No. ____________________

IN THE

SUPREME COURT OF THE UNITED STATES

SANDRA GRAZZINI RUCKI — PETITIONER
(Your Name)

vs.

STATE of Minnesota — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Minnesota Supreme Court.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SANDRA GRAZZINI RUCKI.
(Your Name)

3025 20th Street Court So.
(Address)

ST Cloud MN 56301
(City, State, Zip Code)

Safe place

(Phone Number)

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

INDEX TO APPENDICES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Court of Appeals court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was 1-16-18.
A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Petitioner Sandra Grazzini-Rucki requests Supreme Court review of the above-entitled decision of the Court of Appeals upon the following grounds:

I. Legal issues and their resolution by the Court of Appeals

A. Did the Prosecutor commit misconduct during trial by allowing false statements to be put into the record?

A1. Did the Prosecutor commit misconduct during trial by filing additional felony charges against Petitioner after a witness had been coerced to recant testimony of abuse?

Actual claim by Petitioner on issues of Prosecutorial Misconduct: Misconduct of Prosecutor significantly affected Plaintiff's rights, and not only denied her the ability to receive a fair trial but resulted in a much harsher penalty be imposed than warranted. Petitioner should not have been charged with two additional counts of felony deprivation of parental rights when it witnesses admitted during testimony that statements were not made of her own free will – this is clearly a case of prosecutorial misconduct.

B. Did the district court err by denying evidence submitted by Petitioner? Actual claim by Petitioner. The district court committed reversible error by excluding 80% of defense evidence Petitioner submitted. Exclusion of evidence prevented Petitioner from obtaining a fair trial.

C. Did the district court abuse its discretion by changing the terms of restitution, two months after sentencing, on November 28, 2016 during an unrelated probation violation hearing, to order that "restitution be reduced to a civil judgment"? Actual claim by Petitioner: Petitioner's due process rights were violated when restitution was changed without following the proper procedures needed to petition for civil judgment. In addition, court records indicate that Petitioner is still being held to the original terms of restitution while the court order states she may also be subject to civil judgment – meaning Petitioner is being charged twice for restitution. (See page 74, brief filed by Public Defender, Attorney Russett).

D. Did the district court err by providing instructions to the jury that included misleading statements that implied Petitioner is "guilty" of charges? Actual claim by Petitioner: The district court's misleading statements, when providing the jury

with instructions were prejudicial and significantly impacted the outcome of this case.

The Court of Appeals held all issues in the affirmative; except for issue "C" which was omitted when the Court of Appeals made its ruling to overturn sentencing.

II. Statement of the criteria of the rule applied upon to support the petition

Petitioner request review as the lower courts have so far departed from the accepted and usual course of justice, and narrowed the definition of abuse of process, so as to require the Supreme Court's supervisory powers. This is a case of great public interest; affirmative and appropriate action is required to alleviate the adverse administration of justice. In regards to the issue of restitution, a decision by the Supreme Court will clarify the laws regarding restitution and conversion to a civil judgment and have statewide impact.

III. Statement of the case (facts and procedural history)

In 2011, Petitioner divorced her husband, David Rucki, after 19 years of marriage, in which domestic violence occurred. They have five children, including SVR and GJR. During the marriage, and after, Petitioner was the primary caregiver of the children.

Following the divorce, custody of the children changed several times. On September 7, 2012, after an emergency telephonic conference was held, Petitioner was ordered out of her home and subjected to a no-contact order that prevented contact with her five children unless approved by a court appointed therapist. Paternal aunt, Tammy Jo Love, was ordered to move into the family home and given temporary custody of the children. When the children learned of the court order, four of the five children, including SVR and GJR, ran away, claiming Love had physically and mentally abused them. Custody of the children was then temporarily transferred to a maternal aunt by order of the district court.

On April 19, 2013, after learning of a court order that would again transfer custody of the children back into the care of Love, SVR and GJR, ran away again, claiming they felt unsafe and "would run with or without help". Before they ran away, SVR and GJR raised multiple allegations that their father, David Rucki, had physically, emotionally and sexually abused them; even testifying to this to the district judge presiding over the case as well as revealing abuse to the court ordered therapist and the Guardian ad Litem. The response of the district court and its officers was to call the children "liars" (according to the testimony of SVR) and label them as "brainwashed" and in need of "de-programming", which did occur.

In November 2013, while the children were still missing, David Rucki was awarded sole physical and legal custody of SVR and GJR. At the time of the court order, Rucki was on probation for violating a protective order issued against him by Petitioner. Custody was determined after a trial in which Petitioner's attorney was forced to proceed while handcuffed and strapped to a wheelchair, denied her files, glasses and even shoes. Petitioner was told to leave the court by the presiding judge and was not present for the trial. In total, nearly 4,000 court orders have been issued in the Grazzini-Rucki case. The district court judge admitted that so many orders had been issued that he was confused because there are so many. Conditions of Petitioner's probation require her to follow all the family court orders, even though the files have been destroyed by the district court, and none of the orders exist.

In the summer of 2015, police received information implicating Petitioner in the disappearance of SVR and GJR. Based on that information, she was charged with eight counts of depriving another of custodial or parental rights.

SVR and GJR remained in hiding on a therapeutic horse ranch for abused children until they were discovered in November 2015. While staying on the ranch, SVR and GJR again

disclosed allegations of abuse and refused to return to the care of their father, stating they were afraid of him. After being discovered, SVR and GJR reported to numerous professionals, and police involved in their case that they would run away again if returned to the custody of Rucki. SVR and GJR continued to report that they were afraid of Rucki and that he had been abusive towards them.

In November 2015 during an Emergency Protective Care hearing, a social worker with Dakota County believed that abuse of SVR and GJR did occur and petitioned the district court that the girls remain in foster care for their safety, and that Rucki only be allowed supervised visits. Both girls had also obtained an attorney and fought to remain in foster care, citing fear for their safety, and raising allegations of past abuse. The court denied the petition and ordered the girls to be returned back into the care of Rucki. Both girls were escorted from the court by a handler so they could not run away and flown to a ranch in the mountains of California for reunification therapy with Rucki. At the time the girls were returned into his care, Rucki was on probation for a violent road rage incident in which he followed then beat a fellow motorist.

A jury trial took place from July 18 -28, 2016. Petitioner raised the affirmative defense under Minn. Stat. § 609.26, subd. 2(1-2) (2016) and attempted to offer evidence to demonstrate that she had a reasonable belief that her actions were necessary to prevent physical or sexual assault or substantial emotional harm to SVR and GJR from David Rucki. Petitioner was subsequently found guilty. Following the verdict, Petitioner was sentenced on two of the six counts. An appeal followed.

Argument

A. The Dakota County Attorney's Office/Prosecutor attempted to seek an advantage during Plaintiff's criminal trial by allowing false statements to be put into the record. This happened when SVR's testimony in court was

different than her previously made statements to police.

A police report from June 30, 2016, records statements that witness SVR made to police (see below). The nature of comments indicates that SVR was being pressured and coerced by her father, David Rucki, and paternal aunt, Tammy Love, to recant allegations of abuse that she had previous alleged. This incident happened prior to Plaintiff's trial and constitutes witness tampering.

LAKEVILLE POLICE DEPARTMENT CASE/INCIDENT NUMBER 13001278
STATEMENT:
Date: 06/30/2016
Time: 0900 Hours
Location: Lakeville Police Dept.
Statement of: Samantha Rucki
Statement taken by: Det. Kelli Coughlin
Transcribed by: K. Parranto

Q: Det. Kelli Coughlin A: Samantha Rucki

Q: Ok you are in a really tough spot and I totally understand that. Um no kid should ever have to be in this spot and you are in a tough one. But we are looking to see kind of what happened and how we got to this point. And I, my heart breaks for you Sam, it really does. Are you being forced to be here?

A: No but it's definitely not on free will choice.

Q: Ok what do you mean by that?

A: They basically said I have to, and I have to be here and I have to recant everything I said and it's gonna and that's the way its gonna have to be and they made me feel really guilty about not doing it, I started crying.

Q: Ok, who is they?

A: My dad and Tammy.

Q: Ok, ok. Well I just want to make sure that you are not here against your will, ok. And I don't want to make you say anything that's not true and I want, I just, I just want, want the truth and I don't want anyone to put words in your mouth. So this is kind of like your chance to tell the story on what happened, the true story, just so we have the truth out there because you know

some other people might say other things and which might not be the truth and only know the truth. And I know you don't want to get your mom in trouble and I know you don't want to get your dad in trouble. But we're just looking to see how we got to this point.

In the same police interview with Coughlin, Samantha stated, "I'm not a fan of Judge Knutson, I don't want to hear about that guy," she said, "Honestly. He made such bad decisions and it's not even, he should I don't care what you guys want to say to that. The decisions made by whoever in the court were so horrendous that they shouldn't even be allowed to do it anymore. You can't make a mistake like this and ruin people's lives and then think it's ok. Gilbertson [a therapist appointed by Judge Knutson] and Friedrich [the guardian ad litem appointed by Knutson] and him, you don't just get to screw around with someone's life to like practice or to just try and test out different theories on you can do this (inaudible) a bunch of test dummies or a bunch of things."

Witness tampering is defined by Minn. Stat. 609.498:

"Whoever does any of the following is guilty of tampering with a witness in the first degree and may be sentenced as provided in subdivision 1a:

(a) intentionally prevents or dissuades or intentionally attempts to prevent or dissuade by means of force or threats of injury to any person or property, a person who is or may become a witness from attending or testifying at any trial proceeding, or inquiry authorized by law;
(b) by means of force or threats of injury to any person or property, intentionally coerces or attempts to coerce a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law;
(d) intentionally prevents or dissuades or attempts to prevent or dissuade, by means of force or threats of injury to any person or property, a person from providing information to law enforcement authorities concerning a crime; (the crime in this case would involve domestic violence perpetrated against Petitioner as well as child abuse perpetrated against SVR and siblings);
(e) by means of force or threats of injury to any person or property, intentionally coerces or attempts to coerce a person to provide false information concerning a crime to law enforcement authorities..."

A month later, when giving testimony for trial, SVR's testimony drastically changed. It

should be noted that SVR was interviewed via video conference while sitting in a room outside of the court. Father, David Rucki, and paternal aunt, Tammy Jo Love, were at SVR's side during her testimony, standing outside the view or the camera. These are the same people who pressured SVR to recant before taking her to speak to police on June 30, 2016. In a change of testimony, SVR told the Court she was not told to "recant" and she had not been in her right state of mind when she made the statement to police. She also claimed not to remember a domestic violence incident involving her father beating her mother with an organ leg and said her dad never hit anyone (TT 748-749). S VR further testified she never saw any abuse and perhaps her father only shoved her mother a few times (shoving constitutes abuse). The justice "system depends on the truthfulness of the testimony of witnesses and false testimony strikes at the very heart of the administration of justice." *In re Salmen*, 484 N.W.2d 253, 254 (Minn.1992) SVR did not simply change her story – she was under extreme duress to do so. This constitutes witness tampering, and as such, the entire conviction should be overturned.

In addition, when the district court suppressed evidence submitted by Petitioner – which included evidence of abuse and allegations of abuse raised by SVR (including social service records, statements made during a Fox 9 News interview, audio testimony and a written letter signed by SVR) it also denied Petitioner the right to confront an accuser on the witness stand and offer evidence that would impeach testimony. According to the rules of evidence, *"As amended, Ruled 801(d)(1)(B) permits prior consistent statements of a witness to be received as substantive evidence if they are helpful to the trier of fact in evaluating the credibility of the witness."*

District court's error provided an unfair advantage to Prosecutor that prejudiced the administration of justice. *"Unfair prejudice under rule 403 is . . . evidence that persuades by*

illegitimate means, giving one party an unfair advantage." *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005).

A1. After SVR recanted testimony regarding domestic abuse, Prosecutor filed two additional charges of felony deprivation of parental rights against Petitioner. The chargers were based solely on testimony from SVR that had significantly changed after she admitted to being brought to the police department, in her words, "definitely not on free will choice" and stating quote "my dad and Tammy" told her to "recant everything". SVR did, in fact, "recant everything" during the testimony she gave at Petitioner's trial; and did so with Rucki and Love present during her testimony and standing in close physical proximity to SVR.

The Star Tribune, a local newspaper, reported on the additional charges filed by Prosecutor on July 18, 2016, that, *"Sandra Grazzini-Rucki, now charged with eight felony counts of deprivation of parental rights...Days before her trial was set to begin, the county attorney's office filed two additional felony charges of deprivation of parental rights against Grazzini-Rucki. The attorney's office said an amended criminal complaint was filed Tuesday after one of the daughters made a recent statement to Lakeville police. According to the amended criminal complaint, Samantha Rucki was interviewed by police June 30 and said that her father never abused her and she never saw him abuse any of her siblings..."* http://www.startribune.com/trial-to-begin-for-sandra-grazzini-rucki-in-disappearance-of-her-2-daughters/387185101/

In a situation involving potential misconduct by or affecting the jury, the defendant bears the initial burden to show "private communications or contact or other circumstances suggesting direct or indirect improper influence or jury tampering." *State v. Erickson*, 597 N.W.2d 897, 902 (Minn.1999). Upon such a showing, prejudice is presumed, and the burden

shifts to the State to overcome the presumption of prejudice. Id. (citing *State v. Anderson*, 379 N.W.2d 70, 81 (Minn.1985)). The State has not been able to prove that influencing the testimony of SVR (witness tampering) has not prejudiced the outcome of trial – but has proven that coerced testimony influenced the Prosecutor to file additional charges against Petitioner, establishing a case for prosecutorial misconduct. Instead of pursuing charges against Petitioner, the Prosecutor should have considered charges against those tampering with the testimony of SVR and attempting to unduly influence the trial.

Petitioner was subsequently found guilty of the two additional amended charges that were based entirely on witness testimony from SVR that resulted from being pressured to recant allegations of abuse from her identified perpetrator – father, David Rucki, and paternal aunt, Tammy Love; both whose treatment of her was so frightening that SVR ran away from their custody on two separate occasions and went into hiding for 2 years in fear of her safety. The jury was never allowed to hear evidence of abuse nor allowed to consider SVR's previous testimony – made of her own free will. Petitioner was later sentenced with unusually harsh terms that exceeded sentencing guidelines based on the additional felony counts. The Appellate court has since overturned sentencing; however, the merit of the charges was not considered. Witness tampering is an intent to silence and undermines judicial process and threatens the integrity of court proceedings and must not go unchallenged. It is a clear abuse of discretion that the district court allowed witness tampering to continue during trial when Rucki and sister, Love, who were identified by SVR as perpetrators of abuse against her, and also identified by SVR as pressuring her to recant abuse allegations, were allowed to be present in the room when she testified. This is especially egregious because SVR was forced to testify in an isolated room outside of the reach of the judge, and public. Her only way out of that room, and back home,

was provided by Rucki and Love; she could not refuse whatever was asked of her.

Petitioner's conviction should be overturned, or in the very least, a new trial ordered, because she was unjustly charged of 2 additional felony counts as a direct result of witness tampering. A witness providing false or coerced testimony in turn implants false information and perceptions in the minds of jurors. The addition of those felony counts contributed to Petitioner being found guilty of 4 other related counts, and like a stack of dominoes falling, once the trial had been contaminated, she could not be assured a fair trial.

B. The district court erred by denying evidence submitted by Petitioner. **A**udio recordings and written affidavits from SVR and GJR stating the abuse were sealed and the district court denied their inclusion in trial, this evidence would support Petitioner's reasonable belief that she took action to protect her children from imminent mental, physical, sexual or emotional harm – the basis of the affirmative defense. It is an affirmative defense to all three counts against Petitioner if "t*he person reasonably believed the action taken was necessary to protect the child from physical or sexual assault or substantial emotional harm.*" Minn. Stat. § 609.26, subd. 2(1-2) (2016)

To vindicate their rights, courts must allow people to present evidence "that is material and favorable to their theory of the case." (*State v Crims,* 540 N.W. 2D 860, 866 (Minn. App. 1995). Further, the district court abused its discretion when it prohibited introduction of evidence of prior crimes, wrongs, or acts by any witness called by the State without a prior specific ruling allowing the introduction of that evidence.

The district court also prohibited any specific acts of domestic assault allegedly committed against Petitioner, children and/or any other assaults allegedly committed by David Rucki against any other person(s). The district court ruled that Rucki has never been

convicted for assaulting appellant or any other person. Accordingly, the evidence is not admissible under Minn. R. Evid. 609.

The district court erred by failing to consider that Rucki has been convicted of such crimes and has plead guilty on charges of violating and order for protection and domestic assault. Rucki also was also court ordered on 3 separate occasions to anger management classes and a full 8week course of domestic violence classes, all stemming from domestic abuse & assault and battery charges.

Had the jury been aware of just some of Rucki's charges and the very real impact of his violence towards Petitioner, and the children, they would have information and facts needed to consider the affirmative defense she raised. The district court's refusal to allow Petitioner to submit evidence meant that she could not prove harm or explain her reasoning – two essential elements to the affirmative defense. In turn the jury only heard one side of the story, the State's side, and the jury became prejudiced against Petitioner due to the unreasonable actions of the district court.

"Under our system of jurisprudence, every criminal defendant has the right to be treated with fundamental fairness and 'afforded a meaningful opportunity to present a complete defense.'" *State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1992) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). This includes the opportunity to develop the defendant's version of the facts, so the jury may decide where the truth lies. *Id.* at 194 (quoting *Washington v. Texas*, 388 U.S. 14, 19 (1967)). To vindicate this right, courts must allow defendants to present evidence "that is material and favorable to their theory of the case." *State v. Crims*, 540 N.W.2d 860, 866 (Minn. App. 1995).

Furthermore, the evidence Petitioner attempted to submit regarding Rucki's criminal

history involving violent acts, and history of abuse, should have been allowed because it attests to the credibility of Rucki as a witness. Specifically, Rucki testified under oath that he had never been abusive to Petitioner or children.

Rule 404(a)(3) provides:

> Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
>
> (3) Character of witness. Evidence of character of a witness as provided in rules 607, 608, and 609.

Minn. R. Evid. 404(a)(3). Rule 608(a) addresses the Rule 404(a)(3) exception and provides in pertinent part:

> The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked. by opinion or reputation evidence other otherwise.

The rule permits impeachment by means of reputation or opinion evidence. Traditionally, Minnesota has distinguished between opinion and reputation when dealing with the issue of credibility. Reputation testimony has been permitted but personal opinion has been excluded. *See Simon v. Carroll, 241 Minn. 211, 220, 221, 62 N.W.2d 822, 828, 829 (1954); State v. Kahner, 217 Minn. 574, 582, 15 N.W.2d 105, 109 (1944).* However, since the Minnesota courts permit the witness to testify as to whether he would believe the testimony which the impeached witness would give under oath, Minnesota courts come very close to permitting opinion testimony as to credibility.

It is clear that Petitioner was not given the chance to meaningfully respond to State's

allegations and was not permitted to present evidence, including witnesses or documents she believed supported her defense. These prior acts showed a predisposition of violence, and a history of violence committed by Rucki, and are critical to the affirmative defense Appellant raised. Rules of evidence have been developed over the years to ensure that trials are fair and orderly, and the judge acts as a gatekeeper for the evidence that comes into court. When judges misuse the discretion to allow or disallow evidence the gate on justice slams shut, causing litigants to lose their rights and freedoms.

C. A district court's order for restitution is reviewed under an abuse of discretion standard. But determining whether an item meets the statutory requirements for restitution is a question of law that is fully reviewable by the appellate court." *State v. Ramsay*, 789 N.W.2d 513, 517 (Minn.App.2010) (quotation omitted) (citing *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn.1999)); see *In re Welfare of M.R.H.*, 716 N.W.2d 349, 351 (Minn.App.2006) (stating that appellate court reviews as a question of law whether a particular item is eligible for restitution under restitution statute), review denied (Minn. Aug. 15, 2006).

Petitioner had been sentenced, and ordered to pay restitution, on September 21, 2016 by the district court. Restitution was set at $10,000 to be paid to the MN Crime Victims Reparations Board. Restitution was ordered to be paid joint and several with the other three co-defendants in this case. In addition, Petitioner was ordered to pay restitution for therapy and family reunification costs not covered by insurance.

On November 28, 2016, Petitioner appeared before the court for a probation violation hearing on a matter unrelated to restitution. To get the restitution order "docketed," or entered as a civil judgment, Rucki must file an Affidavit of Identification of Judgment Debtor with the court; this has not occurred. No evidence was offered or submitted by Rucki showing a need

for a change in restitution at the November 28th hearing. Nor was a hearing scheduled regarding restitution prior to November 28, 2016 to date. Without any explanation or findings, the district court reduced the $10,000 restitution to be paid to the MN Crime Victims Board to a civil judgment. District court erred by failing to follow proper procedure to make such a change. *"A court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

There is no factual relationship to Petitioner's probation violation and the claim to change restitution to a civil judgment. Nor has the victim (Rucki) asserted such a claim or offered any supporting evidence to such a claim during the November 26th hearing. Under the restitution statute, a victim may request restitution for a specific loss if the defendant is convicted of a crime. Minn. Stat. § 611A.04, subd. 1(a) (2010). A request for restitution "may include, but is not limited to, any out-of-pocket losses resulting from the crime." *Id.* However, a loss claimed as an item of restitution by a crime victim must have some factual relationship to the crime committed-a compensable loss must be "directly caused by the conduct for which the defendant was convicted." *State v. Latimer*, 604 N.W.2d 103, 105 (Minn.App.1999) (quotation omitted); see *State v. Olson*, 381 N.W.2d 899, 901 (Minn.App.1986) (holding that restitution is proper for "victim's losses [that] are directly caused by appellant's conduct for which he was convicted"); see also *Ramsay*, 789 N.W.2d at 517 (reversing restitution award that "far exceeds the loss attributable to the offense of which [the defendant] was convicted"); *State v. Chapman*, 362 N.W.2d 401, 404 (Minn.App.1985) (stating that district court may not order restitution that exceeds the terms of a plea agreement "on counts dismissed pursuant to the plea, for which the plea itself does not provide a factual basis"), review denied (Minn. May 1, 1985).

The district court likewise erred by changing restitution to civil judgment when Petitioner's conduct in question at the probation violation hearing did not directly affect the victim, Rucki. In order to be compensable as restitution, an economic loss must be "sustained by the victim as a result of the offense." Minn.Stat. § 611A.045, subd. 1(a)(1). Petitioner's probation violated related to failing to provide a verified address to her probation officer, a result of her being homeless. The victim, Rucki, did not suffer an economic loss as a result of Petitioner's probation violation. The district court failed to provide findings as to why restitution was reduced to civil judgment and failed to meet its burden to establish that a financial loss to Rucki resulted from her probation violation. It could be argued that Rucki is in an even better place financially since the divorce because the family court ordered him 100% of the marital property, as well as ordering Petitioner's personal property, income, and millions of dollars held in her portion of a family trust (that is non-marital property) to Rucki. As a direct result of these rulings it is Petitioner that is homeless, destitute and struggling for survival.

Petitioner was also denied her due process rights, and not allowed a hearing to challenge the restitution order. The offender's financial resources and ability to pay should be considered when considering a change in restitution to civil judgment. The statutory procedure required for issuance of a valid order of restitution contains the following mandate: "The court, in determining whether to order restitution and the amount of the restitution, shall consider the following factors: (1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income, resources, and obligations of the defendant." Minn.Stat. § 611A.045, subd. 1(a)(1) Petitioner is currently homeless, unemployed, and without resources to meet her basic needs. It is cruel for the district court to order restitution be reduced to civil judgment which would become an uncapped amount of financial damages, to be paid by her

alone, and may include forfeiture of personal property. Petitioner currently has no personal property but to imagine the court stripping a homeless person of their meager belongings is not only cruel but represents an infliction of physical and emotional distress that does not properly serve the purpose of restitution to repay a debt to society.

Court records currently indicate that Petitioner is also still being held to the original restitution agreement, which means she is being asked to pay twice for restitution, and under two different terms.

"The primary purpose of the [restitution] statute is to restore crime victims to the same financial position they were in before the crime." *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn.2007). A district court may not use restitution as a form of punitive damages. *State v. Pflepsen*, 590 N.W.2d 759, 769 (Minn.1999) (stating "Restitution is intended to be compensatory, not punitive."). The order for civil judgment issued by the district court on November 28, 201 should immediately be vacated as it was improperly issued, and the district court did not follow proper legal procedures needed to make such a change.

D. At trial, the district court made remarks during instructions which could confuse or mislead the jury into finding Petitioner guilty that included (See T. 10 of 42), "**The defendant is guilty of a crime** – let me explain: The next instruction is Liability for Crimes of Another. You'll see when we get into the specific counts that defendant is charged in some with aiding and abetting, and so this instruction on liability of crimes for another pertains to that aid-and-abetting language.

The defendant is guilty of a crime committed by another person when the defendant has played an intentional role in aiding the commission of a crime and made no reasonable effort to prevent the crime before it was committed... the **defendant is guilty of a crime,**

however, only if the other person commits a crime."

The district court's repetition of the words "guilty of a crime" clearly implies that Petitioner is guilty, especially when these remarks are followed by State's arguments that reiterate the instructions of the district court. State argued 1) Petitioners guilt and 2) Petitioner was "acting in concert" with others. At the time of trial, the other 3 co-defendants had not been found guilty of any crime related to this case. By statute, a defendant charged as an accomplice cannot be convicted on the uncorroborated testimony of an accomplice. Minn. Stat. 634.04 It is an abuse of discretion, and highly prejudicial, for the district judge to include these instructions when the guilt or innocence of the other persons has not been established. The court admitted that "*the defendant is guilty of a crime, however, only if the other person commits a crime...*" since the co-defendants had not been found guilty of a crime related to this case at the time of Petitioner's trial, Liability for Crimes of Another should not have been included. Petitioner was subsequently found guilty, by the jury, on 6 felony counts of deprivation of parental rights.

"In Minnesota, we have long recognized that a criminal defendant has a fundamental right to a fair trial before an impartial judge beyond the requirement that a judge not have actual bias." *Id.* at 252. The judge "must maintain the integrity of the adversary system at all stages of the proceedings." *State v. Schlienz*, 774 N.W.2d 361, 367 (Minn. 2009). The judge must therefore be "fair to both sides" and "refrain from remarks which might injure either of the parties to the litigation." *Id.* (quoting *Hansen v. St. Paul City Ry. Co.*, 231 Minn. 354, 360, 43 N.W.2d 260, 264 (1950)).

It is for the jury to decide where the truth lies. A judge should not be giving an opinion of guilt or using jury instructions to convey her opinion of guilt. *State v Peter Ralph Barberg*, No. TX-04-4181, A04-2058 (December 6, 2005), "Whether it is a bench trial or a jury trial, the

trial judge can direct a verdict for either side in a civil case. That is absolutely not true in a criminal case. The trial judge in a criminal trial can only direct a verdict of not guilty for the defendant. It cannot constitutionally in any way, shape, or form direct a verdict in a jury trial of guilty. The trial judge in a jury trial is forbidden from giving his opinion of guilty, even if the record would seem to support it. That is exclusively the province of the jury. In a criminal case, the judge can give his opinion of innocence, and take the case away from the jury, but only for not guilty, never for 'guilty.'" https://law.justia.com/cases/minnesota/court-of-appeals/2005/opa042058-1206.html What a judge says when giving instruction to the jury is not proof of guilt or innocence and should not be considered as such; for a judge to create an impression of guilt upon the jurors before deliberations is clearly an abuse of authority.

Appellant pleaded not guilty and for all eight counts sought to raise an affirmative defense under Minn. Stat. §609.26, subd, 2(1), (2) (2016), that she reasonably believed her actions were necessary to protect SVR and GJR from physical or sexual assault or substantial emotional harm by ex-husband DVR.

It is the duty of the judge to instruct the jury on the law. The District Court failed in its duties to properly instruct the jury on the meaning of the affirmative defense and the implications of Grazzini-Rucki's invocation of the affirmative defense. District courts are afforded considerable latitude in selecting the language of jury instructions, but instructions may not misstate the law *Stale v. Baird,* 654 N.W.2d 105, 113 (Minn. 2002). "Fairness requires that [the defendant] be given an opportunity to present [her] account of the facts to a jury under the proper instructions." *id* at 114.

The instructions given to the jury by the Court were confusing because the affirmative defense was not named as such and the jury was not provided with any legal context to

elaborate on what "defense" meant in relation to the case. The affirmative defense was generically called a "defense" by the Court and lost amid a lengthy description of charges. The Court's generic use of the word "defense" does not explain that the affirmative defense as described in Section 609.26, subd. 2. (1), (2) is a law of the state and not just an ordinary defense that may be raised in criminal proceedings.

In addition, the word "defense" has 9 separate meanings in the dictionary (Dictionary.com:http://wmv.dictionary.comfbrowseidefense), none of which describe the affirmative defense. The word "affirmative defense" is not a part of common vernacular and its meaning would not be recognizable or immediately understood by the jurors. It is not clear what version of the word "defense" jurors used to come to their decision.

Although CRIMJIG 15.07 was utilized by the Court, it alone did not properly instruct the jury about the applicable factors of the affirmative defense. The jury should have been instructed using the correct terminology "affirmative defense" and should have been informed that it is a claim made by a defense that offers legal justification for the action or behavior for which the defendant is on trial. The Court also did not inform the jury that the affirmative defense can result in acquittal, or prevent conviction, even when the prosecutor has proof beyond a reasonable doubt as to every element of the crime. "A district court errs in instructing the jury if the challenged jury instruction confuses, misleads, or materially misstates the law." *State v. Larson,* 787 N.W.2d 592, 601 (Mimi. 2010).

Another area of erroneous instruction exists when the District Court tells the jury that Grazzini-Rucki is guilty of a crime before they have reached their verdict. After explaining to the jury that Grazzini-Rucki has been charged with multiple offenses, the Court says, *"The defendant is guilty of a crime — let me explain: The next instruction is captioned Liability for*

Crimes of Another" (T p. 10, doc 0210). The Court then moves into explaining the eight counts against Grazzini-Rucki. This statement has prejudiced the jury before they are introduced to charges. Quoting the Model Penal Code, "Crime does and should mean condemnation and no court should have to pass that judgment unless it can declare that the defendant's act was culpable. This is too fundamental to be compromised...". *Id.* at 347-48 (quotation omitted).

A total of eight charges against Grazzini-Rucki are read to the jury by the Court, which included describing the definition of the law as they applied to each charge (T. 870-77). However, the Court omitted describing the definition of the law in regards to the affirmative defense for each of the eight charges. So, what the jury heard was an avalanche of information regarding criminal charges that continued on for at least 15-20 minutes, with, at the end, just two short lines describing what a "defense" to the counts could be. This is misleading because the repetition of information places an idea in the jury's mind and by omitting information regarding the affirmative defense; the jury is not being equally informed of its existence or the weight of the affirmative defense. "Determining whether a jury instruction should be given lies within the discretion of the district court and will not be reversed but for an abuse of that discretion, "*State v. Hall,* 764 N.W.2d 837, 846 (Minn. 2009) (quotation omitted). A district court abuses its discretion if it "refuse[s] to give an instruction on the defendant's theory of the case if there is evidence to support it." *State v. Johnson,* 719 N.W.2d 619, 629 (Minn. 2006) (quotation omitted).

Any error contained within the Court's instruction was exacerbated by the State's closing argument. In closing argument, the State repeatedly voiced that it is the burden of Grazzini-Ruck to prove her affirmative defense in remarks that including the following: "has

to be reasonably believed" and it "has to be a rational belief, not an irrational belief" and, "The defense — it has to be a reasonable belief". In another area, the prosecutor states, "When you're thinking about the defense, is it reasonable to leave your two girls with complete strangers? For all she knows, Mr. Dahlen could have been a registered sex offender. What kind of mother does that? That is not reasonable. And as you can tell, it makes me very angry." The prosecutor directly stated throughout closing arguments that Grazzini-Rucki must prove that her belief was reasonable is a misstatement of the law. According to *State v. Charlton,* 338 N. W.2d 26 (Minn.1983), the Fourteenth Amendment prohibits shifting the burden of proof on the element of intent to a criminal. defendant. *Id.* at 29.

This is also supported by *State v. Niska*, 514 N.W.2d 260 (1994): "We now find the subdivision 2 defense to the crime of deprivation of parental, custodial, or visitation rights is sufficiently analogous to the defenses of self: defense, entrapment, and duress to require a similar allocation of the burdens of production and proof. With all these defenses, the defendant admits an intent to do the prohibited act, but inextricably bound up with that intent is a justificatory motive. Requiring the defendant to prove *intent in such cases in effect shifts to the defendant the burden of proof on the element of intent. This the constitution will not permit."*

Another area of confusion, and where the jury was misled, is when the Court instructed the jury, *"You should consider each offense and the evidence pertaining to it separately."* There are eight charges filed against Grazzini-Rucki and the jury was tasked with deciding whether the affirmative defense applied on eight separate occasions and involving multiple spans of time.

Count I includes a time span from April 19, 2013 — November 18, 2015 and

involve SVR and DVR.

Count II includes a time span from April 19, 2013-November 18, 2015 and involves GJR and DVR.

Count III and IV are a pair and include a time span from April 19, 2013 to November 25, 2013 and involve both SVR and GJR and TL.

Count V includes a time span from November 25, 2013 to November 18 2015 and involves SVR and DVR.

Count VI includes a time span from November 25, 2013 to November 18 2015 and involves GJR and DVR.

Count VII involves SVR causing to be a run away on April 19, 2013.

Count VIII involves GJR causing to be a run away on April 19, 2013

The multiple offenses and multiple spans of time could cause the jury to weigh only the elements of the offense, not necessarily the affirmative defense when coming to their decision.

There are also 4 separate charges that pertain to DVR that include the same charges occurring in the same span of time. The Court instructs the jury to charge Grazzini-Rucki twice for the same crime involving SVR in Charges I and V, and twice for the same crime involving GJR in Charges II and VI.[1]

The Minnesota Constitution and the United States Constitution each have a double jeopardy clause that prohibits a criminal defendant from being twice tried for the same crime. Article 1, section 7, of the Minnesota Constitution prohibits double jeopardy in Minnesota:

[1] It should be noted that on April 19, 2013 the Court incorrectly implies that TL and DVR both shared custody of SVR and GJR. TL and DVR are brother and sister. DVR did not have physical or legal custody of SVR or GJR at that time which is why SVR and GJR were temporarily place in the sole custody of their paternal aunt TL.

"No person shall he held to answer for a criminal offense without due process of law, and no person shall be put twice in jeopardy of punishment for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without clue process of law."

The Fifth Amendment to the U.S, Constitution also prohibits double jeopardy ",..; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law..". (U.S. CONST. amend. V).

A disproportionately severe sentence is harmful in being unnecessary and degrading in nature. On November 23, 2015, Grazzini-Rucki was charged with a total of 8 counts related to Deprivation of Custodial/Parental Rights. Numerous counts of indictment against defendant were counted as separate crimes. This made Grazzini-Rucki, who had never before been charged with a crime, into a multiple Offender in a single court case.

The District Court's sentencing constitutes cruel and unusual punishment.

The United States Supreme Court in *Harmelin v. Michigan*, U.S. , 1 1 1 S. Ct. 2680, 115 L. Ed. 2d 836 (1991), held that the federal constitutional prohibition against "cruel and unusual" punishment Forbids punishments that are "unusual," i.e., "out-of-the-ordinary,.... *Id.* at 111 S. Ct. at 2691-92.

The phrase "cruel or unusual" originates with the Northwest Ordinance of 1787, *See People v. Lorentzen*, 387 Mich, 167, 194 N.W.2d 827829 n, 3 (1972). Some of the states formed from the Northwest Territory incorporated the phrase into their constitutions. *See id.* The Minnesota Bill of Rights, as first proposed in both the Democratic and Republican

constitutional conventions, used the federal version, "cruel and unusual punishment." Minnesota Convention Debates 87 (1857)(Republican); Minnesota Convention Debates 203 (1 857) (Democratic).

The early Minnesota cases on excessive punishment generally support "cruel and unusual" as being defined by the unusual nature of the punishment. See *State v. Borgstrom*, 69 Minn. 508, 520-21, 72 N.W. 799, 803 (1897) (state constitutional prohibition refers to punishments that are cruel or barbarous), overruled on other grounds by *State v, Sailor*, 130 Minn, 84, 153 N.W. 271 (1915). In 1894 the court stated:

The (Cruel or unusual punishment clause) is directed, not so much against the amount or duration of the punishment, as against the character of it, what was in mind being those punishments which were cruel and degrading in their nature, and which had been condemned by public opinion years before the adoption of our constitution. State v. Rodman, 58 Minn. 393, 402, 59 N.W. 1098, 1100 (1894)

The abuse of discretion committed by the District Court caused substantial harm to the rights of Grazzini-Rucki, and significantly prejudiced her at sentencing.

On September 23, 2016 the court sentenced Grazzini-Rucki on two of the six counts to concurrent prison terms and consecutive three-year probationary terms (S. 31). As conditions of probation, the court ordered Grazzini-Rucki to serve 250 days in jail, an additional 15 days in jail on November 18 of each year she is on probation, and 12 additional days in jail each year she does not compete 12 days of sentence-to-service (S. 32-33). The court ordered Grazzini-Rucki to pay $10,000 restitution, $1,968.00 in fines and surcharges. The sentence imposed goes above and beyond guidelines for this charge Minn. Stat. 609.26, subd. 1. And is clearly both "cruel and unusual". Multiple offenses increase the defendant's criminal history

score. Grazzini-Rucki is being treated as if she is receiving an aggravated sentence without having qualified for one, The District Court has misapplied the law.

Grazzini-Rucki will continue to be punished long after her sentence is served due to the severe impact of now being a six (6) time convicted felon and having that history permanently on her record.

CONCLUSION

Grazzini-Rucki's conviction is the culmination of a lengthy series of arbitrary and capricious actions and decisions from the District Court. Grazzini-Rucki was denied a fair trial due to the reasons described above and as such, requests the Court to vacate the conviction and enter a judgment of acquittal.

Case law from the Supreme Court demonstrates the ability to reduce the sentences of those convicted of crimes. See *State v. Burton*, 507 N.W.2d 842, 842 (Minn.1993) (affirming conviction for second-degree intentional murder but, consistent with *State v. Gilbert*, 448 N,W.2d 875 (Minn.1989), reducing defendant's sentence in the interests of justice to that of second-degree felony murder); *State v, Gilbert*, 448 N.W.2d 875, 876 (Minn.1989) (reducing defendant's sentence because of the "closeness of the issue" as to whether the evidence used to convict defendant of the greater charge was legally sufficient). The Supreme Court has also granted defendants new trials using these supervisory powers. See, e.g., *State v, Beecroft*, 813 N.W.2d 814, 846 (Minn.2012) (plurality opinion). But has done so only in "exceptional circumstances," exceptional circumstances exist here, (*State v. Roman, No.* A13-0483. (Minn. 2014)

Petitioner has not abandoned any prior arguments. For all the reasons stated here in and her original brief, and regardless of whether the errors alleged were preserved or plain error, the

case should be immediately overturned. Because the errors committed by that Court are so grave, the order should require the dismissal of convictions.

RESPECTFULLY SUBMITTED

March 27, 2018

SANDRA GRAZZINI-RUCKI DEFENDENT

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 3-21-18