonable/rational defense or any reasonable chance of a better sentence if he had taken the matter to trial

[¶40] This Court has noted that simple assertions by a defendant that he would not have pled guilty and instead would have demanded trial if he had competent counsel are insufficient to survive summary judgment. While Morales did file an "affidavit" in his underlying case, there is nothing in that document, or any documents filed by Morales showing evidence of either a rational defense, or a reasonable expectation of a lesser sentence had he gone to trial.

[¶41] Morales noted: "My current attorney, Mr. Arthurs, has informed me that if I am successful in having my conviction vacated, there is a good change that I will be resentenced to more time than I am already serving if I were to lose at trial." (R.O.A. Doc. No. 35 at ¶5). Morales then goes on to say: "I appreciate what Mr. Arthurs is telling me, but for me, Justice is more important than Convenience. I want to have my day in

court and to be able to explain that what happened to my wife was an accident, not a crime." Id. at ¶6.

[¶42] This series of statements from Morales is interesting. He is asserting that Atty. Foster was acting incompetently when she: 1) negotiated away the ten (10) year minimum mandatory prison sentence that Morales would have been subject to as a repeat offender for a prior D.U.I. resulting in death; and 2) negotiated away a period of 24/7 alcohol testing. (C.O.P. Trans).

[¶43] This result was against the backdrop of Morales having a B.A.C. of 0.209%, having crashed the Honda Odyssey mini-van he was driving into a goose-neck trailer, having killed his wife as a result of the crash, and having a prior conviction for D.U.I. resulting in death out of Florida. Simply stated, each and every single element of the offense of D.U.I. causing death was either met or exceeded by these facts.

[¶44] These facts, and this very favorable result for Morales, place this case squarely in line with those post-conviction cases wherein a defendant accepts a plea offer and then later complains about an attorney's performance when they suffer buyer's remorse.

[¶45] The Bahtiraj Court noted: "Bahtiraj's affidavit and testimony allege Bahtiraj would have gone to trial if his attorney had correctly advised him that pleading guilty with a sentence of one year or more would result in mandatory deportation. This statement is not enough to establish prejudice. There is overwhelming evidence of Bahtiraj's guilt due to his own confession to law enforcement. Bahtiraj failed to offer any rational defense to the offense of burglary. Accordingly, Bahtiraj's rejection of the guilty plea under these circumstances would not have been rational. Bahtiraj therefore

cannot show the prejudice necessary for an ineffective assistance of counsel claim." Bahtiraj, 2013 ND 240, ¶19, 840 N.W.2d 605.

[¶46] Here, Morales was faced with an admissible B.A.C. value of 0.209%. Morales, 2015 ND 230, 869 N.W.2d 417. Given that the District Court had previously determined the result to be admissible, the jury would have heard the B.A.C. value. Morales presented nothing showing any defense to the B.AC. value, which was a bit more than 2.5X the legal limit of 0.08%. Even if Morales had taken the matter to trial, and lost, the end result would have been the same on appeal with regard to the B.A.C. value. By negotiating the plea agreement, Atty. Foster preserved Morales' ability to appeal the validity of the blood draw, without subjecting him to the risk of a ten year minimum-mandatory sentence.

[¶47] Morales was also faced with evidence that he was driving and that he crashed into the goose-neck trailer while at a 0.209% B.A.C. causing massive damage to the Honda and moving the loaded trailer. (53-2013-CR-02819 Doc. Nos.: 17, 19, 26). In document #17, one can easily see the impression of the goose-neck trailer's hitch as it gouged through the portion of the hood nearest to the windshield and then cut through the windshield on its way to the passenger's seat where Morales' wife had been seated. In Document #17, one can see that the headrest is intact on the driver's side front seat, but is not present on the passenger's side seat. The headrest appears to have wound up in the back of the vehicle as shown in Document #18. Morales has never advanced any defense to being the driver of the car or to striking the goose-neck trailer.

[¶48] Morales further faced overwhelming evidence that his wife died as a result of his drunk driving crash. Morales has never advanced any defense to his drunk driving crash being the cause of his wife's death.

[¶49] While there is not the confession present as there was in Bahtiraj, the evidence here is overwhelming. Morales was on-scene at the crash and was receiving medical assistance, so he would not be able to assert a defense based on after-the-crash alcohol consumption. Compare. State v. Kaloustian, 212 N.W.2d 843 (N.D. 1973)(defendant asserted that he began drinking whiskey once he got home after fleeing from crash scene and prior to B.A.C. testing).

[¶50] Simply stated, Morales did not show a rational defense to the charge of D.U.I. causing the death of his wife. The only material he presented was his subjective belief that he committed no crime, and that he wanted to tell the jury that he did not commit a crime. North Dakota juries are not required to believe the statements of criminal defendants who take the stand.

[¶51] In addition to not presenting any type of defense to the charges for trial, Morales utterly failed to show any expectation of a lesser sentence from trial. Indeed, Morales appears to concede the point that even his current attorney has told him that he is going to prison for a longer period of time if he tries the case and loses. With the high B.A.C, the amount of damage caused to the Honda Odyssey, and the death of his wife as a result, Morales would likely be looking at the ten year minimum mandatory sentence following trial.

[¶52] Against this stark realization that trial and loss means more prison time, Morales claims that he wants "justice," even if such "justice" results in him serving a ten

year minimum mandatory prison sentence and having the 24/7 alcohol program attached to probation. This assertion makes little sense, as Morales is asking to have his lenient plea agreement, which removed an existing minimum mandatory prison sentence, dissolved in favor of the very real likelihood of having the minimum mandatory back on the table following trial.

[¶53] At this stage, Morales has exhausted his direct appeal and lost. Morales has exhausted his N.D.R.Crim.P. 35(b) request for reduction of sentence and lost. Now, after an extended period of time later, he is asking to have his plea agreement dissolved and go to trial, knowing that if he is convicted, he is going away for a longer and non-discretionary period of time and will have the 24/7 program after completion of his incarceration. The only option that makes sense, is that Morales is hoping to somehow get his plea agreement dissolved, that the State would not be able to bring all of its witnesses to trial, and that he would therefore walk away a free man after killing his wife.

[¶54] As Morales presented nothing showing any defense or showing any reasonable expectation of a lower sentence upon taking the case to trial, the State submits that the District Court correctly rejected his ineffective assistance of counsel claims.

Stein v. State does not provide a means to survive summary dismissal

[¶55] In Stein, there was confusion as to whether the 85% rule applied to the defendant's sentence. Stein v. State, 2018 ND 264. Here, Morales was informed of what he was pleading guilty to, and the time that he was to serve. He was also made aware of what the minimum mandatory sentence. The State submits that Stein does not aid Morales in surviving summary dismissal.

Conclusion

[¶56] For the above-references reasons, the State respectfully requests that this Court affirm the District Court's dismissal of Morales' post-conviction applications. At the time of the sentencing, Morales had no issues with Atty. Foster's performance; now he hopes to ride on the coattails of her disbarment.

Dated this 22nd day of January, 2019.

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STATE OF NORTH DAKOTA **IN THE SUPREME COURT**

Edward Reynaldo Morales,	) **CERTIFICATE OF SERVICE**
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Petitioner-Appellant,	)
	) N.D. Sup.Crt. No.: 20180408
vs.	)
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State of North Dakota,	) Dist. Crt. No.: 53-2017-CV-00031
	)
Respondent-Appellee,	)
	)

____

[¶1] I, Nathan Kirke Madden, hereby certify that on January 22, 2019, a true and accurate copy of the State's Brief was served on Atty. Arthurs via email.

Dated this 22nd day of January, 2019.

/s/ Nathan Kirke Madden____

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State of North Dakota,	) Dist. Crt. No.: 53-2017-CV-00031
	)
Respondent-Appellee,	)
	)

____

[¶1] I, Nathan Kirke Madden, hereby certify that on January 22, 2019, a true and accurate copy of the State's Brief was served on Atty. Arthurs via email.

Dated this 24th day of January, 2019.

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