

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

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Sean Michael Kovalevich,	)	Supreme Court No. 20160194
	)	
	)	
Petitioner/Appellant,	)	
	)	District Court No. 18-2015-CV-02064
vs.	)	
	)	
State of North Dakota,	)	
	)	
Respondent/Appellee.	)	

State of North Dakota,	)	Supreme Court No. 201601325
	)	
	)	
Plaintiff/Appellee,	)	
	)	District Court No. 18-2012-CR-03069
vs.	)	
	)	
Sean Michael Kovalevich,	)	
	)	
Respondent/Appellant.	)	

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ON APPEAL FROM DENIAL OF POST-CONVICTION RELIEF AND MOTIONS  
FOR NEW TRIAL  
FROM THE DISTRICT COURT  
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT  
GRAND FORKS COUNTY, NORTH DAKOTA  
THE HONORABLE JUDGE JENSEN, PRESIDING

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**BRIEF OF APPELLEE**

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## **STATEMENT OF THE ISSUE**

- I. Whether the district court properly denied Kovalevich's Motion for New Trial in 18-2015-CV-02064?**
- II. Whether the district court properly denied Kovalevich's Application and Petition for Post- Conviction Relief in 18-2015-CV-2064?**
- III. Whether the district court properly denied Kovalevich's pro se Motion for New Trial in 18-2012-CR-03069?**

## STATEMENT OF THE FACTS

[¶1] The underlying facts of the criminal case, 18-2012-CR-03069, were outlined for this Court in detail in State v. Kovalevich, 2015 ND 11. Subsequent to this Court's opinion in State v. Kovalevich, further litigation ensued. Kovalevich filed an Application and Petition for Post-Conviction Relief on November 18, 2015, in 18-2015-CV-02064. Kovalevich alleged both prosecutorial misconduct and ineffective assistance. The district court granted the State's motion for summary dismissal of the prosecutorial misconduct claim based on res judicata. Order Granting, in Part, and Denying, in Part, Respondent's Motion for Summary Judgment, January 11, 2016. An evidentiary hearing was held on April 14, 2016, regarding the claim of ineffective assistance of counsel. Kovalevich initially alleged counsel was ineffective for four reasons: 1) Failure to file a pre-trial motion/motion in limine, 2) Filing procedurally deficient post-trial motion regarding alleged discovery violations, 3) Failure to request a continuance upon receiving alleged exculpatory evidence during trial, and 4) Failure to depose the victim. Application and Petition for Post-Conviction Relief, 18-2015-CV-02064, November 18, 2015. Testimony was taken at the evidentiary hearing from both the attorneys who represented him at trial. On April 15, 2016, the district court issued an opinion denying post-conviction relief. Order Denying Post-Conviction Relief, April 15, 2016. On April 25, 2016, Kovalevich filed a Notice of Appeal of the District Court's Order Denying Post-Conviction Relief. On July 26, 2016, Kovalevich, represented by counsel, filed a Motion for a New Trial and Brief in Support in district court in 18-2015-CV-02064. Motion for New Trial and Brief in Support, 18-2015-CV-020264, July 26, 2016. This Court issued an Order for Remand on July 28, 2016. Kovalevich alleged in his Motion

and Brief for a New Trial in 18-2015-CV-02064 that there was newly discovered evidence that entitled him to a trial and referenced Exhibits 1, 2 and 3. Motion for New Trial and Brief in Support, 18-2015-CV-020264, July 26, 2016. Exhibit 1 is a discovery letter sent from the State to Kovalevich's trial counsel detailing items that were disclosed to her. Exhibit 2 is a letter from the State to Agent Zachmeier with the Bureau of Criminal Investigations (BCI) advising that all investigative materials must be disclosed to the State for ongoing discovery proceedings. Exhibit 3 is a affidavit of BCI Agent Mike Ness. Kovalevich did not provide any argument as to why these items entitled him to a new trial, other than to cite a previous Motion to Dismiss, which had been denied by the district court. Further, Kovalevich alleged that after issuing a subpoena duces tecum and receiving the results of that, a motion for new trial must be granted. Motion for New Trial and Brief in Support, 18-2015-CV-020264, July 26, 2016. Kovalevich also claimed that a Motion and Brief on his additional reasons for a Motion for New Trial would be submitted. Motion for New Trial and Brief in Support, 18-2015-CV-020264, July 26, 2016. An evidentiary hearing was held on September 1, 2016. Prior to the evidentiary hearing, it was determined that two pages of hand-written field notes drafted by Agent Zachmeier were not provided to the State and thus also not provided to Kovalevich during the discovery proceedings. Post-Conviction Hearing Motion, September 1, 2016, pp. 21, 37. The notes were offered as Exhibits 5 and 6. The notes related to a meeting Agent Zachmeier had with juvenile R.P. who had been in a room at the Sky Dancer Casino when Kovalevich was caught in the shower naked with the victim in this case. Post-Conviction Hearing Motion, September 1, 2016, p. 22. Kovalevich argued that the field notes from the meeting with R.P. indicate that S.M., the juvenile victim in this case,



was having a sexual relationship with an individual, V. The State is unaware of the age of V. Kovalevich argued that this information was newly discovered evidence and entitled him to a new trial. The State resisted. The district court issued an order denying the motion for new trial. Order Denying Motion for New Trial, September 7, 2016. An additional brief was never filed by counsel subsequent to the motion hearing.

[¶2] It should also be noted that Kovalevich filed, pro se, a Motion for New Trial in the underlying criminal trial, 18-2012-CR-3069, alleging that BCI lacked jurisdiction to investigate the crimes he perpetrated. Motion for New Trial, 18-2012-CR-03069, August 9, 2016. The State resisted and filed a response. State's Brief in Opposition to Defendant's Pro Se Motion for New Trial and Request that Further Pro Se Filings be Prohibited as Defendant Is Represented by Counsel, August 24, 2016. The court permitted Kovalevich to take testimony on his motion in 18-2012-CR-3069 at the Motion for New Trial in 18-2015-CV-2064 hearing on September 1, 2016. On September 7, 2016, the district court issued an order denying Kovalevich's pro se motion in 18-2012-CR-3069. Order Denying Motion for New Trial, 18-2012-CR-3069, September 7, 2016.

[¶3] On September 29, 2016, Kovalevich filed a Notice of Appeal. Kovalevich's counsel filed the Appellant's Brief on November 10, 2016. On December 5, 2016, pursuant to Rule 24 of the Rules of Appellate Procedure, Kovalevich filed a pro-se supplemental statement, an Appellant Brief and Appendix.

## LAW AND ARGUMENT

### **I. The district court properly denied Kovalevich's Motion for New Trial in 18-2015-CV-02064.**

[¶4] Post-conviction relief hearings are civil in nature and are governed by the North Dakota Rules of Civil Procedure. Patten v. State, 2008 ND 29 ¶ 8, 745 N.W.2d 626. This Court has stated that a claim of newly discovered evidence requiring post-conviction relief should be analyzed similar to a request for new trial based on newly discovered evidence under N.D.R.Crim.P. 33. Tweed v. State, 2010 ND 38, ¶ 16, 779 N.W.2d 667. To prevail on a motion for new trial based on newly discovered evidence under N.D.R.Crim.P.33, the defendant must show that: 1) the evidence was discovered after trial, 2) the failure to learn about the evidence at the time of trial was not the result of the defendant's lack of diligence, 3) the newly discovered evidence is material to the issues at trial and 4) the weight and quality of the newly discovered evidence would likely result in an acquittal. Id. This Court has stated that if the newly discovered evidence is not likely to be believed by a jury or change the results of the original trial, the defendant fails to meet the burden of proof. Id.

[¶5] In the case at hand, Kovalevich filed a Motion for New Trial in the civil post-conviction relief case, 18-2015-CV-02064 on July 26, 2016. Counsel alleged that there was newly discovered evidence found in Exhibits 1, 2, and 3 attached to his brief. However, those three exhibits related exclusively to the Ramada Suites records, which have been established on the record, conceded to by Kovalevich, and found by the district court, to have been discovered and disclosed during trial. Order Denying Post-Conviction Relief, 18-2015-CV-02064, April 15, 2016, ¶¶ 16, 17, Post-Conviction Hearing Motion, 18-2105-CV-02064, September 1, 2016, p. 16. Therefore, as to that allegation,

Kovalevich cannot meet the first prong required to prevail on a motion for new trial, as the item was not discovered post-trial.

[¶6] Second, counsel argued in the Motion for New Trial that he expected additional evidence would be discovered as a result of the subpoena duces tecum which would justify a new trial. Motion for New Trial, 18-2015-CV-02064, July 26, 2016. Counsel indicated that defendant would submit a motion and brief on his additional reasons for the motion for new trial. Motion for New Trial, 18-2015-CV-02064, July 26, 2016. Prior to the evidentiary hearing, it was determined that two pages of hand-written field notes drafted by Agent Zachmeier were not provided to the State and thus also not provided to Kovalevich during the discovery proceedings. Post-Conviction Hearing Motion, September 1, 2016, pp. 21, 37. The notes were offered as Exhibits 5 and 6. The notes related to a meeting Agent Zachmeier had with juvenile R.P. who had been in a room at the Sky Dancer Casino when Kovalevich was caught in the shower naked with the victim in this case. Post-Conviction Hearing Motion, September 1, 2016, p. 22. Kovalevich argued that these notes entitled him to a new trial. The district court ruled that both the first and second prong required to proceed successfully on a motion for new trial were met; that the notes were discovered after trial and the failure to discover the notes was not a result of the lack of diligence by Kovalevich. Order Denying Motion for New Trial, 18-2015-CV-02064, September 7, 2016. The State concedes these two prongs as well. Exhibit 2 filed by Kovalevich in the July 26, 2016, Motion for New Trial establishes that even the State had documented its detailed and comprehensive requests of the BCI agent to provide all investigative materials so that discovery could be properly completed in the appropriate timelines. However, Kovalevich failed to successfully

establish prong three and four required to prevail on a Motion for New Trial.

[¶7] The third prong requires that the newly discovered evidence is material to the issues at trial. Tweed at ¶ 16. The evidence at issue are two handwritten notes drafted by Agent Zachmeier during his investigation of this case. Kovalevich is alleged to have perpetrated crimes against a child in multiple jurisdictions across the State of North Dakota, which required investigation and coordination with multiple agencies. One of those events occurred at the Sky Dancer casino where Kovalevich was alleged to have been in the shower naked with juvenile S.M. Agent Zachmeier's notes apparently reflect a conversation he had with another juvenile witness, R.P., about that incident. That juvenile witness disclosed that the juvenile victim was or had been in a sexual relationship with an individual named V. The State is unaware of the age or further details of V., and none of that information was elicited by counsel for Kovalevich at the evidentiary hearing on September 1, 2016. Kovalevich alleges that the existence of the two pages of handwritten notes itself makes a new trial motion successful. However, this Court has stated clearly that the new evidence must be *material*. In the case at hand, whether S.M. was engaged in a sexual relationship with another individual is not material to whether Kovalevich perpetrated sexual crimes against S.M. in Grand Forks County. Further Kovalevich failed to assert, argue, or brief for the district court how these notes were material to the case.

[¶8] Even if this Court were to find that the two pages of handwritten notes were material, Kovalevich failed to establish that weight and quality of the evidence would have changed the result of the trial. Rule 412(a)(1) and (2) of the North Dakota Rules of Criminal Procedure provides that evidence regarding an alleged victim's sexual behavior

or predisposition is not admissible. N.D.R.Crim.P. 412 (a)(1) and (2). Kovalevich alleges that the district court failed to consider Rule 412(b)(1)(c), but Kovalevich never alleged such exception applied during the evidentiary hearing, nor in his brief and motion for new trial.

[¶9] The district court did not err when it denied Kovalevich's Motion for New Trial based on newly discovered evidence. On appeal, Kovalevich argues that he was denied a constitutionally effective cross-examination. This Court has repeatedly stated that it will not consider issues not raised or considered at the district court and raised for the first time on appeal. Moe v. State, 2015 ND 93, ¶ 11, 862 N.W.2d 510. Further, this Court has stated that the purpose of an appeal is not to give the appellant an opportunity to develop new strategies or theories, but rather to review the actions of the district court. Id. The district court in this case was never presented with an argument, oral or written, that Kovalevich was denied a constitutionally effective cross-examination. While counsel Kovalevich was presented with two handwritten pages of notes as a result of a subpoena duces tecum after his July 26, 2016, Motion for New Trial was filed, counsel failed to request a timeline for further briefing of that issue or an additional hearing. Instead, counsel raises the issue of a constitutionally effective cross-examination for the first time on appeal, precluding the district court from providing a thoughtful consideration, review, and decision on the issue. Whether Kovalevich was provided an opportunity for a constitutionally effective cross-examination or not, should not be considered by this Court for the first time on appeal. However, should this Court consider the argument that the newly discovered evidence precluded Kovalevich from conducting a constitutionally effective cross-examination, such argument is without any

legal support. Counsel for Kovalevich cites to State v. Hilling, 219 N.W.2d 164 (N.D. 1974), for support of his argument. In the Hilling case, exculpatory information was not disclosed to the defendant resulting in a very difficult time engaging in cross-examination. State v. Hilling, 219 N.W.2d 164 (N.D. 1974). The evidence was material and exculpatory and would have allowed for impeachment of the witness. Id. at 167-168. In this instance, the evidence was not material, related to a different jurisdiction, was not offered or discussed at trial, was not inconsistent with the investigation in this case, and was not exculpatory, relevant or admissible in any way shape or form. Order Denying Motion for New Trial, 18-2015-CV-02064, September 7, 2016. Kovalevich argues the case report and field notes contradict one another but cites to nothing on the record for support. Judges while trial court or appellate, are not ferrets and should not be expected to engage in unassisted searches of the record for evidence to support a litigant's position. Anderson v. A.P.I. Co. of Minnesota, 1997 ND 6, ¶ 25, 559 N.W.2d 204. Kovalevich argues, for the first time on appeal, that the information is material and would be admissible under Rule 412(b)(1)(c) as the exclusion of the evidence would violate his constitutional rights. However, counsel fails to cite any legal support for his argument. The United States Supreme Court has previously stated that the right to cross-examine is not without limitations and may bow to accommodate other legitimate trial interests, such as relevancy. Michigan v. Lucas, 500 U.S. 145, 149 (1991). If the constitutional right to cross examine automatically abrogated the prohibited uses of a victim's sexual history as set forth in Rule 412 of the North Dakota Rules of Criminal Procedure, the rule would be meaningless. Further, in State v. Clark, the Utah Court of Appeals addressed a factually identical argument in which a defendant alleged that a prior sexual history of victims was

relevant and necessary to conduct a meaningful cross-examination. State v. Clark, 2009 UT App 252, 219 P.3d 631. The court stated that the defendant would have to establish both that the evidence was otherwise admissible and not precluded by any other rule of evidence and that the exclusion would violate his constitutional rights. Id. at ¶ 15. The defendant was unable to do that and the court ruled exclusion of the evidence per Rule 412 of the Utah Rules of Evidence was appropriate. Id. In the case at hand, Rule 412 of the North Dakota Rules of Evidence would preclude the admissibility of the two pages of handwritten notes. Kovalevich's appeal on this issue must be denied. The newly discovered evidence was not material to the case, it was not admissible, Kovalevich never briefed or argued or permitted the district court to rule on the issue of whether he was precluded from engaging in a constitutionally effective cross-examination, and finally, even had the evidence been offered at trial it would not have resulted in an acquittal in the case. Whether the juvenile victim was engaged in a sexual relationship with another individual or not, does not change the underlying facts of Kovalevich's case, which was that he perpetrated numerous sexual crimes against S.M. in Grand Forks County and that corroboration of those crimes were introduced by S.M.'s testimony as well as physical evidence. Even Kovalevich's trial counsel could not articulate that the information would have changed the result of the trial. Post-Conviction Hearing Motion Tr., pp. 18-19, September 1, 2016. Therefore, his appeal of the district court's denial of his Motion for New Trial in 18-2015-CV-02064 must be denied.

**II. The district court properly denied Kovalevich's Motion for Post-Conviction Relief in 18-2015-CV-02064.**

[¶10] The issue of ineffective assistance of counsel is a mixed question of law and fact that is fully reviewable by the North Dakota Supreme Court. Patten v. State, 2008

ND 29 ¶ 8, 745 N.W.2d 626. However, a trial court's findings of fact in a post-conviction relief proceeding will not be disturbed unless clearly erroneous. Id. 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, a reviewing court is left with a definite and firm conviction a mistake has been made. Id.

[¶11] In order to prevail on a post-conviction claim of ineffective assistance, the petitioner bears a heavy burden of establishing that 1) counsel's representation fell below an objective standard of reasonableness and 2) the petitioner was prejudiced by counsel's deficient performance. Rummer v. State, 2006 ND 216, ¶ 10, 722 N.W.2d 528. With respect to the first prong, a petitioner must overcome the strong presumption that counsel's representation fell within the wide range of professional assistance. Laib v. State, 2005 ND 187, ¶ 9, 705 N.W.2d 845. An attorney's performance is measured considering the prevailing professional norms. Sambursky v. State, 2006 ND 223, ¶ 13, 723 N.W.2d 524. When analyzing the first prong on a post-conviction claim, courts must be sure to limit the distorting effects of hindsight. Id. Further, for the second prong, the petitioner must show that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. Kovalevich addressed the alleged ineffective assistance of counsel in Issue III of his brief. (Appellant's Brief at ¶ 60.). At the district court level, Kovalevich alleged that trial counsel was ineffective in four ways: 1) that trial counsel failed to file a pre-trial motion to suppress/in limine, 2) that counsel filed a procedurally deficient motion regarding alleged discovery violations, 3) that trial counsel erroneously failed to request a continuance upon receipt during trial of alleged exculpatory evidence and 4) that counsel



failed to depose the victim. Application and Petition for Post-Conviction Relief, 18-2015-CV-02064, November 18, 2015. The district court found that Kovalevich failed to establish that the motion to suppress or motion in limine would have been successful, that his argument lacked specificity, or that there was a reasonable probability the results would have been different absent the complained of evidence. Order Denying Post-Conviction Relief, April 15, 2016, ¶¶ 9-15. With respect to the second claim, the district court found Kovalevich failed to establish there was any discovery violation, what particular motion should have been filed, or how it would have been meritorious had it been filed appropriately. *Id.* at ¶ 14-15. The trial court found that with respect to issue three, the additional sexual acts perpetrated in another jurisdiction, of which the State provided evidence of the day of trial and did not attempt to offer in Grand Forks County, was not exculpatory but rather inculpatory and a failure to request a continuance was not ineffective assistance of counsel. *Id.* at ¶ 16-17. The district court also found that a failure to depose the victim was not ineffective assistance of counsel as the victim's testimony was consistent with her initial interview to law enforcement and Kovalevich failed to establish or provide any explanation how a deposition would have changed the result of the proceeding. *Id.* at ¶ 18-19. On appeal, Kovalevich appears to abandon the first issue regarding a pre-trial motion to suppress or motion in limine. Further, Kovalevich merely reasserts the same allegations he did at the district court level but does not argue for this Court how the district court's decision was clearly erroneous. As previously referenced, the newly discovered evidence is two pages of handwritten field notes of Agent Zachmeier that reference a juvenile witness, R. P., reporting to Agent Zachmeier that the juvenile victim, S.M., may have been in a sexual relationship at an

unknown time with an individual named V. Simply because this information has now come to light does not make it material, exculpatory, admissible, or cause trial counsel to have been ineffective requiring a new trial. This Court has stated it will not second-guess the trial strategy and tactics of the attorney. State v. Skaro, 474 N.W.2d 711, 716 (N.D. 1991). Further, trial counsel's conduct should be analyzed with a great deal of deference and this Court should consciously attempt to limit the distorting effect of hindsight. Id. at 716. Kovalevich asks this Court to view trial counsel's representation in light of the newly discovered (inadmissible and immaterial) handwritten field notes, which is contrary to the rule this Court has adopted. There is no argument before the Court as to how the district court's finding was clearly erroneous. The district court's decision was based on a thoughtful review of the record, arguments presented and considered, and prevailing case law. Therefore, the district court's decision should be affirmed and the defendant's appeal denied as to this issue.

**III. The district court properly denied Kovalevich's pro se Motion for New Trial in 18-2012-CR-03069.**

[¶12] Simultaneous to counsel filing a Motion for New Trial in the civil case, 18-2015-CV-02064, Kovalevich himself filed a pro-se Motion for New Trial in 18-2012-CR-3069 on August 9, 2016. In his motion, Kovalevich alleged that the BCI lacked jurisdiction to investigate this criminal case. This legal issue had never been raised previously in any pre-trial motion to suppress, motion in limine, or post-trial motion or appeals. The State filed a responsive brief arguing that Kovalevich should be precluded from filing pro-se motions as he was represented by counsel who had already filed a Motion for New Trial in 18-2015-CV-02064 to which the State had responded.

Ultimately, however, the district court permitted Kovalevich to proceed pro-se on his Motion for New Trial in 18-2012-CR-03069.

[¶13] Pursuant to N.D.R.Crim.P. 33, a motion for new trial can be filed based on an allegation of newly discovered evidence within three years after the verdict or finding of guilty or within fourteen days after the verdict or finding of guilty for any other grounds. N.D.Crim.P. 33. Kovalevich's counsel had filed a Motion for New Trial in 18-2015-CV-2064 under N.D.R.Crim.P. 33(1) newly discovered evidence. Kovalevich's pro-se motion for new trial was similarly filed pursuant to N.D.R.Crim.P. 33(1). As previously indicated, in order to prevail on a motion for new trial based on newly discovered evidence, a defendant must establish that: 1) the evidence was discovered after trial, 2) the failure to learn about the evidence at the time of trial was not the result of the defendant's lack of diligence, 3) the newly discovered evidence is material to the issues at trial and 4) the weight and quality of the newly discovered evidence would likely result in an acquittal. N.D.R.Crim.P. 33(1). In the instant case, Kovalevich claims that newly discovered documents exist which established that the BCI lacked jurisdiction to investigate the case. The State has never been in possession or control of these documents. Kovalevich himself obtained them while incarcerated at the North Dakota State Penitentiary. Kovalevich provides no explanation for this Court why this argument was not pursued during the pre-trial process, post-trial, direct appeal or initial post-conviction proceedings. The district court, over the State's objection, reviewed substantively Kovalevich's pro-se claim that the BCI lacked jurisdiction. Further, the district court, allowed Kovalevich to take testimony from Agent Zachmeier on September 1, 2016. Ultimately, the district court found that BCI had jurisdiction to investigate

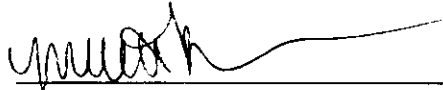
based on N.D.C.C. §§12-60-07(6), 12-60-08, and 54-12-03. As provided by N.D.C.C. § 54-12-03, the Attorney General may make an investigation in any county in this state to the end that the laws of the state shall be enforced therein. N.D.C.C. § 54-12-03. Further, N.D.C.C. § 12-60-07(6) provides that the BCI shall perform investigations assigned by the Attorney General. N.D.C.C. § 12-60-07(6). The Attorney General is deemed the superintendent of the BCI. N.D.C.C. § 54-12-01(4). BCI agents shall have all the powers conferred by law upon any peace officers in this state. N.D.C.C. § 12-60-08. The district court found these statutes controlling when denying Kovalevich's motion for new trial based on newly discovered evidence. Agent Zachmeier testified that he had been advised by the Chief of Security from the Sky Dancer Casino that there was a criminal act that had been perpetrated that was not being investigated. Post-Conviction Hearing Motion Tr. p. 7, September 1, 2016. Agent Zachmeier testified that he conducted follow up work, coordinated with multiple agencies and jurisdictions, and it was determined and requested that he proceed with the investigation. Id. at 7-12. Agent Zachmeier acted within the confines of our laws in investigating a felony sexual assault case involving a juvenile minor that spanned over multiple county jurisdictions and federal land. Kovalevich has not filed any statute or case that supports his argument that the BCI lacked jurisdiction. To the contrary, N.D.C.C. § 54-12-03 authorizes the Attorney General to make an investigation in any county of this state to the end that the laws of the state shall be enforced therein and all violators thereof brought to trial when the attorney general deems it necessary. N.D.C.C. § 54-12-03. Kovalevich relies on N.D.C.C. §12-60-07(5) and argues that the statute limits the powers the BCI has in investigating offenses. N.D.C.C. § 12-60-07(5) is one of several conferred powers and

responsibilities the BCI has, which is to assist in investigations when requested by local law enforcement. However, as proscribed by N.D.C.C. §§ 12-60-07(6), 12-60-08, 54-12-03 and 54-12-01(4), the BCI certainly has jurisdiction to investigate a criminal offense perpetrated in this state. The district court appropriately relied on statutory authority and the clear language in those statutes which grants the BCI authority to conduct investigations of criminal acts committed in our state, as these acts were. Furthermore, Agent Zachmeier clearly testified that he was requested to pursue the investigation into Kovalevich's felony sexual acts against a juvenile in multiple jurisdictions. Post-Conviction Hearing Motion Tr. pp. 7-12, September 1, 2016. Therefore, the district court did not err when denying Kovalevich's pro se Motion for New Trial in 18-2012-CR-03069.

**CONCLUSION**

[¶14] For the above-stated reasons, Kovalevich's appeals should be denied.

DATED this 14 day of January, 2017.



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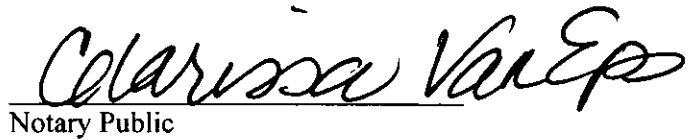
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States Attorney's Office

Subscribed and sworn to before me this 9 day of January, 2017.

  
Notary Public

jka

