

20170421

NORTH DAKOTA SUPREME COURT

CASE NUMBER 20170421

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
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SUPREME COURT
JUL 5 2018 JUL 09 2018

NDR. App. P. 24

STATE OF NORTH DAKOTA

¶1 RULE 24 ALLOWS FOR A SUPPLEMENTAL STATEMENT OF AN INDIGENT DEFENDANT. THIS WAS ADOPTED MARCH 1, 2010 TO DISCUSS MATTERS NOT ADEQUATELY ADDRESSED IN THE BRIEF FILED BY COUNSEL.

¶2 RULE 24 IS LIMITED TO 10 PAGES AND CAN ONLY BE HANDWRITTEN IF LEGIBLE. ALSO, LIKE THE FORMER PRIMARY BRIEF ALLEGED ERRORS MUST REFERENCE THE RECORD AND CITATION TO AUTHORITY.

¶3 WHILE NOT EXPLICITLY STATED, RULE 24 CAN ONLY REFER TO TRANSCRIPTS (THUS THE RECORD) THAT WERE ORIGINALLY ORDERED BY COUNSEL. THROUGH NUMEROUS CHANNELS I TRIED TO ORDER ADDITIONAL TRANSCRIPTS BUT WAS DENIED A COMPLETE RECORD.

¶4 I AM OFFERED 30 DAYS TO FILE AFTER SERVICE WHICH WAS JUNE 4, 2018

¶5 TO TAKE FULL OPPORTUNITY OF THIS GIVEN THESE AFOREMENTIONED CONSTRAINTS COUPLED WITH THE FACT THIS IS ON DIRECT APPEAL I MUST BE PARSIMONIOUS ON WHAT TO PURSUE.

¶6 THE FACTS OF THE CASE ARE SIMPLE AND SHOULD'VE BEEN OPEN AND SHUT. A MENTALLY ILL PERSON FACING ACUTE PSYCHOSIS WAS TRYING TO DEAL "RATIONALLY" WITH ALTRU'S STAFF ON WHY THEY BY HOOK OR BY CROOK ABROGATED MY ACCESS TO MY ANTI-PSYCHOTIC PRESCRIPTION.

¶7 FEARING ONCE AGAIN THE CENTRAL INTELLIGENCE AGENCY (CIA) WAS BEHIND THIS TREACHERY AND USING MY PSYCHOTIC BREAK AS AN EXCUSE TO SEND IN THE LOCAL POLICE TO USE LETHAL FORCE I WENT INSANE.

¶8 IN A CASE WHERE ALTRU WASN'T VERY ALTRUISTIC SENT THE GRAND FORKS POLICE DEPARTMENT - NOT TO DO A WELFARE CHECK - BUT INSTEAD TO ARREST ME ON THE CHARGE OF TERRORISMING SOLELY BASED ON A HE SAID (OR DIDN'T) / SHE SAID

TELEPHONE CALL.

¶9 WHILE THERE IS VIDEO TESTIMONY THAT THE PHONE CALL WAS RECORDED - NOTHING WAS PRODUCED, IN NEITHER PHONE RECORDS FROM ALTRU'S PSYCHIATRIC WARD OR AMERICA'S BEST VALU INN WERE SECURED. THUS THERE IS NO PHYSICAL EVIDENCE THE PHONE CONVERSATION TOOK PLACE.

¶10 UNFORTUNATELY "DOCUMENT CURRENCY", LIMITED TO 16 PAGES, ALLOWS ONLY FOR ABBREVIATED ARGUMENTS. FOR EXAMPLE MY ATTORNEY'S BRIEF CONTAINS FACTUAL ERRORS BUT IDENTIFYING THEM WITH RESPECT TO THE RECORD WOULD CONSUME AN UNORDINARY AMOUNT OF CURRENCY.

¶11 I WOULD BE REMISS IF I DIDN'T ALLOCATE A MINIMUM AMOUNT OF CURRENCY ADDRESSING PSYCHOLOGICAL AND CRIMINAL RESPONSIBILITY. THIS CONSUMED THE DOCKET 8/17/2014 (INDEX #9) UNTIL 10/12/2017 (INDEX #137).

#12 IN THOSE 14 MONTHS IT BECAME SELF-EVIDENT NORTH DAKOTA HAS TWO VASTLY DIFFERENT CRITERIA FOR A "CIVIL" VERSUS "CRIMINAL" COMMITMENT. IN 2015, STUTSMAN AND RAISEY COURT BOTH DEEMED ME MENTALLY INCAPACITATED IN DISTRICT COURT AND SENTENCED ME TO 90 DAYS AND 180 DAYS RESPECTIVELY.

#13 THE NORTH DAKOTA SUPREME AFFIRMED { 865 N.W. 2d 124 (CASE NO. 2015146) } AND { 870 N.W. 2d 26 (CASE NO. 20150188) }, FOR REASONS ONLY FULL UNDERSTOOD BY FULL OFFICERS OF OUR JUDICIAL SYSTEM ONLY

FORENSIC TITLED AND LICENSED MENTAL ILLNESS EXPERTS CAN TESTIFY TO A DEFENDANT'S CULPABILITY. THUS ADAM D. MILLER'S A PSYD, OPINION IS QUALIFIED IN CIVIL COURT BUT INADMISSABLE IN CRIMINAL COURT.

#14 IN NORTH DAKOTA "FORENSIC" MEANS DR. ROBER LISOTA OR DR. STACEY BENSON. IN THE INSTANT CASE EVEN THOUGH THE DISTRICT COURT APPROVED A SECOND EVALUATION (DOCKET INDEX #111, #112, #113, #114, #115, #122, #123, #125, #126, #127, #129, #131 and #133) THE FUNDING

WAS NOT ENOUGH FOR DR. STACEY BENSON SO THE ALTERNATIVE WAS TO ONCE AGAIN USE DR. ROBERT LISOTA, PROPRIETOR AND AUTHOR, OF THE FIRST EVALUATION, AND WITHOUT A FORENSIC REVIEW MY EXHIBITS (INDEX #222, #224, #225, #234, #235, #236, #237, #238, #239, #240, AND #241) WERE NOT ALLOWED INTO EVIDENCE.

¶15 SUFFICE TO SAY THE NORTH DAKOTA STATE LEGISLATOR AND GOVERNOR MAY BE WELL ADVISED TO REPEAL N.D.C.C. CH. 12.1-04.1 AND ELIMINATE THE "INSANITY" DEFENSE. IN LIEU THE STATES ATTORNEY WOULD SIMPLY USE AN EVALUATION AS A LITMUS TEST TO DROP CRIMINAL CHARGES AND RELY ON A CIVIL COMMITMENT.

¶16 WITH THAT SAID THE BALANCE OF THIS BRIEF WILL FOCUS ON MY RIGHTS GIVEN AND AFFORDED ME BY THE CONSTITUTION FOR DUE PROCESS AND THE USE OF BODY WORN CAMERA FOOTAGE AS EVIDENCE.

¶17 IN ACTUALITY IT IS THE PROSECUTION'S SUPPRESSION OF BODY CAMERA (OR BODYCAM) FOOTAGE THAT IS OF RELE-

VANT TO THIS DIRECT APPEAL. THE PROBLEM IS A PROSECUTOR THAT SUPPRESSES EXCULPATORY OR IMPEACHABLE EVIDENCE DURING DISCOVERY WILL USE ALL THEIR ACUMEN OF THE LAW TO ALLOW IT BE REVEALED DURING TRIAL.

¶18 COMPOUNDING THE PROBLEM, AS THE TRANSCRIPTS WILL SHOW, MR. BIALIS WHO HANDLED ALL THE BODYCAM EVIDENCE, IS AS TOTELY ADEPT AT MAKING WHOLESALE EDITS TO ALL THE VIDEO WAS PERFECTLY ADMISSABLE UNDER NO JUDICIAL RULES (OF THE 6 VIDEOS TURNED OVER IN DISCOVERY NOT ONE WAS PUBLISHED IN THE SAME FORMAT).

¶19 THE PROBLEM WITH THE BODYCAM FOOTAGE (AMONG MANY) IS ON AUGUST 3, 2016 AT LEAST SIX [6] DISTINCT VIDEOS WERE CREATED, BY THREE [3] DIFFERENT POLICE OFFICERS AT THREE [3] DIFFERENT LOCATIONS.

¶20 WHILE THE ISSUES WITH THE BODYCAM FOOTAGE AS IT RELATES TO THE DENIAL OF BOTH STATE AND FEDERAL CONSTITUTIONAL DUE PROCESS

AS THE PLAYING OF VIDEO TO THE JURY WAS CLOSER TO AN EPISODE OF "COPS" THAN WHAT TRANSPIRED

¶21 ON NOV. 8, 2017, OVER 15 MONTHS AFTER ARRAIGNMENT AND 6 DAYS BEFORE TRIAL THE PROSECUTION SUBMITTED THE STATE'S EXHIBIT LIST (INDEX #183). EXHIBITS NO. 1, 2, 3 WERE LABELED BODYCAM FOOTAGE FROM OFFICER'S BULLINGER, HOLWEGER AND GANGSRUTH RESPECTIVELY. FURTHERMORE EACH WERE TO BE "STIPULATED" OR "OBJECTIONS" (SIC). THE DEFENSE IGNORED AND CONSEQUENTIALLY THE STATE DROPPED.

¶22 THROUGH THE COURSE OF THE TRIAL IT BECAME A MATTER OF RECORD THAT THAT THESE THREE EXHIBITS WERE NEVER TURNED OVER IN DISCOVERY. IT CONSISTED OF THREE [3] VIDEOS EXTRACTED FROM A SINGLE VIDEO [BULLINGER] AND ONE EACH FROM THREE [3] OF HOLWEGER AND GANGSRUTH.

¶23 THE PROSECUTION DID EVERYTHING IN ITS POWER TO OBFUSCATE THE

THE FACT ALL THE BODYCAM
(AND THE IN CAR) VIDEO WAS A VIOLATION
OF N.D.R. Crim. P 16 AND SHOULD HAVE
NEVER BEEN BY THE JURY, THE
DEFENSE OBJECTED TO ALL OF THE
FOOTAGE: TR. 56:8, 56:13-14, 56:17-18,
133:12-17, 134:2-5, 135:20-25, 136:11-15,
195-196:22-1, 196-197:20-2.

424 THE DISTRICT COURT ERRORED
IN OVERRULING ALL OF THE DEFENSE'S
OBJECTIONS ALLOWING FIVE [5] BODY-
CAM (AND ONE IN CAR) VIDEOS BE PLAYED
AND PUBLISHED TO THE JURY THAT
WERE NEVER PROVIDED IN DISCOVERY.
TO GIVE A SPECIFIC EXAMPLE.
OFFICER GANGRUTH CHECKED THE
BOXES "BODYCAM" AND "AUDIO" ON
HIS INCIDENT REPORT MADE ON
AUG 4, 2016. THE AUDIO WAS ACT-
UALLY INTEGRATED WITH THE BODY-
CAM AND THREE SEPERATE VIDEOS
FROM TWO LOCATIONS [ALTRV HOSPITAL
AND GFCC]. THESE VIDEOS WERE
NOT PROTECTED AND ON 2-22-2017
WERE ENUMERATED 068303239,
068303240 AND 068303241. OF THESE,

ONLY TWO [Z] WERE PROVIDED IN DISCOVER CA CLEAR CUTTY BRADY RULE VIOLATION. TWO DAYS AFTER SUBMITTING THE STATE'S EXHIBIT LIST LABELING #3 TO OFFICER'S BODYCAM FOOTAGE AND FOUR DAYS BEFORE TRIAL IT IS EDITED AND GIVEN A NEW FILENAME: HBA1080. WHEN PLAYED AND PUBLISHED AT TRIAL IT WAS REASSIGNED STATE'S EXHIBIT #4.

#25 NOW COMES THE PRECARIOUS TASK IS "FACTUALIZING" ALL OF PARAGRAPH 24 FROM THE REGISTER OF ACTIONS AND TRIAL TRANSCRIPTS. FOR REASONS UNKNOWN TO ME MY FIRST TWO ATTORNEYS (RETAINED) IGNORED RULE 16 SO NINE MONTHS AFTER MY ARREST THE REQUEST (INDEX #70) WAS MADE. A DISK WAS TURNED OVER, IT CONTAINED FROM OFFICER GANLROTH FILE G8303239, MODIFIED 8/3/2016 AT 3:40 PM, A VIDEO CLIP, SIZE 66,284 KB (TR. 20416-20). VIDEO CLIP G8303240 WAS SUPPRESSED BY THE PROSECUTION IN VIOLATION OF BRADY V MACKLAND, 373 U.S.

83, 83 S Ct. 1194, 10 L. Ed. 2d 215
(1963) AND ALL ITS STATE AND FEDERAL

PROGENY, AND FINALLY G8303241
MODIFIED 8/03/2016, 3:40 PM, A
VIDEO CLIP THE SIZE 60,085 KILOBYTES.
THIS BECAME EXHIBIT G FOR THE
DEFENSE. THE VIDEO FILE G8303239
BECAME EXHIBIT H FOR THE
DEFENSE (TR. 20112 AND 204:14-15)
A26 MR. BIALIS' SHELL GAME
MAKES IT PARTICULARLY DIFFICULT
TO IDENTIFY WHAT VIDEOS FALL
UNDER THE BRADY RULE AND ARE
A VIOLATION OF RULE 16. REFERRING
TO TR 62:18-25 - TR 63:1-6 MR. BIALIS
BRINGS ALL THE VIDEOS THAT WOULDN'T
FIT THROUGH THE FRONT DOOR BY
BOOT STRAPPING THROUGH THE BACK
DOOR. IN TR. 63:6 HE STATES "YES"
THEY WERE PROVIDED ONLY TO DO AN
ABOUT FACE (TR. 63:9) AS SAY "NO"
WE DID NOT PROVIDE THEM IN DISCREET

A27 THE SHELL CONTINUES
AS MR. BIALIS TALKS ABOUT CD'S,
THIS VIDEO, THAT VIDEO, STATES
EXHIBITS, ETC. OFFICER BULLINGER'S

ORIGINAL BODYCAM VIDEO WAS SUPPRESSED FROM AUG 3, 2016. IN UEN AN EDITED ONE MODIFIED ON AUGUST 6 AT 9:40 AM (TR. 148:13-16). NEARLY 15 MONTHS LATER AT TRIAL MR BIALS ANNOUNCES IT HAS BECOME THREE VIDEOS AND A SINGLE FILE EXHIBIT (TR. 62:23-29).

AZB IN TR 173:21-24 IT IS ESTABLISHED THAT OFFICER BULLINGER TURNED OFF HIS BODY CAM ROUGHLY ONE MINUTE BEFORE TURNING ON THE IN CAR VIDEO. IN TR 174:23 - 175:6 WE ALSO ESTABLISH I WAS NOT TOLD BODYCAM VIDEO WAS BEING RECORDED IN TR. 149:12-19 HE STATED THERE WAS NO SPECIFIC REASON HE WAITED UNTIL AFTER THE DOOR WAS OPENED TO START THE RECORDING. THE PROBLEM WITH THIS TESTIMONY IS THE BODYCAM WAS ALREADY ACTIVATED AND RECORDING BOTH EXCULPATORY AND IMPRACHABLE EVIDENCE. THREE DAYS LATER THE GOVERNMENT (THE GPPD) MODIFIED THE VIDEO IN ESSENCE TO SANITIZE.

Q30 IN TR. 63820-25 I MADE

I MADE A DUE DILIGENCE ATTEMPT
STATING "THERE'S OBVIOUSLY OTHER
BODYCAM VIDEO 'TOO' AND I WANTED
IT PRODUCED FOR THE JURY TO SEE
WHAT WASN'T PROVIDED IN DISCOVERY,
THE COURT HAD NO INTEREST IN

DISCUSSING BODY MATERIAL. TR. 64
1-3, "THIS IS THE TIME FOR THAT
MR. ETEMAD, WE CANNOT BE WAITING
FOR VIDEO THAT MAY OR MAY NOT
BE OUT THERE." FROM THEN ON
THE COURT ABUSED HIS POWER BY
OVERRULING, DISMISSING OR FLAT
IGNORING MY OBJECTIONS TO THE
BODYCAM VIDEO.

Q31 IT WOULD BE REMISS NOT
TO COMPLETE THE BODYCAM VIDEO
FOOTAGE EXCEPTS WITH THE
STATES AND DEFENDANT'S EXHIBITS
OF OFFICIAL (RED) HOLDINGS. WHILE
IT DOESN'T MEET THE CLASSIFICATION
OF BRADY MATERIAL IT IS CONSISTENT
IN THE PROSECUTION'S AND ADC PUBLISH-
ING AND INTENT TO CONVINCE THE
DEFENSE, JURY AND COURT. AT FACE
VALUE IT IS A DUE PROCESS VIOLATION
AND IS ACCEPTED INTO EVID-

FENCE WITH PERJURED TESTIMONY.

¶32 TR. 54:15 - 55:19 INTRODUCES
A JUMP DRIVE WITH BODYCAM FOOTAGE
REVIEWED EARLIER. TR. 55:20 THE
"FOOTAGE" IS PLAYED AS EXHIBIT 1.
TR 55:25 - 56:15 OFFICER HOWLEGER
UNDER OATH AND ON THE STAND STATES
THERE ARE "NO OMISSIONS OR
ADDITIONS" OR "ANYTHING MISSING." THE
DEFENSE WOULD GO ON TO OFFER
EXHIBITS B, C AND D WHICH WAS
AN ADDITIONAL 12 MINUTES OF BODY-
CAM FOOTAGE AND TWO VIDEOS. THE
COURT OVERLOOKED THIS BLATANT PERJURY
CITING MY "PRO SE" STATUS AND MY
INABILITY TO UNDERSTAND COMPLEX
LEGAL PROCEEDINGS AND THE NUANCES
IT ENTAILS. (TR 91:13-17)

¶33 FOR COMPLETENESS OF THIS BRIEF
HOWLEGER'S BODYCAM EXHIBITS B AND
D WERE RECEIVED. TR. 96:16-7 ASSIGNS
THE FILENAME G8337612 MODIFIED
8/3/2016 AT 3:40 PM, A VIDEO CLIP WITH
A SIZE OF 460,608 KBYTES. TR. 118:
23-25 ASSIGNS FILENAME G8337614
MODIFIED AUGUST 3RD, 2016 AT 4:34 PM

WHICH IS A VIDEO CAP THE SIZE OF 1/32KB
#34 NEW TECHNOLOGY PUTS UNDER
STRESS TRADITIONAL NOTIONS OF FOURTH

AMMENDMENT PROTECTIONS. SEE ETHAN THOMAS
"THE PRIVACY CASE FOR BODY CAMERAS: THE
NEED FOR A PRIVACY-CENTRIC APPROACH
TO BODY CAMERA POLICY MAKING" 50
(Colum. J.L. & SOC. PROBS (2017)). THERE ARE
CONCERNS FOR THE GENERAL PUBLIC USING
BODY CAMERAS WITHOUT JUDICIAL SUPERVISION.

#35 WHILE NOT A PANACEA - BODYCAM'S
PROTECTS POLICE OFFICERS AND CITIZENS -
IT IMPROVES PUBLIC SAFETY, AN OBJECTIVE
MEANS OF EVIDENCE GATHERING AND
SERVES AS A VALUABLE TRAINING TOOL
FOR POLICE OFFICERS. BUT IN HOWARD M.
WASSERMAN'S, "MORAL HAZARDS AND
BODY CAMERAS" (2015) STATES ~ THEY ARE
NO MAGIC BULLET.

#36 IN THE INSTANT CASE THE

GRPD AND GSA "JUMPED THE TRAP" BY PROVIDING NO TRAINING OR MANUAL
ON SET PROCEDURES FOLLOWING ITS OFFICERS
TO SIMPLY AND ARBITRARILY OUST A
GATION AND THEN DISREGARD BROT

V MARYLAND TO MAKE THEIR CASE.
§ 37 THE SEATTLE POLICE
DEPARTMENT TAKE A PROACTIVE AND COMPREHENSIVE TO ITS USE OF BODYCAM'S BY
HAVING BOTH THE US DEPARTMENT OF JUSTICE
AND THE NINTH CIRCUIT US DISTRICT COURT
SCRUTINIZE THE ADMINISTRATING POLICE
ISSUED BWC'S. { 2017 U.S. DIST LEXIS: 67794
US V CITY OF SEATTLE: MAY 3, 2017, CASE NO.
12-1282 JLR? SEE ALSO MICHAEL D. WHITE,
POLICE OFFICER BODY WORN CAMERAS: ASSESSING
THE EVIDENCE".

§ 38 BODY WORN CAMERAS IS THE
LATEST AND GREATEST IN VIDEO TECHNOLOGY.
OVER 25 YEARS AGO THE PRE-CURSOR
RECORDED THAT INFAMOUS NIGHT WITH
THE LAPD AND RODNEY KING. AS THIS
BRIEF IS WRITTEN NEITHER THE NORTH
DAKOTA OR US SUPREME COURT HAS
RULED ON BODYCAM VIDEO AND HOW
IT RELATES TO EACH OF THEIR CORRESPONDING
CONSTITUTIONS. STILL IN THIS CASE
THEY ARE PRESENTED AS EVIDENCE
AND MUST ADHERE TO STATE AND FEDERAL
PRECEDENTS. BESIDES BRADY V MARYLAND
AND RULE 16 THERE ARE:

CALIFORNIA V TROMBETTA, 467 U.S. 479 (1984)
ARIZONA V. YOUNGBLOOD, 488 U.S. 51, 109 S. Ct. (1988)
STATE V BELL, 2002 ND 130 ¶14, 649 N.W. 2d 243
STATE V MURKIE, 2007, ND 132 ¶25, 737 N.W. 2d 647
STATE V HORN, 2014, ND 230 ¶7, 857 N.W. 2d 77
STATE V OLENDER, 1998 ND 50, ¶11, 575 N.W. 2d 658
STATE V KADOR, 2015 ND 196, ¶9, 867 N.W. 2d 686
STATE V. ADPAT, 2010 ND 29, ¶149, 718 N.W. 2d 555
STATE V. THORSON, 2003 ND 76, ¶13, 660 N.W. 2d 581
STATE V STEFFES, 500 N.W. 2d 608, 613 (N.D. 1993)
STATE V. SIEVERS, 543 N.W. 2d 491, 495-96 (N.D. 1996)

CONCLUSION

THE PROSECUTION SUPPRESSED BRADY MATERIAL IN THE FORM OF TWO [2] BWC VIDEOS. THE CASE IS TO BE REVERSED AND REMANDED BACK TO DISTRICT COURT FOR A NEW TRIAL. A WRIT WILL REQUIRE THE PROSECUTION PRODUCE FILES D068603471 AND D068303240 BOTH VIDEO CLIPS MODIFIED ON AUG 3, 2016 THE DAY OF ARREST.

RESPECTIVELY SUBMITTED AND DATE JULY 2, 2018

BJD

BETAN DAVID ETEMAD

JRCC

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA) SUPREME COURT
PLAINTIFF/APPELLEE) NO. 20170421
VS) CASE NO. 18-2016-CQ-01535
BEJAN DAVID ETEMAD)
DEFENDANT/APPELLANT) CERTIFICATE OF
SERVICE

I, BEJAN DAVID ETEMAD, DO HEREBY CERTIFY
ON JULY 3, 2018 I SERVED THE
FOLLOWING DOCUMENTS:

1. RULE 24 SUPPLEMENTAL BRIEF
ON

PENNY MILLER
CLERK OF COURT
STATE CAPITOL
JUDICIAL WING, 1ST FLOOR
1000 EAST BLVD AVE., DEPT 180
BISMARCK, ND 58505-0530

THOMAS GHERTZ
GRAND FORKS COUNTY STATES ATTORNEY
PO BOX 5607
GRAND FORKS, ND 58206-5607

RUSSELL J. MYHRE
MYHRE LAW OFFICE
341 CENTRAL AVE. N
SUITE 3
VALLEY CITY, ND 58072

PURSUANT TO RULES 5(C) AND 5(E),
NDRCUP, THAT ON JULY 3, 2018
I DEPOSITED POSTAGE PREPAID FIRST
CLASS MAIL FROM THE JRCC A
TRUE AND CORRECT COPY

DATE THE 3 DAY OF JULY, 2018



BETAN DAVID ETEMAD

53130

JRCC

2521 CIRCLE DRIVE

JAMESTOWN, ND 58401