

IN THE SUPREME COURT OF THE UNITED STATES

PAUL CASTONGUAY,

Petitioner,

vs.

THE STATE OF NEBRASKA,

DOUG PETERSON,

Respondents,

CASE NO. 20-8141

PETITION FOR REHEARING

RECEIVED

OCT 19 2021

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SUPREME COURT, U.S.

COMES NOW, the Petitioner, Paul Castonguay; through his self pro se hereby moves the Court for an Order granting the Petition for Rehearing pursuant to Rule 44 of the Court's decision on about October 4, 2021.

Petitioner, writ was placed on the docket since (May 26, 2021), where, the opposing Counsel signed the waiver on (June 25, 2021), and there's been no opposition of brief being filed or no cause why this writ shouldn't be issued by the Respondents.

Petitioner, further argue and established pursuant to NE CIV. R. 39.3 (a) trial exhibits delivery to clerk before trial. Where in "Appendix-G", was never entered into evidence by the state where it's relevant to the petitioner's case. Rule 35 pertains to physical and mental examinations (a) order for an examination (b) examiner's report, (1) request by the party or person examined. "The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report", in which the petitioner argued it in his statement of the case. Where, the petitioner did not receive a copy of such examiner's report until years later after the petitioner had served part of his sentence together with like reports of all earlier examinations of the same condition. "The request may be made by the

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person examined. (2) Contents: the examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests." where, the examiner's findings test results shown "NO MALE DNA PROFILE", found and/or determined there's no male profile in the expert's conclusion of the victim DNA Report dated (December 11, 2008). See: "APPENDIX - G"

Petitioner, further argue that in "Appendix H", verify that Deputy County Attorney Theresa M. Urren, denied the petitioner of his Constitutional right to due process to receive a certified copy of the victim Rape Kit and DNA Testing Results. Furthermore, petitioner Submit and file "Appendix K", verifying a letter from Julie M. Bartard, RPR official (Burl Reporter for the Honorable Thomas A. Ostepka dated (June 1, 2012); response letter requesting a "specific date to show when both parties had entered the victim rape kit and her DNA results. where, the Court can take judicial notice there was only three exhibits were offered and admitted into evidence in which there no DNA evidence ever submitted into evidence. "In exhibit incorporated in a pleading is a part of it for all purposes in the case and it may be considered in deciding if the pleading states a cause of action or a defense." Roller v. Ankeny, 160 Neb. 47, 68 N.W.2d 686, 687 and Brasier v. Cribbitt, 166 Neb. 145, 88 N.W.2d 235 (1958); NO. 34291. Also see: LB 1417 acknowledge "that defendants have the right of access to evidence in the hands of the prosecuting attorney to enable the defendant to prepare his defense. Under 29-1912 (1)(e) a defendant may request permission to inspect and copy "the results and reports of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case." James v. Commonwealth, 482 S.W.2d 92 (Ky. 1972) dealt with a prosecutor's failure to disclose information requested under a statute almost identical with 29-1912 (1)(e), see "Appendix H". where, the

Deputy County Attorney denied the petitioner request to inspect or to receive a Certified copy of the victim Rape Kit / DNA Test Report. "The Second category of materials obtainable virtually as a right under Rule 16 (a) is results or reports of physical or mental examinations... within the possession, custody, or control of the government." i.e. State v. Hurd, 520 S.W.2d 158 (Mo.App. 1975).

PROPOSITION OF LAW

I. on appeal from district Court's decision to exclude expert evidence, the Court of Appeals would not perform a de novo analysis of whether evidence was excludable as involving expert opinion on mental state that was element of the crime charged. where, district Court failed to issue any associated ruling, and it was unclear from the record what elements of expert's report the district Court intended to exclude on this ground and not based on danger of unfair prejudice; because Court of Appeals ability to review for abuse of discretion was obstructed, district Court should bear burden of rectifying the situation. United States v. Drapeau, 414 F.3d 869, 67 Fed.R.Evid.Serv., 867 (2005); NO. 04-1202, Schrag v. Spear, 290 Neb. 98, 858 N.W. 2d 865 (2013); NO. S-13-258. Fed.R.Evid. 403, 704 (b), "the intent to use Rule 404 (2) Evidence the gist of the motion was to allow the state to produced evidence of the victim examination of being sexually assaulted by the defendant." ("A judicial abuse of discretion requires that the reasons or rulings of the trial Court be clearly untenable insofar as they unfairly deprived a litigant of a substantial right and a just result.

II. In United States v. Bagley, *supra.*, the Supreme Court held that the same standard of materiality applies to undisclosed favorable evidence whether [a] defense attorney made no request [a] General request or [a] Specific request for it.

III. Brady, ensures defendant will obtain relief from a conviction tainted by the state's nondisclosure of materially favorable evidence, regardless of fault, but the recovery of 1983 damages requires proof that a law enforcement officer other than the prosecutor intended to deprive the defendant of a fair trial.

IV. Hence, the obligation to compel retesting when the original analyst is unavailable is the state's, not the defendant's. See: Taylor v. Illinois, 484 U.S. 400, 410 n. 14, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988).

V. Fed.R.Crim.P. 16 (F) Reports of Examinations and Tests; (i) the item is within the government's possession, custody, or control, (ii) the attorney for the government knows or through due diligence could know that the item exists; and (B) Reports of Examinations and Tests. If a defendant requests disclosure under Rule 16 (a)(1)(F); Subdivision (a)(1)(D); makes disclosure of the reports of examinations and tests mandatory, (3) to the extent a test may be favorable to the defense, its disclosure is mandated under the rule of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Petitioner, Further argue of the Nondisclosure of the Existence DNA Evidence by the state Knowledge of the Expert's Findings and Test Results of the examining physician's findings was of such a nature that without disclosure the defendant's trial could be viewed as fundamental unfair to prejudicial of the defendant right to Due process. Barbee v. Warden, Maryland Penitentiary, 331 F.2d 842 (4th Cir. 1964); (pertaining to prejudicial effect of prosecutorial Nondisclosure of Information in the possession of the law enforcement). Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); United States v. Beasley, 576 F.2d 626 (5th Cir. 1978), and State v. Brown, 214 Neb. 665, 335 N.W.2d 542 (1983); NO. 82-471.

In Peterson v. United States, 411 F.2d 1074 (CA 8 1969); the Court appeared to require [a] showing that the withheld evidence (was material), and would have aided the defense. Id. at 1079.

WHEREFORE: petitioner argue that the Court failed to acknowledge of the Evidence and Arguments that was presented in the petitioner's writ where the Court erred by being bias on the grounds that the state Court was prejudice and also bias toward the petitioner's right to review the abuse of discretion that was caused by the state Court's by using the petitioner's NO-contest plea against him by not granting DNA Testing pursuant to these Laws, Laws 2001, L.B. 659, Laws 2015, L.B. 245 and L.B. 1417, that's required DNA testing of both parties not just on the victim. When the defendant is charged with first degree sexual assault causing penetration. See: Woods v. State, 140 S.W.3d 39 (2004) and State v. Winslow, 274 Neb. 427, 740 N.W.2d 801 (2007); also see 29-4116 et seq. (Defendant does not waive his or her right to DNA testing based on a NO-contest plea).

CONCLUSION: For the reasons set forth in the Petition For Rehearing petitioner respectfully request the Court to take judicial notice of the errors made in the Court's decision / ruling and to grant the petitioner's Petition For Rehearing pursuant to Rule 44 as deems, just proper and fair under the law and to reverse the Court's ruling de novo.

Dated this 7th day of October, 2021.

Respectfully Submitted:

By: Paul Cortugney

Paul Cortugney

Inmate # 70764

P.O. Box 11099

Omaha, NE 68111

TEL. (402) 595-3963

CERTIFICATE OF SERVICE

The undersigned hereby certify that on this 7th day of October, 2021, a true and accurate copy of the foregoing Petition for Rehearing was mailed, via First-Class United States Mail, postage pre-paid to the following:

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C. 20543-0001

NEBRASKA ATTORNEY GENERAL OFFICE

ASSISTANT ATTORNEY GENERAL

JAMES A. CAMPBELL

2115 STATE CAPITOL BLDG.

LINCOLN, NE 68509-8920

By: Paul Cortugney

Paul Cortugney - Petitioner