20110219

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Jeff Emanuel Mosbrucker,	)	Supreme Court No. 20110219
	)	
Petitioner/Appellant,	)	
	)	Morton Co. Cr. No. 30-06-K-1112
-vs.-	)	
	)	
State of North Dakota,	)	
	)	
Respondent/Appellee.	)	

****

BRIEF OF RESPONDENT-APPELLEE

****

Appeal from Order for Denial of Petition for Post-Conviction Relief
Dated July 5, 2011, and filed July 7, 2011
Honorable Donald L. Jorgensen, Presiding District Judge

Allen Koppy, Id. No. 04201
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STATEMENT OF THE FACTS RELEVANT TO THE ISSUES ON APPEAL

The Petitioner/Appellant, Jeff Emanuel Mosbrucker, was convicted of one count of Gross Sexual Imposition, a Class A Felony in violation of Section 12.1-20-02 of the North Dakota Century Code, after a second trial by jury in Morton County District Court, on July 31, 2007, the Honorable Donald L. Jorgensen, presiding. The first proceeding was declared a mistrial by the court after the jury deadlocked upon reaching an impasse in their ability to return a verdict. The first trial occurred on March 2, 2007. [App. p. 2]

The case went to trial a second time. During the course of the second trial, on July 31, 2007, after the State had presented its case in chief and rested, defense counsel brought a Rule 29 N.D.R.Crim.P. motion for a judgment of acquittal. The trial court granted the defense motion in part, ordering that the portion of the State's allegation alleging that the defendant engaged in a sexual act with another [by force] was not supported by the evidence adduced during the State's case in chief at trial. [App. p. 3]

The remaining part of the allegation of gross sexual imposition, that the defendant engaged in a sexual act with another, Jane Doe, when the defendant knew or had reasonable cause to believe that [Jane Doe] suffered from a mental disease or defect which rendered her incapable of understanding the nature of her conduct, was presented for the jury's deliberation. Id.

After deliberating on the remaining allegation regarding the defendant's knowing or having reasonable cause to know that the victim suffered from a mental disease or defect rendering her incapable of understanding the nature of her conduct, the jury returned a verdict of guilty. [App. p. 5] The court sentenced the defendant on the single

count of gross sexual imposition. [App. p. 4] Defense counsel brought a motion for a new trial on the grounds the evidence was insufficient to sustain the verdict, or the verdict was contrary to the greater weight of the evidence. After receiving briefs from the parties on the motion for a new trial, the court denied the motion for a new trial. [App. p. 5]

The defendant appealed the verdict and judgment to the North Dakota Supreme Court. Id. The appeal was a direct challenge to the result in the trial court and sought an outright reversal of the verdict and judgment in the lower court. The North Dakota Supreme Court affirmed the result in the trial court in its opinion in State v. Mosbrucker, 2008 ND 219, 758 N.W.2d 663. Id.

The defendant brought a petition for post-conviction relief alleging the ineffective assistance of trial counsel on several grounds. Those grounds included: 1) Defense counsel did not present an offer of settlement from the State until right before the second trial began; 2) Trial counsel did not obtain its own expert witness on the issue of the mental competency of the victim/witness, Jane Doe; 3) Trial counsel did not suppress or move to suppress the defendant's pre-trial statement to police admitting he [the defendant] had sexual intercourse with the victim/witness on the date of the alleged offense, and also failed to object to the elicitation of the defendant's admission by a law enforcement witness during the course of the trial; and 4) Trial counsel's appeal to the North Dakota Supreme Court was a direct attack on the verdict and judgment and not an appeal of the trial court's denial of the motion for new trial. [App. p. 7]

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

I. WHETHER TRIAL COUNSEL'S PRESENTATION OF AN OFFER TO SETTLE THE CASE JUST BEFORE TRIAL WAS INEFFECTIVE ASSISTANCE OF COUNSEL?

II. WHETHER FAILURE TO SECURE ITS OWN EXPERT WITNESS TO TESTIFY AT TRIAL ON THE MENTAL CAPACITY OF THE VICTIM WAS INEFFECTIVE ASSISTANCE OF COUNSEL?

III. WHETHER TRIAL COUNSEL'S FAILURE TO SUPPRESS OR MOVE TO SUPPRESS THE DEFENDANT'S ADMISSION TO POLICE TO HAVING HAD SEXUAL INTERCOURSE WITH THE VICTIM WAS INEFFECTIVE ASSISTANCE OF COUNSEL?

IV. WHETHER DIRECT APPEAL OF THE VERDICT AND JUDGMENT TO THE NORTH DAKOTA SUPREME COURT RATHER THAN AN APPEAL OF THE TRIAL COURT'S DENIAL OF THE MOTION FOR A NEW TRIAL BASED UPON THE GROUND THAT THE GUILTY VERDICT WAS AGAINST THE GREATER WEIGHT OF THE EVIDENCE WAS INEFFECTIVE ASSISTANCE OF COUNSEL?

ARGUMENT

The United States Supreme Court, in Strickland v. Washington, 466 U.S. 668 (1984), established a two-prong test for the analysis of a petitioner's claim of ineffective assistance of counsel in a Post Conviction Relief Act [PRCA] proceeding. It is the petitioner's burden to show: 1) That counsel's representation fell below an objective standard of reasonableness; and 2) The deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Strickland v. Washington, 466 U.S. at 684-696.

North Dakota's Post Conviction Procedure Act is found at Chapter 29-32.1 of the North Dakota Century Code. The Petitioner brought the instant action for post conviction relief on several grounds alleging the ineffective assistance of counsel. [App.p. 9]

In Odom v. State, 2010 ND 65, 780 N.W.2d 666, the North Dakota Supreme Court discussed the elements of proof, taken from Strickland v. Washington, above, that need to be met by a petitioner seeking post-conviction relief on grounds of ineffective assistance of counsel: "Post-conviction relief proceedings are civil in nature and are governed by the North Dakota Rules of Civil Procedure." citing Sambursky v. State, 2008 ND 133, ¶ 7, 751 N.W.2d 247. In Roth v. State, 2007 ND 112, 735 N.W.2d 882, this Court summarized the petitioner's burden in a post-conviction claim of ineffective assistance of counsel:

> "The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to effective assistance of counsel. In order to prevail on a post-conviction claim of ineffective assistance, the petitioner bears a heavy burden. The petitioner must prove that (1) counsel's representation fell

below an objective standard of reasonableness, and (2) the petitioner was prejudiced by counsel's deficient performance. As to the first prong, the petitioner must overcome the strong presumption that counsel's representation fell within the wide range of reasonable professional assistance. An attorney's performance is measured considering the prevailing professional norms. In assessing the reasonableness of counsel's performance, courts must consciously attempt to limit the distorting effect of hindsight. Courts must consider all the circumstances and decide whether there were errors so serious that defendant was not accorded the "counsel" guaranteed by the Sixth Amendment."

Odom v. State, 2010 ND 65, ¶9.

Continuing the "elements of proof" discussion on whether ineffective assistance of counsel caused "prejudice to the accused", the Court in Odom v. State, wrote thusly:

"In order to meet the second prong, the petitioner must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The petitioner must prove not only that counsel's representation was ineffective, but must specify how and where counsel was incompetent and the probable different result. If it is easier to dispose of an ineffective assistance of counsel claim on the ground of lack of sufficient prejudice, that course should be followed." The Court citing Roth v. State, 2007 ND 112, ¶¶ 7-9, 735 N.W.2d 882 (other citations omitted). Odom v. State, Id. at ¶9.

Elaborating further on the standard of review the high court takes on the issue of ineffective assistance of trial counsel, the Court in Odom v. State went on to state: "The issue of ineffective assistance of counsel is a mixed question of law and fact which is fully reviewable on appeal." Id. at ¶ 11. The district court's findings of fact in a post-conviction proceeding will not be disturbed on appeal unless clearly erroneous under N.D.R.Civ.P. 52(a)." citing Moore v. State, 2007 ND 96, ¶ 8, 734 N.W.2d 336. "A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if it is

not supported by any evidence, or if, although there is some evidence to support the finding, this Court is left with a definite and firm conviction a mistake has been made." Sambursky v. State, 2008 ND 133, ¶ 7, 751 N.W.2d 247. [quoting from Odom v. State, Id. at ¶9].

I. TRIAL COUNSEL'S COMMUNICATION OF AN OFFER FROM THE STATE TO THE PETITIONER TO SETTLE THE CASE JUST PRIOR TO TRIAL WAS NOT INEFFECTIVE ASSISTANCE OF COUNSEL.

Applying the principles enunciated by this Court in Odom v. State, above, and the earlier authorities, to the issues raised by the petitioner in his application for post conviction relief on grounds of ineffective assistance of counsel, the first contention raised by the petitioner was that trial counsel's presentation of an offer to settle the case just before trial [amounted to] ineffective assistance of counsel. [App. p. 10]

In his affidavit supporting his application for post-conviction relief, the petitioner avers. "That I was not made aware of the State's last plea offer until moments before trial and had I more time to discuss the potential agreement I may not have been in this situation." [App. p. 11]

Regarding this issue, at the hearing on the application for post-conviction relief, trial counsel testified that as a general part of his law practice in keeping clients abreast of developments in their cases:

> Depends on where they are at and where we are at in the time line. If it is early on in the case, I would just send a letter and here it is in writing, here is exactly what was on the table. If it was expressed verbally and close, then I would try to get a hold of the person. If in custody, I would try to leave a message. As I recall, I think Jeff was

> in prison, then I would usually leave a call, if it is urgent, I got to have this guy call me and I would set up a particular time when he could call me back in the office. So we wouldn't miss connections, I would arrange to have him call. What happened here, I don't know. . . If it was urgent I would try to pass it on as quickly as possible by phone.

[Transcript of Proceedings, pp. 6-7]

When asked by the State regarding whether the offer to settle the matter by a plea to a lesser charge prior to the second trial was conveyed to the petitioner, trial counsel answered: "It was. We discussed it and it was turned down. I think we both felt we were going to win. . . And I know the sticky point was he would have to register." [Tr. p. 17]

The State argues on appeal that the evidence shows trial counsel had a practice of keeping clients informed of offers to settle their pending matters. In the instant case, the defense had already been successful in having the trial court declare a mistrial at the conclusion of the first trial in March of 2007, because the jury was deadlocked and at an impasse in reaching a verdict. State v. Mosbrucker, 2008 ND 219, 758 N.W. 2d 663.

Therefore, trial counsel met an objective standard of reasonableness by conveying the State's offer of settlement to the petitioner before the second trial began on July 31, 2007. However, by pursuing a strategy made more confident by the experience gained from the first trial, the defendant and his trial counsel rejected the State's offer, confident they were going to prevail at the second trial with a verdict of acquittal.

II. TRIAL COUNSEL'S DECISION TO NOT USE A DEFENSE EXPERT TO REBUT THE TREATING PSYCHOLOGIST'S TESTIMONY ABOUT THE VICTIM'S ABILITY TO UNDERSTAND THE NATURE OF THE SEXUAL ACT COMMITTED UPON THE VICTIM WAS NOT INEFFECTIVE ASSISTANCE OF COUNSEL

In its Order Denying Post-Conviction Relief Petition, regarding the issue of trial counsel not employing its own expert to rebut the victim's own treating psychologist, the trial court reiterated a premise that trial counsel testified to previously at the Post Conviction Relief Act [PCRA] hearing: "At the post-conviction evidentiary hearing, Goter stated he felt it was unnecessary to secure an independent expert to rebut Dr. DeGree's testimony. Goter had the opportunity to observe Dr. DeGree in the first trial. [Goter] believed the expert testimony would be sufficiently rebutted on cross examination and by other evidence at trial." [App. pp. 20-21]

In so holding, the lower court cited the Pennsylvania Supreme Court case of Commonwealth v. Miller, 987 A.2d 638 (2009), for the proposition that trial counsel's failure to call a rebuttal expert does not demonstrate counsel's performance was deficient per se. [App. p. 21]. Also. Commonwealth v. Miller, 987 A.2d at 667-669. Relying on the reasoning and holding from Commonwealth v. Miller, above, the lower court in the case at bar went on to state: [Mr.] Goter's overall strategy and performance at trial must be evaluated." [App. p. 21]

Bringing the analysis of the issue back home, the lower court continued its analysis and discussion by pointing out that "The North Dakota Supreme Court has similarly stated "the decision to not call an expert witness cannot be analyzed in a vacuum . . . performance must be viewed in the context of the entire trial."" [App. pp. 21-22] Citing Jacob v. State, 2010 ND 81, ¶12, 782 N.W.2d 61, citing Flanagan v. State, 2006 ND 76, ¶17, 712 N.W. 2d 602.

At the evidentiary hearing on the Application for Post Conviction Relief, when

asked by the petitioner's attorney about whether the decision to not seek its own expert may have been a good idea at the second trial, trial counsel stated:

> In retrospect, yeah. I guess. We knew where he was coming from. Still, I felt – like I said, I thought we were going to win the first trial despite his testimony. So I felt we could handle him. I thought – as I said before, I thought the testimony and evidence was better for us the second time around. If I recall, it was intended to hung jury in our favor, and so every sign I had was we were doing okay. Yeah, maybe it would have been helpful, but I didn't see the need. I thought we would win.

[Tr. p. 20]

In addressing the second prong of the Strickland test, and the contention that trial counsel's allegedly deficient performance prejudiced the petitioner, the lower court cited Damron v. State, 2003 ND 102, ¶16, 663 N.W.2d 650, a North Dakota Supreme Court case, standing for the proposition that in arguing prejudicially deficient representation, "A defendant must offer evidence that any additional witnesses would have aided the defendant's claim." [citing Damron v. State, 2003 ND 102, ¶16, 663 N.W.2d 650.

The lower court emphasized the testimony of the victim's psychologist at trial that "Intelligence Quotient [I.Q.] generally does not materially change as people age. The impact of a more recent evaluation is unclear." [App. p. 24] The lower court also mentioned contrary evidence in the form of trial testimony by the victim and her father that the victim understood the nature of sexual intercourse and had the capacity to consent." Id. at p. 24.] In the final analysis, the lower court concluded that trial counsel's failure to enlist a defense expert on the issue of the victim's capacity to understand the nature of the sex act and her ability to consent to it did not prejudice the petitioner when it

stated: "Mosbrucker failed to show that securing a rebuttal expert would have aided his defense. [Id. at p. 24]

III. TRIAL COUNSEL'S FAILURE TO SEEK SUPPRESSION OF THE DEFENDANT'S ADMISSION TO LAW ENFORCEMENT TO HAVING HAD SEXUAL INTERCOURSE WITH THE VICTIM WAS NOT INEFFECTIVE ASSISTANCE OF COUNSEL.

At the hearing on the petitioner's application for post-conviction relief, trial counsel was queried as to why no pre-trial motion for the suppression of evidence was brought with regard to the defendant's statement to law enforcement that he had engaged in sexual intercourse with the victim. Trial counsel replied: "No. I just remember the recording. I didn't see a constitutional issue." [Tr. p. 13]

When asked to elaborate on the decision to not seek pre-trial suppression of the defendant's statements to law enforcement, trial counsel went on to say:

Q. [By the State] . . . But do you recall any issues in regards to your opinion that would have been eligible for suppression? [Tr. p. 17, ll. 17-18]

> A. I don't. I don't. And I don't know of anything on there that was particularly worrisome. He had an interview, he made statements. He admitted that he had sex with her. That wasn't the issue. The issue was her perceptions of what is going on. So to me whether it came in or not wasn't harmful. And Jeff testified in his own defense. It is going to come in anyway, as I understand it. It is a possible impeachment. So I didn't see an issue for suppression, and I didn't see it as being a particularly harmful statement. I don't know what is in there that hurts him really.

[Tr. pp. 17-18]

The soundness of trial counsel's decision to forego a pretrial motion to suppress the defendant's statements to law enforcement is borne out by the fact that the defendant's admissions were not the fruits of a custodial interrogation, which would typically trigger the procedural safeguards against self-incrimination under Miranda v. Arizona, 384 U.S. 436 (1966).

During the State's case in chief at the second jury trial, when Detective Jerry McClure of the Morton County Sheriff's Department was testifying about his August 5, 2006, interview with the defendant, the detective testified that he gave Mr. Mosbrucker the Miranda warning prior to beginning the interview when he testified: "Generally, what I do right off the bat is advise him of his Miranda." [Trial Transcript, p. 36, ll. 12-13].

The State then asked Detective McClure: Q. "He was not in custody?" [Trial Transcript p. 36, l. 14]. Detective McClure replied: A. "He was not in custody. I told him he can leave at any time he wanted to. I guess the first thing I asked him is did he or did he not have sex with Jane Doe that evening?" Q. Now, that interview is recorded? A. Yes, it is." [Trial Transcript, p. 36, ll 15-20]

The record on appeal further shows that the defendant was not arrested on the date of the interview with Detective McClure, but rather was taken into custody much later, after Detective McClure sought and obtained a complaint and warrant of arrest on October 31, 2006. [App. p. 1]

The lower court made a similar finding on the petitioner's claim that ineffective assistance of counsel did not lie with the trial counsel's failure to bring a motion to suppress when it held: "Goter testified he did not observe any constitutional issues

regarding Mosbrucker's statement. Also, he believed Mosbrucker's statement was not prejudicial. Goter's defense strategy did not deny that a sexual encounter occurred, but aimed to show no force was used and Doe was capable of consenting." [App. p. 20]

The lower court also went on to hold that "the Sixth Amendment does not require attorneys to file a motion to suppress without a legal or factual basis." [App. p. 20] To require otherwise, the lower court reasoned, would lead to a practice of bringing a suppression motion in every case, just for professional self-protection. [Id.], and with the lower court further citing State v. Wolf, 347 N.W.2d 573, 576 (N.D. 1984).

From that analysis the lower court found that "Mosbrucker has not shown that Goter's failure to file a suppression motion was objectively unreasonable. Further, Mosbrucker did not show how he was prejudiced by Goter's failure to file a motion to suppress." [Id.]

The State argues on appeal that it was not ineffective assistance of counsel for trial counsel to forego a pretrial motion for the suppression of the defendant's statements to law enforcement. Because the defendant's interview was not a custodial interrogation, there was no actionable suppression issue arising under Miranda v. Arizona, above.

Furthermore, trial counsel testified at the hearing on the application for post-conviction relief that it was trial strategy that the defendant's admission to having had sexual intercourse with the adult victim was not harmful to the defense. Rather, the main theory of the defense at trial was the issue of the mental capacity of the victim to consent to the sexual act and her ability to understand the nature of the sexual intercourse between the defendant and Jane Doe. [Tr. pp. 17-18]

IV. APPEAL OF THE VERDICT AND JUDGMENT TO THE NORTH DAKOTA SUPREME COURT RATHER THAN APPEAL OF THE DENIAL OF THE MOTION FOR A NEW TRIAL WAS NOT INEFFECTIVE ASSISTANCE OF COUNSEL.

At the conclusion of the second jury trial on July 31, 2007, counsel for the defendant filed a MOTION FOR NEW TRIAL, on August 2, 2007, pursuant to Rule 33 of the North Dakota Rules of Criminal Procedure. [App. p. 3] The trial court entered its ORDER FOR BRIEFS UPON PENDING MOTION FOR A NEW TRIAL, on October 2, 2007. The defense filed its BRIEF IN SUPPORT OF MOTION FOR NEW TRIAL, on October 16, 2007. The State filed its BRIEF IN RESISTANCE TO DEFENDANT'S RULE 33 N.D.R.CRIM.P. MOTION FOR A NEW TRIAL on October 23, 2007. [App. pp. 3-4] Upon receiving the briefs of the parties, the trial court entered its ORDER DENYING MOTION FOR NEW TRIAL, on November 9, 2007. [App. pp. 5, 25]

After the judgment and sentence were pronounced by the trial court on November 8, 2007, and after the DISPOSITION of a verdict of guilty to one count of gross sexual imposition was docketed on November 13, 2007, defense counsel filed a NOTICE OF APPEAL of the conviction to the North Dakota Supreme Court on December 7, 2007. [App. p. 5]

HEARING ON THE APPLICATION FOR POST-CONVICTION RELIEF

At the evidentiary hearing on the application for post conviction relief, trial counsel was asked by the State whether there were any concerns by trial counsel about an appeal of the verdict and judgment on their merits as opposed to an appeal of the denial

of the motion for a new trial. [Tr. p. 14] Trial counsel explained to the lower court, just what it was trial counsel was thinking at the time the notice of appeal of the conviction was brought, as follows:

> "Well, this is the second time that has happened to me where we've had a trial and there has been a conviction and the Supreme Court upholds it but only after they've changed some of the basic rules of what the law is. And this one. I asked for a simple reversal. We should win. No offense to the judge, but I thought he made some mistakes on the rulings. And I can't remember the name of the case, but it was Justice Levine had made the decision and they had defined this term, and under that definition based on the testimony I thought we should clearly win on appeal so I asked for a reversal. I should have, in my opinion, if we had asked for less relief and said we want a new trial, then we at least may have maybe a shot at a new trial. And I am just wondering if I had done that if they would have given us a new trial. I don't know."
>
> [Tr. pp. 14-15]

In making its finding that trial counsel's decision to appeal the verdict and judgment instead of the order denying the motion for a new trial, the lower stated the following rationale:

> "Goter stated, in hindsight, he felt like he had made a mistake by failing to perfect the appeal from the decision denying the motion for new trial. However, Goter stated that based upon the evidence he thought the North Dakota Supreme Court would reverse Mosbrucker's conviction, based upon prior precedent. Again, Goter's strategy, although ultimately incorrect, was reasonable. Mosbrucker failed to show Goter's assistance on appeal falls outside the bounds of reasonable professional assistance."

[App. p. 15]

The MOTION FOR NEW TRIAL, filed in the trial court on August 2, 2007, listed three issues as grounds for granting a new trial. Those issues were: 1) Insufficiency of the evidence: 2) The verdict was against the greater weight of the evidence; and 3) The State's witness, Dr. Craig DeGree, was allowed to testify over objection about the alleged victim's understanding of the consequences of having sex with the defendant, when the issue before the court and jury is whether the alleged victim understood the nature of the acts, to wit, that she was engaged in sexual acts." *See* State v. Mosbrucker, 2008 ND 219, ¶24. The lower court denied the motion for a new trial and the defendant appealed. App. pp. 5, 26]

In the direct appeal of the judgment and conviction to the North Dakota Supreme Court, in the brief of the Appellant, trial counsel listed three issues on appeal. Those issues were: 1) The evidence was insufficient to sustain the guilty verdict; 2) The trial court committed obvious error in allowing Dr. DeGree to give expert opinions about Doe's ability to understand the implications of engaging in sexual acts; and 3) The trial court abused its discretion in denying Mosbrucker's motion for a new trial based upon the ground that the guilty verdict was against the greater weight of the evidence." [Brief of the Appellant, State v. Mosbrucker, 2008 N.D. 19, 758 N.W. 2d 663].

In affirming the conviction of the defendant on one count of gross sexual imposition, the North Dakota Supreme Court held as follows: "Viewing the evidence in a light most favorable to the prosecution, there is a reasonable inference of guilt supporting the verdict." State v. Mosbrucker, 2008 ND 19 ¶22.

The State argues on this appeal that while trial counsel may not have been able to

achieve appellate review of the lower court's denial of the motion for a new trial on the merits of that claim, the issue of challenging the sufficiency of the evidence to support the verdict in the trial court was preserved for review on the previous appeal, and the issue was briefed and argued by trial counsel, and was ultimately decided on its merits. Id.

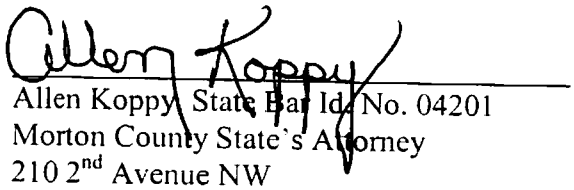
The lower court summarized in concluding that trial counsel's failure to appeal the denial of the motion for a new trial was not ineffective assistance of counsel when it wrote: "Goter's strategy, although ultimately incorrect, was reasonable. Mosbrucker failed to show Goter's assistance on appeal falls outside the bounds of reasonable professional assistance." [App. p. 25]

The State on appeal urges the Court to affirm the finding of the lower court, and hold that trial counsel did not render ineffective assistance of counsel in attacking the judgment and verdict on the grounds of the insufficiency of the evidence. The State argues that an appellate challenge based upon the greater weight of the evidence would still have resulted in the shining of a similar light of appellate scrutiny upon the proceedings in the trial court below had trial counsel specified an appeal of the lower court's denial of the motion for a new trial.

CONCLUSION

Based upon the points and authorities cited and argued in the State's brief on appeal, the State urges the North Dakota Supreme Court to affirm the lower court's denial of the petitioner's application for post-conviction relief.

Dated this 16th day of November, 2011.



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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Jeff Emanuel Mosbrucker.	)	Supreme Court No. 20110219
	)	
Petitioner/Appellant,	)	Morton Co. Cr. No. 30-06-K-1112
	)	
v.	)	CERTIFICATE OF SERVICE
	)	BY MAIL
State of North Dakota.	)	
	)	
Respondent/Appellee.	)	

I hereby certify that on the 16th day of November, 2011, I served a true and correct copy of the attached:

BRIEF OF RESPONDENT/APPELLANT

upon the following named party by __X__ personal delivery to said party or, _____ by depositing the documents in the United States mail at Mandan, North Dakota, postage prepaid, to:

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