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SUPREME COURT

OCT 6 1999

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

District Court No. CR-99-208

Supreme Court No. 990114

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

OCT 6 1999

STATE OF NORTH DAKOTA

State of North Dakota, )  
 )  
 Plaintiff/Appellee, )  
 )  
 -vs- )  
 )  
 Kevin Eugene Rohde, )  
 )  
 Defendant/Appellant. )

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DEFENDANT/APPELLANT'S  
BRIEF

APPEAL FROM THE CRIMINAL JUDGMENT  
 AND COMMITMENT DATED APRIL 13, 1999  
 THE HONORABLE FRANK L. RACEK

Kevin Rohde  
*In propria persona*  
 North Dakota State Penitentiary  
 P.O. Box 5521  
 Bismarck, North Dakota 58505-5521

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## STATEMENT OF THE CASE

The Defendant, Kevin Eugene Rohde, was by Information dated January 28, 1999, with the following: Count 1: Driving while under the influence of intoxicating liquor, a class "C" felony; Count 2: Driving while license suspended, a class "B" misdemeanor; Count 3: Driving without liability insurance, a class "B" misdemeanor; and Count 4: Possession of a controlled substance, a class "A" misdemeanor. [App. pp. 6-7]

Subsequent to a jury trial, the Defendant was convicted as to Counts 1, 2, and 3. Count 4 was dismissed. A Criminal Judgment and Commitment was executed by the Court on April 13, 1999. [App. pp. 8-10]

Previously, on April 12, 1999, the Defendant submitted a note to the Clerk of District Court, which was filed on April 13, 1999, showing his intention to appeal the sentence of the Court to the North Dakota Supreme Court. [App. p. 11]

The Defendant desires to proceed "*in propria persona*" on this appeal.

## ARGUMENT

The Defendant's legal arguments are set out below. These arguments mirror the Defendant's "Complaint" in a cause of action prepared by the Defendant entitled "*Kevin Rohde Citizen in Party Plaintiff v. Frank L. Racek, Jennifer L. Thompson, Al Schmidt, and Kyle Schenck.*"

1. The acts committed at this "point in time", to the "Plaintiff" titled above in the State of North Dakota of the United States of America, are under the "collusion" [Title 28 Chapter 85 U.S.C.A. 1359] of the Admiralty, Maritime, and Administration Jurisdiction supported band under the gold fringe flag, with the gold braid, and a gold eagle or gold spear or gold ball, atop the flag pole, will establish the jurisdiction of the Admiralty, maritime (flag speech) or administrative jurisdiction. This type of flag is described in the [army regulation 1979 October Section 840] flag of war under the War Powers Act of 1917 and 1933 by President Roosevelt. This is an Article One (1) Jurisdictional Court. = Guilty until proven innocent = War Powers Act. [App. p. 12]

2. The right to a Common Law Court under the 7<sup>th</sup> Amendment shall be preserved. State's Constitution of the United States of American described the jurisdiction of the court by the American flag of peace, under [Title 4 United States Code One (1)]. This flag is described as red, white, and blue with a star to represent each state of the union on a field of blue, and stripes of red and white horizontally placed in alteration. Under the

Jurisdiction of the American flag of peace, the United States Constitution is alive and well and all rights are preserved. People are innocent until proven guilty. The jurisdiction of the "American Flag" is the determining factor upon which all citizens rights are determined.

3. Plaintiff charging the Defendants titled above with [Title 42 U.S.C. 1986] action for neglect to prevent: for knowledge of the law and neglect to stop and correct a wrong. Every citizen who having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful acts be committed, shall be liable to the party injured, or citizen's legal representatives, for all damages caused by such wrongful act, which such party by reasonable diligence could have prevented, and any number of citizens guilty of such wrongful neglect or refusal may be joined as Defendants in this action.

#### U.S. Constitutional Violations.

4. Plaintiff states: No 4<sup>th</sup> Amendment warrant, signed by a judge of "oath and affirmation", was ever presented to the Plaintiff with a bona fide signature upon the arrest and incarcerated.

CAUSE OF ACTION: Officers of the Court gives rise to an action under [Title 42 U.S.C. 1986] for "knowledge" and "neglect" and "perjury of oath" under [Title 18 U.S.C. 1621], as the officers swore to defend and



protect the citizens of the state, then with want of care violated that oath and were enriched by the state for their actions to violate a citizen's rights.

5. Plaintiff was denied right to "due process", under the 5<sup>th</sup> A.U.S.C. Cause of action: no due process of law in right to trial.

6. Plaintiff is being denied right to counsel under the 6<sup>th</sup> A.U.S.C. Plaintiff signed papers under F.R.C.P. 44 for: assistance of counsel. That counsel has been denied every time Plaintiff needs counsel of choice.

7. Plaintiff is being denied the right to a "fair trial" under the 7<sup>th</sup> A.U.S.C. Cause of action: no trial or hearing has been conducted under Article three (3) of the United States Constitution. And [Title 4 U.S.C. 1] "American Flag" within the designated time and place to be present.

8. Cause of action: Plaintiff was denied Plaintiff's United States Constitutional rights under the Equal Protection of the Law and Due Process of the Law under the 14<sup>th</sup> A.U.S.C.

9. Plaintiff accuses the Defendants with kidnapping and "assault" with a "deadly weapon", and "coercion" [Title 28 Chapter 85 U.S.C. 1359] while in the process of arrest. The acts of "coercion" against the Plaintiff (are in) violation of the 5<sup>th</sup> A. U.S.C.

10. Officers of the court give rise to a cause of action in denying the Plaintiff right to counsel of choice caused by U.S. Constitutional violation under 4<sup>th</sup> A. U.S.C. and "perjury of oath", in the acts of order to show cause Plaintiff was arrested and forcibly transported to the Cass County Jail. The

Defendants have converted civil process into criminal process by the misuse of their office and the use of false affidavits.

10. [Title 42 U.S.C. 1985] = (1) Conspiracy to interfere with civil rights: an organized conspiracy to commit the crimes of "extortion or coercion", or attempt to commit extortion or coercion. The fear which constitutes the legally necessary element in extortion is included by oral or written threats to do an unlawful injury to the property of the threatened citizen, by means of either threat, express or demanding, soliciting or receiving such thing of value will cause the competition (?) of the citizen from whom the payment is demanded, solicited or received to be diminished or eliminated (Arrested without due process for the silencing of the plaintiff) "Through use of contempt of court or jail time threat".

11. Cause of action: Violation of rights by officers of the Court and kept quiet while an innocent party went to the Cass County Jail gives rise to a cause of action [Title 18 U.S.C. 4]. Misprison of a felon: whoever, having knowledge of the actual commission of a felony "cognizable" by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other party in civil or military authority under the United States, shall be fined under this Title or imprisoned not more than three years, or both [Note: applies to all officers of the court who have knowledge of the wrong committed in violation of the United States Constitutional Rights] Note Def: Cognizable = capable of being tried or examined before a designated tribunal.

12. [Title 42 U.S.C. 1985 (2)] Obstructive Justice, Intimidating Party, Witness or Juror. If two or more citizens in any state or territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from Attending such witness in any court or from testifying to any matter pending therein, freely, fully and truthfully, or to injure such party or witness in citizen's behalf or property, on account of citizen having so attended or testified, or to influence the verdict, presentment, or indictment of any Grand or Petit Juror in any such court, or to injure such juror in party/citizen self or property on account of any verdict, presentment or indictment lawfully assented to by citizens, or of citizen being or having been such juror, or if two or more citizens conspire for the purpose of impeding, hindering, obstructing, or defeating, in any matter, the due course of justice in any state or territory, with intent to deny to any citizen the equal protection of the law, or to injure citizen or citizen property for lawfully enforcing, or attempting to enforce the right of any citizen or class of citizens, to the equal protection of the law ...

13. [Title 42 U.S.C. 1985 (3)] Depriving party of rights or privileges. If two or more citizens in any state or territory conspire or go in disguise, for the purpose of depriving, either directly or indirectly, any citizen or class of citizens of the equal protection of the law, or of equal privileges and immunities under the law, or for the purpose of preventing or hindering the constituted authorities of any state or territory from giving or securing to all citizens within such state or territory the equal protection of the laws, or if

two or more citizens conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving party support or advocacy in a legal manner, or to injure any citizen in self or property on account of such support or advocacy, in any case of conspiracy set forth in this section, if one or more citizens engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in citizen self or property, or deprived of having and exercising any rights or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages by such injury or deprivation, against any citizen or more of the conspirators. [App. p. 13]

14. Cause of action: [Title 18 U.S.C. 242] = (1) Deprivation of rights under color of law by officers of the court. = Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any party in any state, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States, or two different punishments, pains, or penalties, on account of such party being alien, or by reason of the parties color or race, than are prescribed for the punishment of citizens, shall be fined \$10,000 under this Title or imprisoned not more than ten years, or both.

15. Cause of action: [Title 18 U.S.C. 872] = "Extortion" by officers or employees of the United States.

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to

act as such under color or pretense or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both.

16. Cause of action. [Title 18 U.S.C. 141] = "Conspiracy" provides in pertinent part:

Whoever under color of law, statute, ordinance, regulation, or custom willfully subjects any inhabitant of any state, territory or district to the deprivation of any rights, privileges, or immunities secured or protected by the United States Constitution or laws of the United States ... shall be fined not more than \$10,000.00 or imprisoned not more than ten years or both.

17. Giving rise to a cause of action under [Title 24 U.S.C. 1983 Chapter 21 at Notes 319 and 337] "Policy and custom" when acts committed, cause violation of due process and equal protection of the law, and before the facts of a case [Under Federal Rules of Civil Procedure 12(b)(1) lacks subject matter jurisdiction over the subject] are presented to the court for review, the officer of the court for acts committed to determine the outcome of the case, before the facts are presented in the court, will lose jurisdiction over the subject matter of the case, and when such acts cause the party injury under a U.S. Constitutional violation, shall be liable to the party injured under [Title 42 U.S.C. 1983 Chapter 21 at Notes 333, 349, 351, 352, 355].

18. Cause of action: [Title 28 Chapter 85 U.S.C. 1359] Collusion when a judge uses force to intimidate or collusion to force the party into the bar.

19. The further applications to the "Rules of Law, the violations under Maritime and Admiralty Jurisdiction, is when the honorable judge as the "fiduciary" and responsible for the setup of the court room; when a judge enters the court room under the maritime flag, with the gold fringe, gold braid on the "flag", and on the "pole": gold spear, gold ball, gold eagle, placed in the court by the judge and before the hearing begins, is declaring that the court room will be under "maritime jurisdiction" and all constitutional rights will be suspended. WARNING!!! Citizens will be guilty until proven innocent. [There is a 97.3% conviction rate under Maritime Jurisdiction.]

20. Giving rise to a cause of action for "injury" defined as [Title 18 U.S.C. 242 "deprivation" of rights under color of law] and Title 42 U.S.C. 1983 injury to U.S. Constitutional violation of the 14<sup>th</sup> Amendment U.S. Constitution = Due Process and Equal Protection of the Law, giving rise to a "perjury of oath of office" under Title 18 U.S.C. 1621]

"Perjury of Oath" is the necessary element needed to prove "intent" to commit title 18 U.S.C. deprivation of rights under color of law.

21. [Title 42 U.S.C. 1621 Chapter 79] "Perjury of Oath" (1) Whoever, having taken an oath before a competent tribunal, officer, or party, in any case which a law of the United States authorizes an oath to be administered, that party will testify, declare, depose, or certify true, willfully

and contrary to such oath states or subscribes any material matter which party does not believe to be true, or (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of Title 28 U.S.C. willfully subscribes as true any material matter which party does not believe to be true, is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this Title or imprisoned not more than five years or both. This section is applicable whether the statement or subscription is made within or without the United States.

22. [Title 42 U.S.C. 1983 Chapter 21] "Personal Injury".

Every party who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other party within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

23. [Title 42 U.S.C. 1983 Chapter 21 Note 39; in order to establish personal liability on part of government official in Federal Civil Right Law Action, it is enough to show that official action under the color of law caused deprivation of Federal Right in contrast, with "intent". Government

entity is liable in official capacity suit under Title 42 U.S.C. 1983 only when entity is moving force behind "deprivation" = Title 18 U.S.C. 242]

24. If the judge fails to joint with the Article 3, American flag [Title 4 U.S.C. 1] Then by the jurisdiction of the authority under the Federal Rules of Civil Procedure Rule 16(1) Sanctions for nonjoinder and perjury of oath apply.

In addition to the arguments set out immediately above, the Defendant has additional matters that he desires to place into issue before the Court. They are as follows:

1. No felony (no loss or injury) (law of estoppel); [App. p. 11]
2. No 24-member grand jury indictment to see if there was enough evidence against the Defendant for trial. An information as the Court used is not in compliance with the Fifth Amendment to the United States Constitution and North Dakota State Constitution.
3. The Defendant requested a blood test and did not get one.

Lastly, the Defendant questions the evidence used against him at trial.

He cites the following portions of the transcript:

P. 27. Lied about following me.

P. 29. Lied about license plate telling him I was driving.

P. 30. Assistant states attorney admits injury has nothing to do with the charges but yet she prosecutes me. No blood test. Insurance coverage.

P. 31. Testing for sobriety.

P. 32. The judge admits I'm on trial & refuses to let me testify.



P. 34. Claiming of my rights.

P. 35. Witness for plaintiff testifies.

P. 23 & 24. About slurring of speech & taking my trial rights away.

P. 25. About my disabilities.

P. 27. Cop <sup>liED K.R. 10-1-99</sup> ~~lied~~ about following me for 15 blocks.

P. 29. Lied about car being mine – perjured himself.

P. 30. Denied right again.

P. 34. Charges are multiplicituos & duplicitous.

P. 41. Eye test.

P. 43, 44, 45, 46, 47, 48, all sum up my arguments plus on P. 17. Officer Schmidt testifies he read me my Miranda rights which he did not do until I was handcuffed and in the back of his automobile. Which means I was not protected by Miranda when being tested for sobriety. I also never had slurred my speech as the cop was asking me all the medications I was on and pronouncing them very well as can be attested to by the jailer Mary. I'm not a party to any contract for which I'm being punished for.

P. 11 & 12 eye test not accurate to say anyone is drunk based on that. This according to an eye doctor at the penitentiary.

P. 13. R. leg test for balance is bad because of my knee hip and back are in bad shape and has no relevance to sobriety also I have an inherent balance problem anyway as did my paternal grandfather.

P. 14, 15 included.

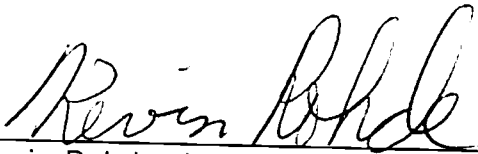
P. 16, lines 3 to 9 said I refused test not a yes or no answer.

Defendant further argues that the State failed to prove that the Defendant had five or more prior convictions, which would make this a class "C" felony per N.D.C.C. 39-08-01(2). [App. p. 18]

CONCLUSION

The Defendant respectfully requests that his conviction be reversed,  
~~and that he be granted a new trial herein.~~ CHARGES DISMISSED, K.R.

Respectfully submitted this 30<sup>th</sup> day of September 1999.

  
Kevin Rohde, *In propria persona*

10-1-99