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STATE OF NORTH DAKOTA

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

State of North Dakota,)
)
Plaintiff-Appellee,) **Sup. Crt. No.: 20190274**
)
vs.) **Dist. Crt. No.; 53-2018-CR-01643**
)
Joey Michael Wayland,)
)
Defendant-Appellant.,)
)

APPEAL FROM THE AUGUST 1, 2019 CONVICTION,
THE HONORABLE JOHSUA RUSTAD,
NORTHWEST JUDICIAL DISTRICT, PRESIDING

Brief of the State of North Dakota, Plaintiff-Appellee

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Table of Contents

Table of Authorities

Statement of the Issues

I. **[¶1]** Wayland's speedy trial rights were not violated.

II. **[¶2]** The process of obtaining a mental health evaluation does not violate constitutional principles.

Statement of the Case

[¶3] On November 14, 2018, Atty. Wiese was appointed to represent Wayland. (R.O.A. Doc. No. 9). Atty. Wiese filed an N.D.R.Crim.P. 16 discovery demand on November 16, 2018. (R.O.A. Doc. No. 11). On December 11, 2018, Atty. Wiese moved to withdraw, citing a breakdown of the attorney-client relationship, and that Wayland was wanting to pursue a course that Atty. Wiese fundamentally disagreed with. (R.O.A. Doc. Nos. (17-21).

[¶4] On December 26, 2018 Wayland wrote a letter to the Court complaining of various issues. (R.O.A. Doc. No. 30). Wayland claimed that: he could see the probable cause issues and evidence issues with the case; he wanted Atty. Wiese to put in a motion to suppress evidence; he does not know how to file motions/briefs; he believes that where he is from, trial must happen within sixty days of charges being filed or the matter is dismissed; he is not waiving his speedy trial rights; he is grieving the attorneys of record; he wants an omnibus hearing due to probable cause and evidence issues; he wanted Atty. Wiese to investigate exculpatory evidence; he believes there is exculpatory evidence that is being concealed; he feels that media coverage should be provided by the State in discovery; he believes that law enforcement is "trespassing" if they come to private property without a call; he believes there are "many discrepancies" in the evidence and that there are "many reasons" to suppress the "little amount of circumstantial evidence" in the case; he believes that statements made are hearsay; he believes that false

information was used to identify him; he believes that many civil rights were violated; he believes that Atty. Wiese has not worked on his case, which is part of the reason his case should be dismissed, and that Atty. Wiese has not looked at discovery, had not seen the van video, would not tell him when his "speedy rights" are up, would not file a motion to suppress, did not file a motion to dismiss due to lack of evidence, did not investigate mentioned leads or witnesses, did not look into the State's witnesses[sic] records, did not show him the N.D.R.Crim.P. 16 demand for discovery, did not look into false information on social media posts, and "much more" that will be filed in grievances against various attorneys; he believes his rights to privacy were being violated; he was arrested after asking for a lawyer based on no probable cause; he believes law enforcement is biased against him; he believes that Atty. Wiese's failures made him go against attorney-client privilege; he disliked Atty. Wiese's statement that he would get a break if the State could recover the gun; and various other complaints.

[¶5] On January 2, 2019, the District Court granted Atty. Wiese's motion to withdraw following a hearing on the motion. At the hearing, Wayland claimed that he just needed a lawyer. (Jan. 2, 2019 hearing trans. 5:24-25). Wayland continued to demand an omnibus hearing and a suppression hearing. Id. at 7:5-8. Wayland stated: "I'm just asking one thing. If I could possibly - - me and Misty have had problems just when I said I wanted to go to trial and so I wouldn't want to have her coming in. You know what I mean." Id. at 8:14-17. Wayland also asked about "speedy rights" and how they operated.

[¶6] On January 3, 2019, Atty. Sauviac was appointed to represent Wayland. Atty. Sauviac filed an N.D.R.Crim.P. 16 discovery demand on January 3, 2019. (R.O.A. Doc. No. 36).

[¶7] On January 10, 2019, Wayland wrote a letter to the District Court asserting that: he was not waiving his "speedy rights;" that he does not authorize any continuances; that he needs "issues" resolved related to witnesses and witness relations to include City of Williston cases (not a part of the District Court matters); that he wants a Form 13 omnibus hearing; he wants a transcript of the December 6, 2018 preliminary hearing; he does not authorize a mental health evaluation because there is no basis; he does not waive his presence or arguments at hearings; he wants a suppression motion filed by Atty. Sauviac; he wants Atty. Sauviac to ask about his medications; he wants a bond reduction hearing; he claims that there is no basis for the mental health evaluation but complains that the State is unwilling to reduce his bond to allow for what appears to be mental health treatment at Northwest Human Service Center (N.W.H.S.C); he finds no grounds for alcohol/drug evaluations; he demands that the scheduling order stay as set; he claims that his issues are a neurological disorder and not a mental health issue and that the evaluation was not his idea and was not authorized by him; he has health concerns at the jail; and he will not take a plea. (R.O.A. Doc. No. 47).

[¶8] At the January 29, 2019 dispositional conference, Wayland indicated that he was going to treatment at Northwest and was supposedly complying with the Court's recommendations. (dispositional hearing trans. 4-5). Wayland stated that he was not going to do a mental health evaluation, and that his "speedy rights" come up on March 9, 2019.

[¶9] On February 4, 2019, Wayland wrote a letter to the District Court. (R.O.A. Doc. No. 58). In this letter, he asserted that: he will not waive his presence at any hearings; he will not waive his rights to speedy trial; he will not agree to a mental evaluation; he will not agree to any continuances; he has made it known that he wants a suppression hearing and a Form 15 for omnibus and that it will be a breach of duty for any officer of the court to ignore this; he believes that there are Brady issues that are "too much to ignore;" he needs a Brady motion against various officers and persons; he believes that there are Brady issues with employees of Scenic Sports; he asks questions about how do people get to do various things with pictures; he asks about the white van; he asks why the State did not give Atty. Sauviac video of the white van and claims there is too much dilly-dallying; he believes that the case is "bogus" because there is no physical evidence, there are no direct witnesses, and that photographs were "misused;" and he believes that trial is not plausible but must be by March 9, 2019.

[¶10] The District Court issued an amended scheduling order moving the trial to April 8, 2019.

[¶11] On March 10, 2019, Wayland wrote a letter to the District Court. (R.O.A. Doc. No. 60). In this letter, he asserted that: he believes that the continuance was not properly requested; he will not waive his "speedy rights" or presence; he believes that all officers of the court except Atty. Sauviac know that; since January 4, 2019 Atty. Sauviac has known this; he believes Atty. Sauviac should file suppression and omnibus motions; he believes that the Court should act on his *pro se* letters regarding suppression and omnibus motions; he has told this to Atty. Wiese, Atty. Sauviac, and Valley City; he believes there are probable cause, Brady, witness, and various other issues present; he

believes there is no reason for a continuance; he objects to a continuance; he needs his RIGHT (emphasis in original) to a speedy trial and due process; he believes that all officers of the court will be breaching their duties by not addressing the issues he brought up, by continuing for any reason; he believes Atty. Sauviac has no reason to withdraw; he believes that his "speedy rights" have passed and the matter should be dismissed; he believes that the matter should be dismissed for lack of evidence; he believes Atty. Sauviac is breaching his duty if he does not file suppression/dismissal and omnibus motions; he will not waive rights; and he believes that the laboratory results are inadmissible because they were not within thirty days of trial.

[¶12] There was a final pre-trial conference held on March 26, 2019. A transcript was prepared of the proceedings. Wayland stated that: "Since December, I've asked for an omnibus and suppression hearing and no one's acknowledged it." (March 26, 2019 final pre-trial trans. 4:22). Wayland claimed that there was no acknowledgment of "speedy rights." Wayland stated that he "had pointed out enough misconduct with things in this case that - - so I mean." Id. at 4:24-25. Wayland wanted a bond hearing without "that guy there" apparently referring to Atty. Sauviac. Id. at 5:11-12. Wayland was unhappy that his trial was not the top priority for the week of March 11, 2019, and claimed that "nothing" has been handled. Wayland referenced having a bond review as soon as Atty. Sauviac withdraws. Id. at 6:18-20.

[¶13] On March 28, 2019, the State moved to continue trial from the April 8, 2019 date to a later date because of an unexpected death in the family of a material witness, Officer Lachner, who was going to be in Minnesota for the funeral the date of trial. (R.O.A. Doc. Nos. 64-68). The District Court granted the State's motion.

[¶14] On March 29, 2019, the matter was assigned to Atty. Kuna at the State's Attorney's Office. (R.O.A. Doc. No. 69). No continuance was requested due to the reassignment.

[¶15] Atty. Sauviac moved to withdraw on March 29, 2019. (R.O.A. Doc. Nos. 71-76). Atty. Sauviac noted that Wayland had filed his own motions that Atty. Sauviac did not agree with; that Wayland demanded the filing of an "omnibus motion" and a motion to suppress despite not being able to describe anything other than the "white van;" that the white van issue would be without merit; that Wayland is threatening disciplinary action against him; that Wayland refuses to cooperate at all court appearances; and various other issues with the attorney-client relationship. (R.O.A. Doc. No. 73).

[¶16] At the April 23, 2019 final pre-trial conference, Wayland recognized that the matter was coming off of the trial date so that his new attorney could have time to prepare. (April 23, 2019 final pre-trial trans. 6-7). Atty. Sauviac even pointed out to the District Court that the Court had given Wayland the same warnings beforehand that the Court gave before, indicating it would appoint yet another attorney. Id. at 8. Wayland also complained about his matter not being dismissed due to "speedy rights" issues, and complained about other pending cases. Wayland complained about wanting an omnibus, an evidence haring, a suppression hearing and "all sorts of stuff for a long time" and that he was just getting ignored. Wayland also complained that Atty, Sauviac ignored his omnibus and suppression and "all that stuff."

[¶17] On April 25, 2019, Atty. Hoffman was assigned as conflict counsel. She filed an N.D.R.Crim.P. 16 discovery demand on April 29, 2019. (R.O.A. Doc. No. 85). On July 17, 2019, Atty. Hoffman moved to withdraw as counsel. (R.O.A. Doc. Nos. 99-

104). Atty. Hoffman noted a material breakdown in the attorney-client relationship. (R.O.A. Doc. No. 103).

[¶18] On July 17, 2019, the North Dakota Commission on Legal Counsel for Indigents sent a letter to the District Court asking that the Court either require Atty. Hoffman to remain as the attorney of record or that Wayland be found to have waived counsel. (R.O.A. Doc. No. 107).

[¶19] There is a July 22, 2019 entry in the Odyssey Register of Actions which appears to be a twelve-page collection of various items that were sent to the District Court by Wayland during the months of June and July of 2019. (R.O.A. Doc. No. 109). In these filings, Wayland asserts that: he has included proof of what he asked his attorneys to do; he wanted a bench trial; he did not ask for Atty. Hoffman to withdraw; he provided written proof through a "buffer" as a witness; he can provide more proof that he asked for motions, and an NCIC check on the firearm; he can provide proof that he took the same procedures with the same "buffer" with Atty. Sauviac; he believes this should have been addressed at the July 16, 2019 final pre-trial conference; he showed Atty. Hoffman Rule 17.1; he is second on the priority list and demands his trial; he demanded to stay with the scheduling order; he believes that the video is not a positive I.D. and that it is "circumstantial;" he claims that the reassignment to Atty. Kuna is why the motion to continue occurred; he claims that things happened on March 29, 2019 because of his disciplinary complaint; he does not know how to instruct the jury that video cannot be a positive I.D. and that two-dimensional depictions are "circumstantial" and insufficient for a positive I.D.; he told Atty. Hoffman about his thoughts on videos; he told Atty. Hoffman to demand a bench trial; he objects to her withdrawal because he needs an

attorney, the case will show that it should not have been filed by the undersigned, that a conflict of interest exists when the prosecutor notarizes an affidavit; he wants to argue all pre-trial issues; he wants no more delays; he wanted Atty. Hoffman to file motions for omnibus, suppression/dismissal; and to argue his "speedy rights;" he was enclosing communications between himself and Ms. Delaney; he has written proof of asking his attorneys to do things (document cut-off); his rights were violated; he believes Atty. Kuna lied when stating that he had issues with three attorneys; he knows that there are no positive I.D.'s; and he believes that nothing has happened among other things.

[¶20] Included in the July 22, 2019 filings was a letter he wrote to Atty. Hoffman on June 27, 2019. In that letter, Wayland complains about his "speedy rights;" that Atty. Kuna did not file a response following the April 23, 2019 hearing; that he is "on the record multiple times saying I do not need Sauviac to withdraw and pursue my speedy rights, suppression, and omnibus;" he asks why she had not filed for the omnibus; he asks why the State stipulated to suppress the white van video; he has why Scenic Sports has not provided a listing of all employees and their activities the day of the theft; he asked who positively ID'ed him at any time; he asked about the original comments to a Facebook post; he asked why she had not interviewed Vickie Miller; he asked how the undersigned could notarize the affidavit and still prosecute the matter; he wanted in writing what a positive ID is; and other matters.

[¶21] On July 24, 2019, Wayland sent a letter consisting of approximately sixty-five pages to the District Court. (R.O.A. Doc. No. 125). In that document, he asks Judge Sjue to review the charging documents that were originally signed. Wayland again complains about his attorney's performance. Wayland indicates that he would agree to a

misdemeanor disposition if it did not have an evaluation as a required condition. Wayland appears to claim that the matter should proceed or have been settled by now. This is the first letter that the State is aware of in which Wayland claims to want to settle the matter.

[¶22] Jury trial began on July 30, 2019, with Wayland being convicted of the theft of a Sig-Sauer AR-15 "pistol" from Scenic Sports. Before trial, the State dismissed the paraphernalia charge.

Statement of the Facts

[¶23] On November 2, 2018, employees of Scenic Sports in Williston, North Dakota, reviewed video surveillance footage from the camera that covered the area where a Sig-Sauer AR-15 "pistol" with a drum magazine had been displayed. The "pistol" had been missing, and they reviewed video from November 1, 2019.

[¶24] The November 1, 2019 video showed a male, later identified by law enforcement as Wayland, approach the AR-15 "pistol" display. The video shows Wayland pick up the "pistol," manipulate his jacket, and then shows the empty display. Wayland then left the store without paying for the firearm.

[¶25] On November 4, 2019, Wayland was located inside of a Dodge Dakota pickup truck that was parked in the lot of a local business in Williston. Law enforcement obtained a search warrant for the Dakota to look for firearms and related materials. During the course of executing that search warrant, law enforcement located suspected marijuana paraphernalia inside of the vehicle. Law enforcement then obtained and executed a second search warrant for narcotics and narcotics paraphernalia.

Law and Argument

[¶26] Wayland filed multiple *pro se* documents in the underlying case. Many of these filings included references to purported laws, rules, and other matters that do not exist in North Dakota. Wayland claimed that, where he came from if he was not tried within sixty days of being charged out that his matter would be dismissed; that is not the law in North Dakota. Wayland also demanded that various motions be filed. Wayland further demanded that the matter be dismissed because video surveillance footage is "circumstantial" and appears to represent no evidence. Wayland also threatened disciplinary action against all of the attorneys who were in the record of the case. This string of filings and the accompanying demands began in late December of 2018, or roughly two-and-a-half months before the original March 11, 2019 trial date. Evidence of the inability to work with counsel pre-dating the instant charges came from Wayland himself at the January 2, 2019 hearing on Atty. Wiese's motion to withdraw as counsel

[¶27] As a result of these filings and the apparent attitude of Wayland, court appointed attorneys found it impossible to work with Wayland, and three of them withdrew over the course of the proceedings. Atty. Wiese was the first to withdraw, and he moved to withdraw on or about December 11, 2018. The last attorney to withdraw, Atty. Hoffman, was allowed to withdraw in July of 2019.

[¶28] In addressing the claims in the instant appeal, the undersigned is making what amount to estimations of what Wayland was claiming below as his filings reference improper law, frivolous assertions, and other matters. The undersigned apologizes if the estimations are incorrect.

[¶29] Wayland's filings are also internally inconsistent. In the sixty-five page document filed on or about July 25, 2019, Wayland indicates to Judge Sjue that he would be willing settle the matter for a credit-for-time-served misdemeanor. (R.O.A. Doc. No. 125 at page 6). Previously, Wayland had definitively told the District Court in his *pro se* filings that he was not interested in anything but a trial. Indeed, in his December 26, 2018 letter against Atty. Wiese, he was dismissive of Atty. Wiese's attempts to get a more favorable outcome by providing information about where the stolen AR-15 "pistol" might be found. Previous to document number 125, Wayland had been pushing for a jury trial as soon as possible, then wrote the letter to a different judge making it appear that he was willing to possibly settle the matter.

[¶30] Wayland's filings also demonstrate external and internal falsities such as his claims in the July 22, 2019 collection of documents that he was on the record "multiple times" saying I do not need Sauviac to withdraw. Yet, in the court proceedings, he was asking if he could have a bond hearing without Atty. Sauviac there, and made it clear on the record that he wanted Atty. Sauviac gone. (March 26, 2019 final pre-trial trans.). Wayland is also on the record at the April 23, 2019 hearing saying, in regard to Atty. Sauviac's motion to withdraw: "I - - at one hearing, well after my speedy rights were violated, I asked him to withdraw. That was at the bond hearing in front of Kristen (verbatim) Sjue. That was the only time I asked for it. So I'm not objecting now, especially after his motion that he filed." (April 23, 2019 hearing trans. 3).

I. Wayland's speedy trial rights were not violated

[¶31] In his Appellant's Brief, Wayland asserts:

> The key factor in the present case is the delay that occurred on the originally scheduled trial date, the week of March 11, 2019. Mr. Wayland was ready for trial, counsel had been appointed for over two months at that point. However, the delay occurs which causes a chain reaction of attorney-client relationship breakdowns, State's Attorney reassignments, and unavailability of State witnesses. (Appellant's Brief at ¶25).

[¶32] This assertion does not comport with the materials found within the record itself. As shown below, the only portion of this claim that bears a relationship to the record is the one continuance granted to the State when a material witness was unexpectedly unavailable.

Wayland's own filings demonstrate that he was not "ready for trial"

[¶33] Wayland's numerous *pro se* filings demonstrate that he was in no way "ready for trial" on March 11, 2019. On December 26, 2018, Wayland was complaining about all of the motions that he felt needed to be done, as well as all of the investigation that he thought was necessary, along with all of the other things that he felt Atty. Wiese had not done properly for him. Wayland claimed that where he was from, trial had to happen within 60 days of the charges being brought. The December 26, 2018 letter even indicated that Wayland felt that Atty. Wiese's purportedly poor performance should be a reason to dismiss the charges against him.

[¶34] Wayland's January 10, 2019 letter to the District Court also demonstrates that he was not "ready for trial." (R.O.A. Doc. NO. 47). As noted in the Statement of the Case, this letter claimed numerous issues with discovery, with witnesses, and other matters such as filing various motions. In the filing, Wayland admitted to having had care through Northwest Human Service Center (N.W.H.S.C.), but yet claimed there were no grounds for a mental health evaluation.

[¶35] Wayland's February 4, 2019 letter to the District Court further demonstrates that he believed he was not "ready for trial." In this letter, he was still demanding a suppression hearing, a "form 15" omnibus hearing, along with other demands for pre-trial motion practice. He also says that trial is not viable, but must happen by March 9, 2019.

[¶36] Wayland's March 10, 2019 letter to the District Court again demonstrates that he believed he was not "ready for trial" and needed suppression and omnibus hearing matters addressed.

[¶37] The compilation of documents sent to the District Court by Wayland that became R.O.A. Doc. No. 109, demonstrates that Wayland still was not "ready for trial" as he wanted various pre-trial motions filed to include omnibus hearing(s), suppression motions, motions to dismiss, and various other matters.

[¶38] Wayland's July 23, 2019 letter to the District Court demonstrates that he is not "ready for trial," as he is still complaining about "circumstantial" evidence, motions that needed to be filed, and other matters. (R.O.A. Doc. No. 115).

[¶39] At the July 29, 2019 final pre-trial conference, Wayland claimed to not know what the elements of theft were because his attorneys supposedly never told him. (July 29, 2019 pre-trial trans. 19:3-10). Again, Wayland did not seem "ready for trial" even at that date, as he was claiming to not know the offense for which he was charged.

[¶40] Now, on appeal, Wayland claims that he was "ready for trial" the week of March 11, 2019. He makes no mention of the demands for frivolous pre-trial filings made of counsel months before the March 11, 2019. He makes no mention of his repeated demands that the pre-trial motions and other filings needed to be done as March 11, 2019 approached. The State submits that when there is a conflict between the

unsubstantiated claims of a party on appeal and the record, that this Court should go with the information in the record.

[¶41] Further, the assertion that he had been "ready for trial" back during the week of March 11, 2019 does not comport with his assertions later in this appeal, where he claims he could not have been ready for the July of 2019 trial date because he only had four days to prepare. The State submits that if he had truly been ready to go to trial on March 11, 2019, he would have still been ready to go to trial in July of 2019.

Wayland's own filings and statements demonstrate an unwillingness to work with counsel from the beginning

[¶42] Contrary to the assertion that it was the delay at the March 11, 2019 trial week that caused breakdowns in attorney-client relationships, the record demonstrates that Wayland was simply unwilling to work with counsel for months prior to that initial trial date.

[¶43] Atty. Wiese moved to withdraw on December 11, 2018 citing a breakdown of the attorney-client relationship and the insistence of Wayland in following a course of action that Atty. Wiese fundamentally disagreed with. (R.O.A. Doc. No. 19). Given the demands made by Wayland in his *pro se* filings, it is clear that this course of conduct included the filing of multiple pre-trial motions of a frivolous nature. The letters of Wayland also indicate that he was operating under the assumption that North Dakota had a sixty-day dismissal requirement if a matter could not be brought to trial after being charged and insisted that this be argued. In effect, Wayland was insisting that Atty. Wiese make frivolous arguments to the District Court instead of actually attempting to work with Atty. Wiese to move the case forward.

[¶44] Given that Wayland already had issues with the attorney-client relationship three months before the scheduled trial date, the record demonstrates that the resetting of the trial date from March 11, 2019 did not cause a sudden problem with attorney-client interactions.

[¶45] As noted elsewhere, the December 26, 2019 from Wayland laid out all of his assertions of wrongdoing on the part of Atty. Wiese. This letter was roughly two-and-a-half months before the March 11, 2019 original trial date. Again, this letter demonstrates that attorney-client relationship problems existed long before the trial was moved from March 11, 2019.

[¶46] At the January 2, 2019 hearing on Atty. Wiese's motion to withdraw, Wayland voiced to the court that he and Atty. Misty Nehring have had "problems" in the past, which he blamed on his demands to go to trial. Given that Atty. Nehring has never been a part of the underlying proceedings, and Wayland's reference to difficulties, in the past, this statement demonstrates that Wayland has issues working with attorneys that predate the instant matters. Based on information in the Odyssey system, Atty. Misty Nehring represented Wayland in 53-2016-CR-01152, and ultimately moved to withdraw as counsel in that case. (53-2016-CR-01152 Doc. No. 76 [order]).

[¶47] Wayland's January 10, 2019 letter demonstrates difficulties with the attorney-client relationship. This letter was drafted roughly two months before the originally scheduled March 11, 2019 trial date. Wayland is again claiming that an omnibus hearing must be held and that there are various issues that need to be addressed. This letter shows that attorney-client relationship problems did not arise from the resetting of the March 11, 2019 trial date. The claim that Wayland's behavior towards

and inability to work with defense counsel stemmed from the resetting of the March 11, 2019 trial date is simply inaccurate.

Reassignment to a different prosecutor had no effect on the timing of trial

[¶48] It is unknown why Wayland includes the reassignment of the case to a different prosecutor as having some effect on the timing of the case. The State has been unable to find anything in the record indicating that the reassignment of the case had anything whatsoever to do with when it came to trial. Wayland has presented no document in the record showing such an effect. As such, the State submits that the reassignment is simply a non-issue with regard to when the trial happened.

The unavailability of a material witness for the State caused one rescheduling

[¶49] In his filings with the District Court, it appears that Wayland was trying to claim that the March 29, 2019 motion to continue came as a result of the reassignment of the case. That is incorrect. The State filed a motion to continue due to the unavailability of a witness. This is the one and only situation in this matter where the State asked for a continuance.

The failure to file a response to the April 23, 2019 request by the District Court does not create a violation of speedy trial rights.

[¶50] Judge Rustad did ask the State to file a response to what the Court was considering a motion regarding speedy trial rights that consisted of writings from Wayland. Based on a review of the Odyssey Register of Actions, it appears that this was not done.

[¶51] However, the failure to respond does not result in an automatic victory on the motion filed. The moving party must demonstrate that he/she is entitled to what is

asked for. See. Hartman v. Hartman, 466 N.W.2d 155 (N.D. 1991). Here, Wayland presented nothing to the District Court showing that he was entitled to have the matter dismissed for violation of his "speedy rights."

Wayland conflates rescheduling of trials with requests for continuance

[¶52] Requests for continuances of matters come from parties, and are governed by portions of N.D.C.C. Chap. 29-19. The District Court's moving of Wayland's trial from the March 11, 2019 week was not a product of a party's request for a continuance.

[¶53] What is apparent from the February 26, 2019 final pre-trial conference before the trial set for week of March 11, 2019, is that Wayland's refusal to work with counsel was on full display. (February 26, 2019 final pre-trial trans.). At the hearing, Wayland claimed that there "major issues" that needed to be addressed, and indicated that it was not his problem that he and other attorneys have had issues. Id. at 6-7. Wayland knew the case prioritization schedule of the District Court at the hearing, but had previously claimed that his case needed to be dismissed if trial did not happen by March 9, 2019, which he said was an impossibility.

Speedy trial right analysis

[¶54] In State v. Hamre, 2019 ND 86, 924 N.W.2d 776, this Court noted the four elements considered in speedy trial analysis. They are: 1) the lend of the delay; 2) the reasons for the delay; 3) the defendant's assertion of the right to a speedy trial; and 4) the prejudice to the accused. Id.

Assertion of speedy trial rights

[¶55] Essentially, Wayland believed that if you made a demand for "speedy rights," and your case was not held within sixty days of the date of arrest, your case was automatically dismissed. That is not the law in North Dakota. See. N.D.C.C. §29-19-02.

[¶56] When the District Court explained how speedy trial provisions work, Wayland simply ignored the information that he did not wish to hear. Judge Rustad indicated that there is a ninety-day window for certain types of cases. Once he abandoned the sixty-day figure, Wayland then picked up the ninety-day one claiming that dismissal should be automatic based on more than ninety days having elapsed. Theft of property is not one of the charges enumerated in N.D.C.C. §29-19-02 as having a ninety-day window.

[¶57] Wayland's recalcitrance was fully on display at the January 2, 2019 hearing on Atty. Wiese's motion to withdraw, wherein Wayland agreed that Atty. Wiese should be allowed to withdraw but he was not going to waive his "speedy rights." This is very similar to Hamre, 2019 ND 86, 924 N.W.2d 776. In effect, Wayland refused to work with any attorney yet continued to demand his "speedy rights" be honored while demanding counsel. The State submits that this is precisely the type of pre-trial gamesmanship that should be discouraged.

[¶58] Now, on appeal, he claims that this inability to work with counsel only came after reaching the point of no return after March 8, 2019, yet the record shows it was in existence even in December of 2018 when Atty. Wiese moved to withdraw. The record shows that Wayland continued to file materials with the District Court even after Atty. Sauviac was appointed. The record shows that, as with Hamre, Wayland refused to work with defense counsel while simultaneously demanding his "speedy rights" from the

very beginning, which is completely the opposite of his new claim on appeal that his attorney issues came about only after his March trial date was moved.

[¶59] While Wayland did repeatedly demand his "speedy rights," the record also shows a constant tension between those demands and refusal to work with counsel; something that is played out periodically with defendants who wish to avoid the consequences of their actions. See. Hamre, 2019 ND 86, 924 N.W.2d 776.

[¶60] Based on the documents filed by Wayland, it appears that he was hoping that by asserting his "speedy rights" and hampering the efforts of his attorneys, he could obtain an automatic dismissal based on what he claimed was the law back where he came from.

[¶61] With regard to the prioritization of cases, Wayland ignores the fact that all defendants have the right to speedy trial. Wayland also ignores the fact that Panasuk's case had been reset multiple times during the course if its existence, with trial dates being reset related to August 27, 2018; December 17, 2018; and February 11, 2019 prior to the March 11, 2019 trial week.

[¶62] Wayland has presented nothing showing that the assertion of speedy trial rights results in an automatic prioritization of his case over others that are considerably older. While the assertion of the right is one element to be considered, it is, as even Wayland admits, not the decisive factor in finding a violation of speedy trial rights.

Wayland was the primary reason for the delays

[¶63] Turning to the reasons for the delay, the State notes a pervasive and ongoing problem regarding Wayland's unwillingness to work with appointed counsel. While Wayland claims on appeal that this was an issue after trial was reset from March

11, 2019, the record indicates that this problem existed even before the instant matter with his inability to work with Atty. Misty Nehring in earlier matters being demonstrated in the record. This problem continued with Atty. Wiese, who moved to withdraw citing demands by Wayland to pursue a course of conduct that Atty. Wiese did not agree with.

[¶64] After Atty. Wiese's withdrawal, Atty. Sauviac was appointed. Atty. Sauviac filed a motion to have a mental health evaluation done on Wayland. Wayland fought with Atty. Sauviac over that issue as well as his issue about wanting to file other motions, such as a suppression motion involving the "white van," that he could not provide any explanation for. Based on filings from Atty. Sauviac, Wayland refused to cooperate with anything in court. In essence, it was the same problem that was present when Atty. Wiese was appointed.

[¶65] Then, after Atty. Sauviac withdrew and Atty. Hoffman was appointed, Wayland continued to make objectively unreasonable demands such as demands to file motions to dismiss, motions to suppress, and motions for omnibus hearings.

[¶66] With regard to the March 11, 2019 trial date, the Defendant's case was in the priority queue behind older cases. As noted above, the Defendant's case did not involve sex offenses or possession of controlled substances offenses. Therefore, the ninety-day window was not triggered.

[¶67] Wayland has presented nothing showing that it was not appropriate to try an older case, State v. Dustin Panasuk, 53-2018-CR-00529 instead of Wayland's case for the week of March 12, 2019. In his filings, it appears that Wayland confuses the issue of a party asking for a continuance with the fact that not every case in which a defendant wants a trial can be tried at the same time. The State notes also that there were many

obvious issues occurring between Wayland and Atty. Sauviac around the time of the March 11, 2019 trial week as demonstrated by the numerous filings by Wayland. Those filings indicate that, at least in Wayland's opinion, multiple matters needed to be addressed before trial. Indeed, Wayland even stated that trial was impossible that week, but that it "must" occur by March 9, 2019. Despite Wayland's own assertion to the District Court that trial was not possible/plausible by March 9, 2019, he continues to complain that trial did not occur on the week he considered to be impossible himself. The State submits that Wayland became fixated with the inapplicable concept of trial within sixty or ninety days or automatic dismissal, and simply could not accept the fact that North Dakota does not have such a rigid and inflexible mandate.

[¶68] The trial was reset once due to the State having a witness who was unexpectedly unavailable. This witness, Officer Lachner, was even indicated by Wayland himself as being critically important to the matter. Wayland has presented nothing showing that the continuance due to the death of a family member, and the subsequent funeral, was improper. Based on filings with the District Court, and the reference to the reassignment of counsel in the State's Attorneys Office, Wayland seems to claim that this change somehow caused delays. The record shows that no continuances were sought because of that, and the State therefore asks this Court to not take the reassignment into consideration.

[¶69] It appears that there was a data entry error in the Odyssey Register of Actions for the entry between Documents ##92 and 93 which shows a continuance because the attorney for the State of North Dakota is not available. The only document filed addressing the trial dates of April 8, 2019 and May 6, 2019 and the unavailability of

any attorney, was filed by Atty. Sauviac on April 8, 2019. While the State did move to reset the April 8, 2019 trial date, it was due to the death in Officer Lachner's family, and had nothing whatsoever to do with the case being reassigned to Atty. Kuna. Perhaps it is the apparent data entry error in Odyssey which resulted in the idea that the reassignment caused delays.

[¶70] After Atty. Sauviac's March 29, 2019 motion to withdraw was granted, Atty. Hoffman was appointed to represent Wayland on or about April 25, 2019. Atty. Hoffman filed a request for transcripts of various hearings on May 3, 2019. (R.O.A. Doc. No. 91). Atty. Hoffman made a request for a bench trial on July 16, 2019. (R.O.A. Doc. No. 98). These actions, which appear to be pre-trial things that Wayland wanted done based on his repeated discussions about transcripts, were not sufficient to appease Wayland, and Atty. Hoffman moved to withdraw as counsel on July 17, 2019.

[¶71] Wayland then sent his July 18, 2019 letter to the District Court complaining about failures of Atty. Hoffman and prior counsel. As noted above, Wayland was continuing to be insistent that he was never "positively ID'ed" in his mind. In the July 18, 2019 letter, Wayland also complains that he instructed Atty. Hoffman to demand a bench trial; something that Atty. Hoffman had already requested. This communication demonstrates that, no matter what defense counsel did or did not do, Wayland was simply not going to cooperate. As with his other letters, Wayland refused to work with counsel while demanding his "speedy rights" be upheld.

[¶72] Wayland was also claiming that he did not ask for Atty. Hoffman to withdraw, creating the sort of tension present in State v. Yost, 2014 ND 209, 855 N.W.2d 829 of a defendant filing document complaining about attorney performance, but

supposedly not wanting the attorney to withdraw. The difference between this matter and Yost is that here, Wayland had been warned about the consequences of his inability to work with counsel. This is also the type of tension present in Hamre, wherein the defendant kept making speedy trial assertions despite being unwilling to work with defense counsel.

[¶73] The record demonstrates that, instead of working with defense counsel since the inception of the case, Wayland demanded that they engage in frivolous practices which would likely violate the Rules of Professional Conduct. His assertion that law enforcement cannot enter the parking lot of a business because it is trespassing on private property to investigate a report of potential unauthorized activities at the location does not comport with North Dakota law. N.D.C.C. §12.1-22-03(6). His assertion that the Scenic Sports surveillance video should be suppressed because it is "circumstantial," or two-dimensional, or for his other reasons does not comport with North Dakota law. E.g. Sate v. Gill, 2004 ND 137, 681 N.W.2d 832 (hidden cameras capturing defendant stealing money). His assertions that two-dimensional video could never result in a positive ID are of a similarly frivolous nature as demonstrated by his complaints that there should have been a photographic lineup done; a procedure which is also inherently two-dimensional. These claims appear to have hampered defense counsel dating back to mid-December of 2018.

[¶74] The record also demonstrates that, instead of attempting to work with defense counsel, it appears that Wayland was demanding that his court appointed counsel address cases in which he/she was not even appointed. These issues manifested

themselves not only in writings to the District Court, but also in various court appearances.

Wayland experienced no prejudice

[¶75] With regard to any claims of prejudice, Wayland claims that these delays caused him to reach the point of no return in confidence after March 8, 2019. (Appellant's Brief at ¶43). He therefore says that his "prejudice" was not having trial counsel because his second appointed counsel withdrew, and he supposedly received "no further support" from his third appointed counsel. Wayland then cites to the order to withdraw as counsel related to Atty. Hoffman's motion.

[¶76] The record shows that Wayland had difficulty working with his attorneys long before March 8, 2019. Atty. Wiese moved to withdraw on December 11, 2018. At the January 2, 2019 hearing on Wiese's motion to withdraw, Wayland commented about difficulties he has had working with other counsel in the past. None of this had to do with Atty. Sauviac moving for a mental health evaluation because Atty. Sauviac was not even attorney of record at the time. The January 2, 2019 motion to withdraw hearing demonstrates that Wayland had significant issues with Atty. Wiese. He complained that "virtually nothing" had been done outside of the request for speedy trial and the motion to withdraw. (January 2, 2019 trans. 5:18-19). Wayland complained that he need to get an omnibus hearing and that he just needed a lawyer. Id. at 5. Wayland then complained that what he was really asking for was the omnibus hearing and suppression and that he asked Atty. Wise for the suppression. Id. Wayland later commented on not wanting Atty. Misty Nehring because he had issues with her in the past when he stated that he wanted to go to trial.

[¶77] Wayland appears to omit the data where he demands that Atty. Hoffman file motions to suppress information on "white vans," motions to dismiss, motions for omnibus hearings, and other matters. Wayland harassed all three attorneys that he had regarding the filing of frivolous motions to suppress information about "white vans," to demand an omnibus hearing, to dismiss for lack of evidence despite him being caught on video stealing the firearm, to suppress the video surveillance footage as "circumstantial" evidence, to dismiss for lack of immediate eyewitnesses, and various other reasons.

[¶78] Wayland appears to omit the material about the complaints that Wayland sent to Valley City regarding Atty, Hoffman that were found in the twenty-some-page July 22, 2019 filing. Not only was Wayland sending letters to his attorneys demanding that they file what were described by at least one as meritless motions, he was filing materials with the District Court and was filing disciplinary type complaints to various agencies. Ultimately, Wayland drove away attorneys until the District Court finally said no more court appointed attorneys. Now, he complains that he was prejudiced by being denied counsel as trial approached.

[¶79] Wayland also omitted Judge Rustad's repeated admonitions about not working with appointed counsel. Judge Rustad had previously told Wayland that he may not get another attorney when Atty. Wiese withdrew and Atty. Sauviac was appointed. (January 2, 2019 hearing trans. at 5-7). Judge Rustad even stated he was going to approve one more appointed attorney, which turned out to be Atty. Sauviac. Id. at 7. Judge Rustad later agreed to appoint yet another attorney, who was Atty. Hoffman. (April 23, 2019 final pre-trial trans. 4-7). It was only through the beneficence of the District Court that Wayland even received a third attorney after his actions with the first two.

[¶80] Simply stated, Wayland was given ample warnings about the effects of his continued unwillingness to work with defense counsel, yet he kept making it impossible for them to work. The State submits that the loss of court appointed counsel came not from the delay of the original March 11, 2019 trial date, but from the continuous and unbroken course of the Defendant's conduct. E.g. State v. Dvorak, 2000 ND 6, 604 N.W.2d 445; State v. Holbach, 2007 ND 114, 735 N.W.2d 862. Wayland's *pro se* status was completely of his own doing.

[¶81] Wayland's assertion of not having a copy of the jury pool listing is not a function of any purported prejudice suffered as a result of the trial date. Wayland showed the ability to make repeated filings with the District Court, but, instead of asking for a jury pool list, he chose instead to make large-scale filings which essentially consisted of complaints against the State and his prior attorneys. Under State v. Gasser, 306 N.W.2d 205 (N.D. 1981), *pro se* litigants do not receive any special treatment compared to those litigants who are represented by counsel. Wayland could have inquired about the matter, but chose other paths instead.

[¶82] Wayland's complaint about not having witnesses subpoenaed until less than 24 hours before trial again does not relate to the timing of trial. If anything, the delay in having his trial would have given him ample time to file subpoenas. Instead, he elected to write complaints to the court, to Valley City, and to the disciplinary board about how poorly he felt he was being treated by his attorneys and by the State. How Wayland chose to use the time leading up to trial was up to him. The fact that he chose to use the months leading up to trial to refuse to work with counsel, to file disciplinary complaints,

and to file letters to the District Court does not create "prejudice" when is faced with having to file subpoenas close to trial because of his choices in how he spent his time.

[¶83] Now, on appeal, Wayland complains that he was not given enough time to prepare for a very simple theft of property case, where he was caught on video stealing a Sig-Sauer AR-15 "pistol" from Scenic Sports. As with the subpoena matter, he could have spent his time reviewing materials and preparing for trial. He elected to spend his time complaining about the performance of those involved, and refusing to work with his attorneys. It is ironic that, having complained about having to wait months for trial, he now asserts that he did not have enough time to prepare for trial. Compare. N.D.C.C. §29-16-07 (minimum of one day to prepare for trial after entry of not guilty plea, if requested by defense).

[¶84] It is noteworthy that Wayland, having previously claimed in his Appellant's Brief he was "ready for trial" back in March of 2019, then reverses course and claims "prejudice" because he did not have subpoenas ready and did not have sufficient time to prepare for trial. These matters would not have been issues if he was truly "ready for trial" back in March of 2019.

[¶85] Wayland claims to not know who the witnesses were until shortly before trial when he was *pro se*. The record demonstrates that Wayland himself was indicating he wanted subpoenas of various witnesses dated back to December of 2018. (July 29, 2019 final pre-trial conference trans. 50). Wayland noted that the State has it witnesses including Officer Lachner, Megan Vigness, and the two guys from Scenic Sports. Wayland also talked about Officer Mann. The record demonstrates that Wayland was well aware of who the persons involved were. The record even demonstrates that

Wayland was talking about Officer Lachner and other individuals long before trial occurred in July of 2019. Simply stated, Wayland was not prejudiced with regard to who the witnesses were, or the lack of any.

[¶86] The Information filed in the felony case included: Jeremiah Lachner, Anthony Mann, Hugh Benzen, Shane Anderson, Loren Anderson, and Megan Vigness. (R.O.A. Doc. No. 16). At trial, the State called Jeremiah Lachner, Shand Anderson, Lroen Anderson, and Megan Vigness based on the appeal transcript's listing of witnesses called. Against this obvious material in the record, Wayland claims: "Mr. Wayland did not have a witness and exhibit list from the State regarding the trial that was commencing in less than 24 hours." (Appellant Brief at ¶44). The record shows that Wayland received an N.D.R.Crim.P. 7 Information, which contained a listing of people that included those called at trial per N.D.R.Cim.P. 7(g). The State submits that making naked assertions regarding witnesses, which are completely at odds with the record, does not create "prejudice" on behalf of a party.

[¶87] With regard to Wayland's claim about "prejudice" from not having an exhibit listing before trial, the State notes that Wayland had received the video of him taking the AR-15 "pistol" from Scenic Sports. The record indicates that a Facebook page printout was introduced into evidence, which is presumably the one that Wayland had been complaining about in his multiple filings with the District Court during the course of the proceedings. Based on the record, it appears that some ammunition was introduced by the State to show a comparison between the various types of ammunition that AR-15's can be chambered in. Apart from the comparative ammunition types, the rest of the State's exhibits appear to have been received by Wayland during the course of the case.

Wayland has presented nothing showing that he was prejudiced by not having a listing of exhibits to be offered at trial before trial began.

[¶88] Wayland also complains that he sent all of his discovery and other materials to the District Court, and that he was somehow prejudiced by having to do a *pro se* trial on short notice without his preparation materials. The apex of this claim is that he was left by himself with no materials and no copy machine.

[¶89] Wayland submitted approximately sixty-five pages of materials to Judge Sjue in an attempt to get Judge Sjue to act on a case that was not hers. Again, Wayland got his materials; what he chose to do with them was up to him. Instead of reviewing them, he elected to send them to a different judge along with another complaint about how poorly his attorneys had treated him. The fact that Wayland chose this course of action does not create "prejudice" when he later realizes that he sent his only copy to the District Court with his complaints. Further, N.D.R.Crim.P. 16 does not require the State to provide multiple copies of discovery materials to criminal defendants; it does not even require that the State copy them at all. State v. Flynn, 479 N.W.2d 477 (N.D. 1992).

[¶90] Here, the State exceeded what is required by N.D.R.Crim.P. 16 and provided copies of the materials. The State has no control over what a defendant does with the materials he/she receives. The fact that Wayland chose to squander his resources on attacks against his attorneys and the State does not demonstrate that the State or the time to trial caused him to suffer prejudice.

[¶91] While Wayland has complained about being incarcerated during the pendency of the pre-trial matters, he omits that there were reasons for this under N.D.R.Crim.P. 46. Wayland's criminal history was significant, and included multiple

felonies and misdemeanors. (November 8, 2018 bond hearing trans. 3); N.D.R.Crim.P. 46(a)(3)(E). The strength of the evidence against Wayland was high, as he was captured on video stealing the AR-15 "pistol." See. N.D.R.Crim.P. 46(a)(3)(B). Wayland's continued incarceration was not an attempt to deprive him from resources; it was a product of his extensive criminal history and the strength of the evidence against him.

[¶92] Wayland has not indicated how Williams County, North Dakota has "unlimited resources" available to prosecute a case involving the theft of a firearm. The reason that Wayland was "isolated from any support" came from his own actions; actions which even caused the Commission in Valley City to ask the District Court to put an end to the cycling of attorneys. Through the three attorneys who were appointed to represent him, he had access to their resources. The fact that he demanded they file frivolous motions, that he filed disciplinary actions against them, the fact that he refused to cooperate with them, etc. is not a display of power by the government. His *pro se* status and isolation was purely a product of his own actions and cannot be attributed to the State.

[¶93] Further, his assertions that what happened was a "domino effect" that would not have happened at all but for the moving of Wayland's March of 2019 trial date do not match the record. At the April 23, 2019 pre-trial conference hearing, Wayland was basically asking to have Atty. Sauviac fired. Given his attitude toward other attorneys as demonstrated by the record beginning in December of 2018, there is nothing indicating that he would have actually been willing to proceed to trial on March 11, 2019 with Atty. Sauviac. Indeed, his constant insistence that various frivolous pre-trial motioned needed to be filed, that his attorneys were doing nothing, and similar claims

dating back months before March 11, 2019 demonstrate that he would not have been willing to proceed to trial on March 11, 2019 with Atty. Sauviac,

II. The process of obtaining a mental health evaluation does not violate constitutional principles

[¶94] This particular argument was not raised below. As such, neither the District Court nor the State had a chance to address it before it first appeared in Wayland's brief. Therefore, the State respectfully requests that this argument be rejected as newly raised on appeal. E.g. Berlin v. State, 2000 ND 206, 619 N.W.2d 623.

[¶95] Based on what Wayland appears to argue in his brief, it would be impossible for any criminal defendant to receive a mental health/competency evaluation without violation both the United States and North Dakota constitutions. Wayland has failed to bring up the heavy artillery necessary for such a claim; indeed he has cited nothing whatsoever in support of this position. See. State v. Kensmoe, 2001 ND 190, 636 N.W.2d 183. Wayland merely complains that he believes that by participating in a mental health evaluation, he has somehow had his Fifth Amendment rights violated without citing any support for this position. Therefore, he has failed to make the showing necessary to find that the competency evaluation practice is unconstitutional. Based on the information in N.D.C.C. Chap. 12.1-04.1, the inquiry focuses on competency, ability to differentiate right from wrong, and the ability to aid in defense; not whether or not a defendant did what is alleged.

[¶96] It appears that Wayland is arguing for a secretive process of obtaining an evaluation, wherein the State would never be able to know of the results, which would allow for an ambush at trial. He has presented nothing in support of this position.

Conclusion

[¶97] The record shows that Wayland kept demanding his "speedy rights" thinking that if trial did not occur with in sixty or ninety days, he would be a free person. The record also shows, that at the same time he was demanding his "speedy rights," he was demanding his attorneys engage in frivolous motion practice from the very beginning. The record shows that he wanted attorneys removed, but was still demanding his "speedy rights." The record shows that Wayland himself recognized that trial was not possible by March 9, 2019, but now claims on appeal that he was "ready for trial" that week.

[¶98] What the record does not show is Wayland making any showing that his "speedy rights" were violated by the District Court selecting an older case for trial that week, especially given his informing the District Court that trial would be impossible in that timeframe. Similarly, the record does not show that Wayland suffered any prejudice from the delay, as all of the matters complained of go back to his continual refusal to work with counsel.

[¶99] For the above-referenced reasons, the State respectfully requests that this Court affirm the conviction below.

Dated this 6th day of March, 2020.

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

State of North Dakota,	)	**CERTIFICATE OF COMPLIANCE**
	)	
Plaintiff-Appellee,	)	**Sup. Crt. No.: 20190274**
	)	
vs.	)	**Dist. Crt. No.; 53-2018-CR-01643**
	)	
Joey Michael Wayland,	)	
	)	
Defendant-Appellant.,)		
	)	

[¶1] I, Nathan Kirke Madden, hereby certify that the State's Appellee's Brief complies with the page limitation set forth in N.D.R.App.P. 32, as the total pages including the Brief, Certificate of Compliance, and Certificate of Service combine at 37 pages.

[¶1] The State is not requesting oral argument on this matter.

Dated this 27th day of February, 2020.

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vs.	)	**Dist. Crt. No.; 53-2018-CR-01643**
	)	
Joey Michael Wayland,	)	
	)	
Defendant-Appellant.,	)	
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[¶1] I, Nathan Kirke Madden, hereby certify that on February 27, 2020, a true and accurate copy of the State's Brief was served on Atty. Gereszek via the North Dakota Supreme Court E-filing portal system and via email at sam@brudviklaw.com.

Dated this 27th day of February, 2020.

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20190274

FILED
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CLERK OF SUPREME COURT
MARCH 6, 2020
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