

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_

DENNIS J. GAEDE — PETITIONER

VS.

THE STATE OF NORTH DAKOTA — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF NORTH DAKOTA

APPENDICES

Dennis James Gaede — Pro Se

P.O. Box 5521

Bismarck, ND 58506-5521

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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2023 ND 242

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Dennis James Gaede,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

---

No. 20230269

---

Appeal from the District Court of Cass County, East Central Judicial District,  
the Honorable Steven E. McCullough, Judge.

AFFIRMED.

Per Curiam.

Dennis J. Gaede, self-represented, Bismarck, N.D., petitioner and appellant;  
submitted on brief.

Nicholas S. Samuelson, Assistant State's Attorney, Fargo, N.D., for respondent  
and appellee; submitted on brief.

APP-D

Gaede v. State  
No. 20230269

Per Curiam.

[¶1] Dennis James Gaede appeals from an order and judgment dismissing his petition for postconviction relief. The district court concluded Gaede's claims were brought outside the statute of limitations provided in N.D.C.C. § 29-32.1-01(3)(b) and he had raised no genuine issue of material fact there was new evidence to avoid the statute of limitations. After reviewing the record, we conclude Gaede's claim is outside the statute of limitations and he has raised no genuine issue of fact on newly discovered evidence. We summarily affirm under N.D.R.App.P. 35.1(a)(6). *See also Gaede v. State*, 2022 ND 71, ¶ 1, 973 N.W.2d 5 (affirming district court's finding "Gaede's PTSD diagnosis is not newly discovered evidence, and this claim was brought outside the statute of limitations"); *Gaede v. State*, 2015 ND 160, 870 N.W.2d 26 (summarily affirming district court's findings on claims of newly discovered evidence); *Gaede v. State*, 2013 ND 41, ¶ 1, 832 N.W.2d 334 (res judicata precludes claims that were raised or could have been raised in prior proceedings).

[¶2] Jon J. Jensen, C.J.

Daniel J. Crothers

Lisa Fair McEvers

Jerod E. Tufte

Douglas A. Bahr

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

JUDGMENT

Supreme Court No. 20230269  
Cass County Case No. 2023-CV-01044

Appeal from the district court for Cass County.

Dennis James Gaede,

v.

State of North Dakota,

Petitioner and Appellant

Respondent and Appellee

[¶1] This appeal was considered by the Court at the December 2023 Term and an opinion was filed. The Court considered the matter, and

[¶2] IT IS ORDERED AND ADJUDGED that the order of the district court is AFFIRMED under N.D.R.App.P. 35.1(a)(6).

[¶3] This judgment, together with the opinion of the Court filed this date, constitutes the mandate of the Supreme Court on the date it is issued to the district court under N.D.R.App.P. 41.

Dated: December 28, 2023

By the Court:

Jon J. Jensen  
Chief Justice

ATTEST:

Petra H. Mandigo Hulm  
Clerk



APP-E

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

ORDER ON PETITION FOR REHEARING

Supreme Court No. 20230269  
Cass Co. No. 2023-CV-01044

**Dennis James Gaede,**  
v.  
**State of North Dakota,**

**Petitioner and Appellant**  
**Respondent and Appellee**

[¶1] This appeal was considered by the Court at the December 2023 term and an opinion was filed on December 28, 2023. A petition for rehearing was filed by January 2, 2024, for the Appellant. The Court considered the matter, and

[¶2] ORDERED AND ADJUDGED, that the petition be and is hereby **DENIED**.

[¶3] AND IT IS FURTHER ORDERED, that this cause be and it is hereby remanded to the District Court for further proceedings according to law, and the judgment of this Court.

Dated: January 18, 2024

[¶4] Jon J. Jensen, C.J.  
Daniel J. Crothers  
Lisa Fair McEvers  
Jerod E. Tufte  
Douglas A. Bahr



IN DISTRICT COURT, CASS COUNTY, NORTH DAKOTA

Dennis James Gaede, )  
Petitioner, )  
vs. )  
State of North Dakota, )  
Respondent. )  
\_\_\_\_\_  
)

**AFFIDAVIT OF SERVICE BY MAIL**  
Court # 09-2023-CV-01044  
SA# CV-23-00044

STATE OF NORTH DAKOTA )  
 ) SS. VERIFICATION  
COUNTY OF BURLEIGH )

Dennis James Gaede, being duly sworn, deposes and states that he is of legal age and that on this date he deposited in the United States Mail at Bismarck, North Dakota, a true and correct copy of the following documents in the above-entitled action:

**Objection to State's Motion for Summary Judgment**  
**Brief in Support of Objection to State's Motion for Summary Judgment**

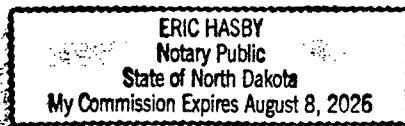
The copies of the foregoing were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

Nicholas S. Samuelson  
Assistant Cass County State's Attorney  
Cass County Courthouse  
P.O. Box 2806  
Fargo, ND 58108

Dated this 15 day of May 2023.

Dennis J. Gaede  
Dennis J. Gaede

Subscribed and sworn to before me this 15 day of May, 2023



LH  
Notary Public

IN DISTRICT COURT, CASS COUNTY, NORTH DAKOTA

Dennis James Gaede, )  
Petitioner, )      **AFFIDAVIT OF SERVICE BY MAIL**  
vs.                )  
State of North Dakota, )  
Respondent. )  
\_\_\_\_\_  
)

STATE OF NORTH DAKOTA        )  
                                  ) SS.      VERIFICATION  
COUNTY OF BURLEIGH        )

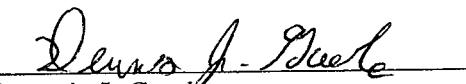
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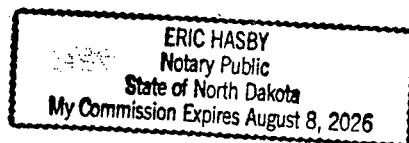
Clerk of Court  
Cass County Courthouse  
P.O. Box 2806  
Fargo, ND 58108

Dated this 15 day of May 2023.

  
\_\_\_\_\_  
Dennis J. Gaede

Subscribed and sworn to before me this 15 day of May, 2023

  
\_\_\_\_\_  
Notary Public



**IN DISTRICT COURT, CASS COUNTY, NORTH DAKOTA**

Dennis James Gaede, )  
 )  
 Petitioner, ) Court# 09-2023-CV-01044  
 vs. ) SA #CV-23-00044  
 )  
 State of North Dakota, )  
 )  
 Respondent. )  
 )

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**REPLY AND OBJECTION TO MOTION FOR SUMMARY  
JUDGMENT**

**OBJECTIONS**

[¶1] Petitioner disagrees with the state and that he is entitled to post-conviction relief because newly discovered evidence does exist requiring vacation of the conviction and sentence.

[¶2] That the state did not address all of the grounds raised in the post-conviction petition, mainly the Grand Jury challenge as an apparent attempt to sidestep the issue. This alone would infers that the state concedes to the petitioner's argument and gives the court cause to deny their Motion for Summary Judgment.

**WAIVER**

[¶3] The Petitioner hereby waives any evidentiary hearing and or oral arguments, again in the interest of judicial economy. He feels that all evidence for needed for this petition is contained within the record and is ipso facto.

**PRAYER FOR RELIEF**

[¶4] **WHEREFORE**, the Petitioner respectfully requests that this Court  
**DENY** State's motion for Summary Judgment and Grant his Petition for Post-  
Conviction Relief.

Dated this 8<sup>th</sup> day of May, 2023



Dennis J. Gaede  
P.O. Box 5521  
Bismarck, ND 58506-5521

IN DISTRICT COURT, CASS COUNTY, NORTH DAKOTA

Dennis James Gaede, )  
Petitioner, ) BRIEF IN SUPPORT OF OBJECTION  
vs. ) TO STATE'S MOTION FOR SUMMARY  
Respondent. ) JUDGEMENT  
State of North Dakota, )  
\_\_\_\_\_  
Court# 09-2023-CV-01044  
SA #CV-23-00044

[¶1] COMES NOW, Dennis J. Gaede, Petitioner, and moves this Court to deny the State's Motion for Summary Judgement as his claims are not barred by res judicata, misuse of process, or the statute of limitations.

**LAW AND ARGUMENT**

[¶2] Gaede's Application for Post-Conviction Relief states four grounds for his petition:

[¶3] **New Evidence.** The new evidence raised from the November 19, 2021 evidentiary hearing is Dr. Madeline Free's statement [TR: 17, lines 6-7] as to the nature and cause of the petitioner's medical condition, which was never before in the record and is raised within the two year statute of limitations. Further, the petitioner was blocked out from most of the hearing on November 21, 2021[TR: 18, lines 7-8] so the new evidence was only discovered upon reading the transcript of said hearing.

[¶4] A statement by Dr. Free that contradicts physical evidence is found at (TR: 13, line 5-6) where she states, “*The diagnosis of PTSD has no bearing on his crime of his competency.*” So compare this excerpt from the 2014 post-conviction petition:

[¶5] “All of these conditions are the precepts for the condition of Post-Traumatic Stress Disorder that Gaede demonstrates symptoms of now and at the time of the murder.

[¶6] Additionally, the medical text, “*Mental Health Nursing-The Nurse-Patient Journey,*” lists the following as characteristics of the four levels of anxiety:

#### Characteristics of the Four Levels of Anxiety <sup>i</sup>

Level	Physiological	Emotional	Cognitive	Subjective
Mild	Increase in pulse, B/P, and heart rate due to sympathetic arousal	Affect Posture	Alert; aware; able to problem solve	Attentive
Moderate	Muscle tension; diaphoresis; pupils dilated; increased pulse, B/P, and breathing rate; peripheral vasoconstriction	Tension, fear	Attention focused on issue of concern; able to shut out irrelevant data	Sense of helplessness; apprehensive expectation; sweating palms; vigilance and irritability
Severe	“Fight or flight” responses; generalized sympathetic nervous system response; dry mouth; numbness of extremities	Distress, trembling	Sensory perception greatly reduced; person can focus only on small details; learning cannot occur	Dyspnea, dizziness; fear of going crazy; visual disturbances; motor tension with hyperactivity

Panic	Continued arousal	Emotionally overwhelmed; may regress to primitive coping behaviors	Responds only to internal distress	Feelings of impending doom or death; chest pain or discomfort
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[¶7] The text further states that: “*Severe anxiety and panic are infrequently observed outside the emergency department or psychiatric unit. In this state, patients are unable to think clearly because attention and concentration are markedly reduced. Sympathetic nervous system stimulation has caused increased blood pressure, pulse, and respirations. Subjective reports might include a felt inability to sit down, nausea, agitation, shortness of breath, and panicky statements such as ‘I am going to pass out’ or ‘I am going to die’ or ‘I am going crazy.’ Clearly, such patients require immediate nursing intervention. Severe anxiety has caused decompensation of ego functions so that the patient is overwhelmed with feeling and has a significant lessening of the capacity to think and problem solve.*”

[¶8] “*This extreme reaction might be observed in persons involved in a major automobile accident, in a patient who has just been told about a terminal illness, or in one who is reacting to bad news about a significant other. Such a patient requires the immediate psychological and sometimes physical support of the nurse. The patient should not be left alone. His or her deficits in focused thinking, affect modulation, and problem solving require the capacities of the nurse as an ‘alter-ego’ whose functions have not been impaired by anxiety. Such patients need specific instructions if task completion is required. In some cases anxiolytic medication may be appropriate.*” <sup>ii</sup>

[¶9] In light of the previously quoted medical text, Gaede offers as evidence of his mens rea at the alleged time of the crime the following excerpts taken from a statement that Diane Fruge gave to Special Agent John A. Dalziel and Lieutenant Richard Majerus on February 23<sup>rd</sup> 2004 at the Hales Corners Police Department:

[¶10] Fruge: "*And about 8 o'clock, um, I took my son to bed and closed the door and went to sleep. And I, ah, woke up to Dennis frantically waking me up. Diane, Diane, wake up, come down stairs.*" pg. 1826

[¶11] Fruge: "*And I said to Dennis, I said you must have really partied this guy out, you know, and he said, no, I shot him. And I said, what do you mean, you shot him? I said he's snoring. He said, I've never seen anything like this in my life. And then I went into the living room and said Oh my God, I can't believe you shot him. And then I walked back in to see what he was doing and he was putting the plastic bag over his head and that's when I saw the first blood and I went and started vomiting.*" pg. 1826-1827

[¶12] Fruge: "*He started running around the house freaking out, 'What am I going to do now. What are we going to do? What are we going to do now? What are we going to do, what are you going to do?' I was, I, what I do. Do I call the police? No like he might kill me before they get there because how am I going to explain having two Timothy Wicks in the same house.*" pg. 1827

[¶13] S.A. Dalziel: "*Okay, snoring. (Pause) And then... (pause) you go out into the living room. You come back into the kitchen, and Dennis... (pause) was doing what?*

[¶14] Fruge: "*Panicking*" pg. 1880"

[¶15] First, there is no way that Dr. Free could possibly have known how the petitioner would react to such a situation, but the evidence here corroborates the fact that the he suffered from PTSD or more commonly called CPTSD (Childhood Posttraumatic Stress Disorder) since long before the murder happened. And Diana Fruge's statement gives a clear picture of a panic attack while it was happening. And notice that this stage is well beyond the normal fight or flight psychological response for PTSD. And these are the State's witnesses own words, not the Petitioner's. And the only reason that the Petitioner

stayed at the house after the murder with Diana was out of moral necessity. The petitioner is a father and there was a child to protect and he was not about to leave him behind with an unstable murderess.

[¶16] Therefore, res judicata and misuse of process and all the other State's arguments fall short in all aspects because the transcript is ipso facto. In addition, because of the foreign nature of the hearing held during a pandemic and no one being present in the courtroom, there may have been an honest oversight on the part of the court just as this evidence wasn't apparent to the petitioner and other parties until after reading the actual transcript. That way with this issue being raised here it is an opportunity for the court to correct that error without harm or foul. Without this petition being heard by the court it will only be up to a higher court to make this correction. This is an olive branch being offered in good faith by the petitioner and nothing else.

[¶17] **New Evidence.** The area that the state purposely ignored is the denial of a Grand Jury issue. The petitioner knew nothing about this until being notified by a watchdog group monitoring the state's legal tactics and high profile cases. Further, after being assigned a plethora of lawyers over the years who never mentioned this, how could the petitioner have been expected to know about it? And it's ironic that the state would raise N.D.C.C. §29.32.1-01(2) as an affirmative defense when the petitioner just happens to be challenging that very statute in this post-conviction as an ex post facto law and constitutional violation. However, seeing that the state failed to address this issue it would then appear that Assistant State's Attorney Nicholas S. Samuelson concedes to the

petitioner's challenge thereby admitting to a constitutional violation. That alone should suffice as grounds to deny the State's Motion to Summarily Dismiss this petition.

[¶18] The United States Constitution's Fifth Amendment Grand Jury Clause reads, "*No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service time of war or public danger.*"

[¶19] This issue is highly relevant because Gaede believes that if a State Grand Jury would have been convened he would have been charged correctly as well as the state's number one witness against him, the confessed murderer Diana Fruge. Therefore by this process being taken out of the hands of true ministers of justice the petitioner's rights were violated from the onset. This would undoubtedly have changed the outcome of the trial.

[¶20] This also shows that the state deliberately avoided the grand jury to shield their "Star" witness, Diana Fruge from prosecution so they could use her to testify against the petitioner thus creating a hedged advantage, especially with the perjured testimony she introduced into the trial. This is also a Fourteenth Amendment Due Process violation.

[¶21] "*The requirement of due process in safeguarding the liberty of the citizen against deprivation through the action of the state embodies the fundamental conceptions of justice, which lie at the base of American civil and political institutions. It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation. Upon the state courts, equally with the courts of the union, rests the obligation to guard and enforce*

*every right secured by the Constitution,”* Moony v. Holohan, 294 U.S. 103, 55 S. Ct. 340, 79 L. Ed. 791 (1935).

[¶22] Because the right to a Grand Jury falls under the United States Constitution it cannot be avoided. The “*Federal Constitution is the Supreme Law of the United States, Butler V. Alabama Judicial Inquiry Commission*, 245 F. 3d 1257, (2001 WL 292996) United States Court of Appeals, 11<sup>th</sup> Cir. March 27, 2001.” (*USCA Art. VI*)

[¶23] And it cannot be altered:

**[¶24] Clause 2, Supreme Law of the Land (USCA Const. Art. VI Cl. 2)**

[¶25] “*The Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.*”

[¶26] As far as the State’s assertion that the Petitioner previously raised the issue of the ex post facto law, this is false. It was never raised as a ground in a post-conviction petition. It was merely stated at the beginning of the petition that the law is unconstitutional. This petition is the first challenge because this is the first time there is a ground raised that is affected by it. So the misuse of process argument falls flat there too. However, the law is clear how ex post facto applies in this case:

[¶27] See State v. Norman, 660 N.W. 2d 549 (ND 2013). Where the court held, “*A law which imposes a collateral consequence of a conviction may be applied retroactively if the purpose is to protect some other legitimate interest, rather than to punish the offender.*”

[¶28] This ex post facto clause results in excessive sentences and punishment in violation of the Eighth Amendment if challenges cannot be brought to light if they are discovered outside of the two year limitation as in this evidence.

[¶29] The court in Norman further noted that, “*We have stated the Legislature may apply statutes retroactively unless doing so would result in ex post facto application.*”

[¶30] As shown, in this case there is clearly an ex post facto application.

[¶31] However, the reason that Assistant State’s Attorney Nicholas S. Samuelson has stepped in as the substitution counsel for Mr. Burdick is quite apparent. The old adage applies here that a guilty conscious needs no accuser. When a prosecutor denies a defendant a Constitutional right like a grand jury for nefarious reasons it starts to shine a bright light on the entire judicial process and the prosecutor. And evil cannot no longer hide in the dark.

[¶32] After all, “*the prosecutor’s duty in a criminal prosecution is to seek justice,*” Berger v. U.S. 295 U.S. 78, 88 (1935). As such, “*the prosecutor should prosecute with earnestness and vigor,*” but may not use “*improper methods calculated to produce a wrongful conviction.*” *If the use of such methods “so [infests] the trial with unfairness as to make the resulting conviction a denial of due process,” it may justify a mistrial or reversal of conviction,* Darden v. Wainwright, 477 U.S. 168, 181 (1986) (quoting Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974)).

[¶33] This is precisely what happened in this case. With the denial of the grand jury the entire judicial process was tainted from the onset. And now because of one prosecutor’s illegal actions, the entire state’s justice system is in jeopardy of coming under attack.

[¶34] The only answer here is to do the right thing and correct the wrongs that have been done. The Court should grant this petition for post-conviction relief and Assistant State’s Attorney Nicholas S. Samuelson should look very close at the profound ruling in Houston v. Estelle, 509 F. 2d 372 (5<sup>th</sup> Cir. 1978):

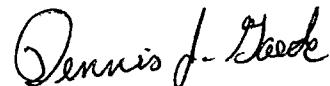
[¶35] “A public prosecutor wields the sword of justice. It is his duty to recall that this sword, though forged in the flame-heat of zeal is alloyed with iron of restraint. The prosecutor in this case forgot this fundamental truth. The trial judge did not adequately remind him of it. As a result, [the defendant] was not afforded that fundamentally fair

trial to which he was entitled by the due process clause of the Fourteenth Amendment. We therefore, reverse..."

[¶36] The Houston v. Estelle case is prime example why prosecutors should not play with fire in trying to elicit a wrongful prosecution or in this case defend one. In the end the meek always inherits the Earth.

### CONCLUSION

[¶] WHEREFORE the Petitioner respectfully requests that this Court deny the State's Motion for Summary Dismissal.



Dennis J. Gaede  
P.O. Box 5521  
Bismarck, ND 58506-5521

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<sup>i</sup> Carson, V.B., Ph.D., R.N., CS-P, and Arnold, E.N., Ph.D., R.N., CS-P, *Mental Health Nursing: The Nurse-Patient Journey*. Philadelphia: W.B. Saunders Company, a Division of Harcourt Brace & Company, 1996. pg. 695

<sup>ii</sup> Ibid. pp. 695-696

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

Dennis James Gaede )  
Petitioner, )  
vs. )  
State of North Dakota, )  
Respondent. )

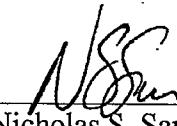
**NOTICE OF ENTRY  
OF JUDGMENT**

Court No. 09-2023-CV-01044  
SA #CV-23-00044

**TO: PETITIONER DENNIS JAMES GAEDE**

[¶1] PLEASE TAKE NOTICE that a Judgment dated June 13, 2023, in the above-entitled action was entered in the Office of the Clerk of District Court in and for Cass County, North Dakota, a copy of which is herewith served upon you.

Dated this 15 day of June, 2023

  
Nicholas S. Samuelson, #08841  
Assistant State's Attorney  
Cass County Courthouse  
P.O. Box 2806  
Fargo, ND 58108  
(701) 241-5850  
sa-defense-notices@casscountynd.gov

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

Dennis James Gaede,

)

Plaintiff,

)

vs.

)

State of North Dakota,

)

**AFFIDAVIT OF SERVICE BY MAIL**

Court# 09-2023-CV-01044

SA# CV-23-00044

Defendant(s).

)

STATE OF NORTH DAKOTA

)

) SS.

COUNTY OF CASS

)

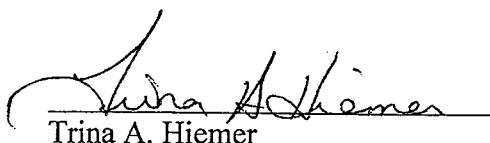
[¶1] Trina A. Hiemer being first duly sworn on oath, deposes and states that she is of legal age and that on this date she deposited in the United States Mail at Fargo, North Dakota, a true and correct copy of the following documents in the above-entitled action:

**Notice of Entry of Judgment**

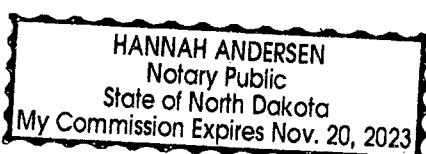
[¶2] The copies of the foregoing were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

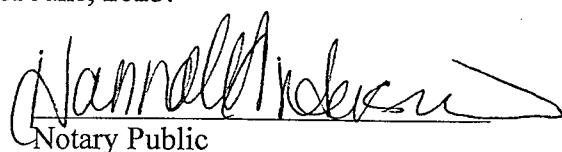
**Dennis James Gaede  
Inmate #23184  
ND State Penitentiary  
PO Box 5521  
Bismarck, ND 58506**

Dated this 15th day of June, 2023.

  
Trina A. Hiemer

Subscribed and sworn to before me this 15th day of June, 2023.



  
Hannah Andersen  
Notary Public

IN DISTRICT COURT, CASS COUNTY, NORTH DAKOTA

Dennis James Gaede, )  
Petitioner, ) MOTION FOR JUDGMENT  
vs. ) ON THE PLEADINGS  
State of North Dakota, )  
Respondent. )  
\_\_\_\_\_  
)  
)  
)

[¶1] Comes Now, Dennis James Gaede, the above-named Petitioner, pro se, respectfully and for shown good cause, moves the Court pursuant to N.D.R.Civ.P. Rule 8(a)(1),(2) and 12(c) of the North Dakota Rules of Civil Procedure for an Order Granting the Petitioner's petition for post-conviction relief, and thereby shows to the Court the following:

[¶2] That the Petitioner, Dennis James Gaede, through his pleadings, has provided the Court with material facts proving that through duplicity his civil rights have been violated requiring a reversal of the conviction;

[¶3] That this is now a matter of substantive law requiring the Court to act;

[¶4] That the Petitioner, in compliance with N.D.R.Civ.P. Rule 8(e) has offered as a remedy a guilty plea to N.D.C.C. 12.1-16-01(2) with credit for time served from 2006, written as a Rule 11(a)(2) plea agreement.

[¶5] That this will account for a total of twenty-four years of incarceration served upon release and is within the interest of justice;

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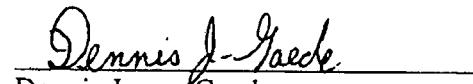
Denied.

*SO EEN*

[¶6] WHEREFORE, the Petitioner has demonstrated that good cause exists to grant this motion and petition for post-conviction relief and has met the requirements of N.D.R.Civ.P. Rule 8(a)(1),(2) and 12(c) of the North Dakota Rules of Civil Procedure. He therefore begs the Court to rule in his favor.

Respectfully submitted this 9<sup>th</sup> day of June, 2023.

Respectfully,

  
\_\_\_\_\_  
Dennis James Gaede  
Petitioner, pro se

STATE OF NORTH DAKOTA  
COUNTY OF CASS

IN DISTRICT COURT  
EAST CENTRAL JUDICIAL DISTRICT

Dennis James Gaede,  
Petitioner,  
vs.  
State of North Dakota,  
Respondent.

File No. 09-2023-CV-01044

MEMORANDUM OPINION AND ORDER  
SUMMARILY DISMISSING  
PETITIONER'S APPLICATION FOR  
POST-CONVICTION RELIEF AND  
DENYING PETITIONER'S MOTION FOR  
APPOINTMENT OF COUNSEL

[¶1] Petitioner Dennis James Gaede (hereinafter "Gaede") was convicted on June 23, 2006, for murder and sentenced to life imprisonment without the possibility of parole. (Case No. 09-05-K-02878). Gaede timely appealed his conviction to the North Dakota Supreme Court. See State v. Gaede, 2007 ND 125, 736 N.W.2d 418. The Supreme Court affirmed the criminal judgment on July 25, 2007. Id. at ¶ 31.

[¶2] After Gaede's direct appeal, he filed an application for post-conviction relief. (Case No. 09-08-C-04458, Docket No. 1). The Court denied the application on July 26, 2010. The Supreme Court affirmed the order denying the application on August 18, 2011. Gaede v. State, 2011 ND 162, 801 N.W.2d 707. Gaede filed a second application on January 30, 2012. (Case No. 09-2012-CV-00345, Docket No. 1). The Court entered an order denying the application on June 21, 2012, and the Supreme Court summarily affirmed the order on April 4, 2013. Gaede v. State, 2013 ND 41, 832 N.W.2d 334. Gaede filed a third application on April 14, 2014, and the Court denied the application on November 15, 2014. (Case No. 09-2014-CV-01350, Docket No. 1). The Supreme Court summarily affirmed the order denying the application on July 1, 2015. Gaede v. State,

2015 ND 160, 870 N.W.2d 26. Gaede's fourth application was filed on May 18, 2021. (Case No. 09-2021-CV-01619, Docket No. 1). The Court issued an order denying the application, and the Supreme Court summarily affirmed the order on April 14, 2022. Gaede v. State, 2022 ND 71, 973 N.W.2d 5.

[¶3] Besides Gaede's applications for post-conviction relief, Gaede petitioned for habeas corpus with the United States District Court, North Dakota Southwestern Division. See Gaede v. Schmalenberger, No. 1:10-CV-068 (D.N.D. 2013). The federal court denied the petition and later dismissed it upon Gaede's request for reconsideration. Gaede appealed the dismissal to the Eighth Circuit, and a per curiam opinion affirming the dismissal was issued on March 8, 2013. See Gaede v. Podrebarac, 499 Fed. Appx. 637 (8th Cir. 2013).

[¶4] Gaede filed his newest APPLICATION FOR Post-CONVICTION RELIEF on April 3, 2023. The application includes a VERIFICATION with Gaede's notarized signature. The State filed an ANSWER along with a MOTION FOR SUMMARY DISPOSITION OF POST-CONVICTION RELIEF APPLICATION on April 20, 2023. Gaede responded on May 20, 2023. Prior to filing his response, Gaede filed a MOTION FOR APPOINTMENT OF COUNSEL on April 24, 2023. Neither party has requested a hearing on either motion. Both the State's motion, pursuant to Rule 56(c) of the North Dakota Rules of Civil Procedure, and Gaede's motion, pursuant to Rule 3.2 of the North Dakota Rules of Court, are now ripe for review. Accordingly, the Court, having received and reviewed all of the materials submitted for the motions, now issues this MEMORANDUM OPINION AND ORDER on both motions.

[¶5] North Dakota law provides that a person convicted of and sentenced for a crime may institute a proceeding under Chapter 29-32.1 of the North Dakota Century Code

(Uniform Post-Conviction Procedure Act) by filing an application for post-conviction relief.

N.D.C.C. § 29-32.1-01(1). The applicant bears the burden of establishing they are entitled to relief. Bridges v. State, 2022 ND 147, ¶ 5, 977 N.W.2d 718 (citing Abdi v. State, 2021 ND 110, ¶ 8, 961 N.W.2d 303). A district court may summarily dispose of an application by way of motion if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id. at ¶ 6 (citing Everett v. State, 2016 ND 78, ¶ 15, 877 N.W.2d 796). The party opposing the motion is entitled to all reasonable inferences at the preliminary stages of a post-conviction proceeding and is entitled to an evidentiary hearing if a reasonable inference raises a genuine issue of material fact. Berlin v. State, 2005 ND 110, ¶ 6, 698 N.W.2d 266 (citing Whiteman v. State, 2002 ND 77, ¶ 7, 643 N.W.2d 704). A petitioner needs only to provide evidentiary support for his application once he has been notified that he is being put on his proof. Id. (quoting Ude v. State, 2009 ND 71, ¶ 8, 764 N.W.2d 419). At that point, the petitioner may not merely rely on the pleadings or unsupported, conclusory allegations but must present competent admissible evidence by affidavit or comparable means, which raises an issue of material fact. Id. If the petitioner presents competent evidence, he is entitled to an evidentiary hearing to present that evidence fully. Id.

[¶6] Gaede's instant application raises four claims for relief:

1. Newly discovered evidence;
2. Illegal/Excessive Sentence;
3. Petitioner was denied his Fifth Amendment Right to a Grand Jury.

4. Gaede's Fourteenth Amendment Right to Due Process is violated by N.D.C.C. § 29.321-01(3)(a)(1) and (2) is unconstitutional because it is an *ex post facto* law.

The prayer for relief section of his application states the following:

Wherefore, Gaede prays that the Court grant him relief to which he may be entitled in this proceeding, including the following:

1. An evidentiary hearing where testimony and evidence can be given to support the grounds in this petition;
2. A reversal of the judgment of conviction;
3. A new trial, or;
4. Allow the petitioner to plead guilty to N.D.C.C. 12.1-16-01(2) under a Rule 11(a)(2) plea agreement.

The State argues that the statute of limitations, *res judicata*, and misuse of process bar these claims. The State maintains that Gaede's application is untimely because it was filed more than two years after Gaede's judgment of conviction became final and no exceptions to the statute of limitations under N.D.C.C. § 29-32.1-01(3) are applicable.

The State also asserts that the claims are barred by *res judicata* and misuse of process because Gaede has previously raised these claims or should have either on direct appeal or in a previous post-conviction relief application.

[¶7] Generally, an application for post-conviction relief must be filed within two years of the date the conviction becomes final. N.D.C.C. § 29-32.1-01(2). A conviction becomes final if an appeal is taken to the North Dakota Supreme Court and the time for petitioning the United States supreme court for review expires. Kremer v. State, 2021 ND 195, ¶4, 965 N.W.2d 866 (quoting Moe v. State, 2015 ND 93, ¶ 9, 862 N.W.2d 510). The application may still be considered in three instances:

- (1) The petitioner alleges the existence of newly discovered evidence, including DNA evidence, which if proved and reviewed in light of the evidence as a whole, would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted;
- (2) The petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief; or
- (3) The petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States supreme court or a North Dakota appellate court and the petitioner establishes that the interpretation is retroactively applicable to the petitioner's case.

N.D.C.C. § 29-32.1-01(3)(a). The application must still be filed "within two years of the date the petitioner discovers or reasonably should have discovered the existence of the new evidence, the disability or disease ceases, or the effective date of the retroactive application of law." N.D.C.C. § 29-32.1-01(3)(b).

[¶8] Gaede appealed his criminal conviction to the North Dakota Supreme Court. The Supreme Court affirmed the conviction and issued a mandate on August 16, 2007. State v. Gaede, 2007 ND 125, 736 N.W.2d 418. Gaede had 90 days to petition the United States Supreme Court for certiorari. Sup.Ct.R. 13. He did not. Gaede's conviction, became thus final, for purposes of the post-conviction relief act, on November 14, 2007 (90 days after August 16, 2007). Any petition for post-conviction relief needed to be filed within two years of that date, which was November 14, 2009. That date passed more than 13 years ago. Thus, Gaede's application may be summarily dismissed unless he shows that his claims are based on one of the three limited instances outlined above.

[¶9] The first claim in Gaede's application attempts to allege the existence of newly discovered evidence that qualifies as a defense of lack of criminal responsibility and

duress. Gaede asserts that the State Psychiatrist Dr. Madeline Free's testimony at the hearing on his fourth application establishes that he has post-traumatic stress disorder and suffered from the disorder on the alleged date of the murder and at the time of his murder trial.

[¶10] Gaede has repeatedly raised claims in his applications relating to or touching upon his psychiatric or psychological condition in some way. Gaede first submitted a claim explicitly relating to his post-traumatic stress disorder in his second post-conviction relief application, which read as follows:

1. On or about January 26, 2011, Gaede was officially diagnosed with posttraumatic-Stress-Disorder, after being examined by several psychiatrists and psychologists. Evidence shows that this condition was present on the alleged date of the crime and at time of Gaede's trial for murder and qualifies as a defense of lack of criminal responsibility under N.D.C.C. § 12.1-04.1-01(1).

(09-2012-CV-00345, Docket No. 1, p. 2 (APPLICATION FOR Post-CONVICTION RELIEF (09-05-K-027878)).

[¶11] The claim was denied on account of the fact that Gaede had not actually been diagnosed with post-traumatic stress disorder. (09-2012-CV-00345, Docket No. 57, pp.4-7 (MEMORANDUM OPINION AND ORDER ON APPLICATION FOR Post-CONVICTION RELIEF). He was eventually diagnosed with the disorder in 2018, and the claim was raised again in Gaede's fourth application. It read as follows:

On or about July 18, 2019, (Sic) Gaede was diagnosed with a Post-Traumatic Stress Disorder by state psychiatrist Dr. Madeline Free. Evidence in this petition shows that this condition is and was present on the alleged day of the crime and at time of Gaede's trial for murder and qualifies as a defense of lack of criminal responsibility under N.D.C.C. § 12.1-04.1-01(1) and any other further alleged actions committed by Gaede under the condition of duress noted in N.D.C.C. § 12.1-05-10(1).

(09-2021-CV-01619, Docket No. 1, p. 3, (APPLICATION FOR POST-CONVICTION RELIEF); and Docket No. 51, pp.144-45 (MEDICAL RECORDS, pp. 136-37)).

[¶12] Doctor Free testified at Gaede's fourth post-conviction hearing. (09-2021-CV-01619, Docket No. 65, pp. 5-18 (POST CONVICTION TRANSCRIPT HEARING TRANSCRIPT)). She confirmed that Gaede had in fact been diagnosed with post-traumatic stress disorder in 2018. (*Id.* at p. 6 l. 10). Doctor Freeman maintained that the diagnosis had no bearing on Gaede's crime or his competency. (*Id.* at p.13 l. 1-10). In fact, she did not have any opinion on whether Gaede lacked the requisite intent to commit the crime of murder or that Gaede was incompetent to stand trial. (*Id.* at p. 10 l. 10-23).

[¶13] At the conclusion of the hearing, the Court agreed that the diagnosis was new information. Unfortunately for Gaede, however, it disagreed that it was new evidence as Gaede had been claiming the existence of the disorder since his second petition in 2012 and it had been longer than two years since the diagnosis. (*Id.* at p. 28 l.13-18). As a result, the Court concluded that there was no new or additional evidence to support Gaede's claim for relief. (*Id.* at p. 28 l.19-20).

[¶14] Gaede's instant claim is substantively and for all purposes, the same one he brought in his fourth application and must be denied for the same reason. As the Court previously iterated, Gaede's post-traumatic stress disorder diagnosis is anything but new evidence. The diagnosis was made more than two years before Gaede submitted his fourth application, and the present application is even further from the date of the diagnosis. The Court has also already considered Doctor Free's testimony and it does not support a finding that Gaede's post-traumatic stress disorder prevented his ability to form the requisite intent to commit the crime of murder or that he was incompetent to

stand trial. Gaede's argument that Doctor Free's opinion that Gaede's disorder had no bearing on his competency is somehow contradictory to the evidence at trial still fails to provide context for how the Court could view the diagnosis or consider Doctor Free's testimony as new evidence. Therefore, there are no factual issues raising a material issue of fact. Gaede therefore, failed to meet his burden of providing new evidence to support his application and raise a material issue of fact. Accordingly, the claim is untimely and barred by the statute of limitations.

[¶15] Aside from the claim being barred by the statute of limitations, it is also barred by res judicata and misuse of process. "An application for post-conviction relief may be denied on the ground that the same claim or claims were fully and finally determined in a previous proceeding." N.D.C.C. § 29-32.1-12(1). An application may also be denied on the ground of misuse of process. N.D.C.C. § 29-32.1-12(1). Process is misused when the applicant either "[p]resents a claim for relief which the applicant inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous post-conviction proceeding" or "[f]iles multiple applications containing a claim so lacking in factual support or legal basis as to be frivolous." Id. The North Dakota Supreme Court has held that misuse of process occurs in these instances:

- (1) if the defendant has inexcusably failed to raise an issue in a proceeding leading to judgment of conviction and now seeks review in a first application for post-conviction relief;
- (2) if the defendant inexcusably fails to pursue an issue on appeal which was raised and litigated in the original trial court proceedings; and
- (3) if a defendant inexcusably fails to raise an issue in an initial post-conviction application.

Bell v. State, 2001 ND 188, ¶ 7, 636 N.W.2d 438 (quoting Clark v. State, 1999 ND 78, ¶ 23, 593 N.W.2d 329).

[¶16] As previously noted, Gaede's claim, as it is, is the same claim in his fourth petition, and it relies on Doctor Free's diagnosis and previous testimony. The claim has therefore already been litigated and is barred by res judiciata. And because the claim relies on Doctor Free's diagnosis and previous testimony, any claim or theory for relief Gaede is asserting now should have been raised in his fourth application. But because Gaede has failed to provide sufficient evidentiary support for the claim or provide a justification for not previously raising the present claim, it is a misuse of process for him to attempt to raise it now. There is thus, no material issue of fact, and the claim must be dismissed. Accordingly, Gaede's instant claim remains untimely, just as it was in his fourth application, by the statute of limitations, and is similarly barred by res judicata, and misuse of process.

[¶17] Gaede's remaining three claims assert no other exceptions to the statute of limitations under N.D.C.C. § 29-32.1-01(3)(a). The second claim asserts that he received an "illegal/excessive sentence" in violation of the Eighth Amendment. The third claim asserts a violation of his fifth amendment right to a grand jury. And the fourth claim asserts that Gaede's fourteenth amendment right to due process was violated by N.D.C.C. § 29.321-01(3)(a)(1) and that N.D.C.C. § 29.321-01(3)(a)(2) is unconstitutional because it is an ex post facto law. Gaede does not argue or provide any evidence to suggest there is newly discovered evidence to support these claims, he had a physical disability or mental disease that precluded him from timely asserting these claims, or that a retroactively applicable interpretation of law applies warranting consideration. These

claims are therefore untimely and barred by the statute of limitations. Furthermore, the claims have been previously raised or are variations of previous ones or should have been submitted previously.

[¶18] Gaede argues for a third time that N.D.C.C. § 29-32.1-01(3)(a)(2) is unconstitutional ex post facto law. According to Gaede Gaede however, this is the first time he has properly raised the issue. But see (09-2014-CV-01350, Docket No. 1, p. 1, (APPLICATION FOR POST-CONVICTION RELIEF); (09-2021-CV-0169, Docket No. 1, p. 1, (APPLICATION FOR POST-CONVICTION RELIEF). Be that as it may, the argument that N.D.C.C. § 29-32.1-01(3)(a)(2) is an ex post facto law that was presented in Gaede's third application was specifically rejected. (09-2014-CV-01350, Docket No. 1, p. 6, ¶ 12, (ORDER FOR EVIDENTIARY HEARING). The law has not changed. An application for post-conviction relief must comply with newly enacted statute of limitations. Lehman v. State.2014 ND 103, ¶ 11, 847 N.W.2d 119. The claim is therefore still without merit and barred by res judicata.

[¶19] Furthermore, this is not the first time Gaede has asserted an eighth amendment violation. He did so in his first application, which was also summarily denied. Even if Gaede's argument now is more than a mere variation of the one raised previously, it should have been raised then.

[¶20] Finally, the only claim that is not completely redundant is the suggestion that a grand jury needed to indict Gaede for him to be properly charged with the crime of murder. Grand jury indictments were addressed by the North Dakota Supreme Court in Bell v. State, 2001 ND 188, 636 N.W.2d 438. The Supreme Court explained that [s]ection 29-09-02, N.D.C.C., and N.D.R.Civ.P. 7 authorize criminal prosecutions by information, and

Bell's argument that a prosecution must be by an indictment is meritless. Id. at ¶11.

Therefore, even if the claim was properly raised, it is still without merit.

[¶21] All in all, all three claims are the type of issues that are appropriate for review at the time of trial or on direct appeal. Gaede did not raise these issues during his trial, at the time of sentencing, nor at the time of his direct appeal to the North Dakota Supreme Court. To that end, it was necessary that Gaede provide a justification for not previously bringing any one of them. None was provided. These claims are therefore barred by res judicata and misuse of process. Accordingly, the entire application fails to raise a material issue of fact, lacks merit, and can be summarily dismissed.

[¶22] Gaede requested that counsel be appointed to assist him. "If an applicant requests counsel and the court is satisfied that the applicant is indigent, counsel shall be provided at public expense to represent the applicant." N.D.C.C. § 29-32.1-05. "A court may properly deny a request for appointment of counsel if the applicant for post-conviction relief is able to file an application without assistance, and the application, read most favorably toward the applicant, does not raise the possibility of a substantial issue of fact or law." St. Claire v. State, 2002 ND 10, ¶ 16, 638 N.W.2d 39 (citations omitted). "It is not an abuse of discretion for the trial court to refuse to appoint counsel when the application for relief is completely without merit." Id. (quoting Crumley v. State, 2000 ND 110, ¶ 11, 611 N.W.2d 165. Gaede is indigent. He was, however, able to file the application without assistance. The application, read most favorably toward Gaede, does not raise the possibility of a substantial issue of fact or law and, most importantly, it is without merit. Accordingly, based upon the above and the foregoing, it is hereby,

[¶23] **ORDERED, ADJUDGED, AND DECREED** that the State of North Dakota's Motion for Summary Disposition of Post-Conviction Relief Application be, and the same hereby is, **GRANTED**. Accordingly, Petitioner Dennis James Gaede's Application for Post-Conviction Relief and Motion for Appointment of Counsel are hereby **DENIED**.

[¶24] The State shall prepare and serve a judgment in accordance herewith.

[¶25] **LET JUDGMENT BE ENTERED ACCORDINGLY**

Dated this 7th day of June, 2023.

BY THE COURT:



---

Hon. Steven E. McCullough  
Judge of the District Court

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

Dennis James Gaede,  
Petitioner, )  
vs. ) JUDGMENT  
State of North Dakota,  
Respondent. ) File No. 09-2023-CV-01044

[¶1] The above-entitled matter came before this Court on Petitioner Dennis James Gaede's ("Petitioner") Application for Post-Conviction Relief, filed April 3, 2023.

[¶2] The Court having reviewed the documents filed by Petitioner and Respondent and being fully advised in the premises, and having issued its Memorandum Opinion and Order Summarily Dismissing Petitioner's Application for Post-Conviction Relief and Denying Petitioner's Motion for Appointment of Counsel, dated June 7, 2023:

[¶3] IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

Respondent's Motion for Summary Disposition is **GRANTED** and Petitioner's Application for Post-Conviction Relief is **DENIED**.

[¶4] Witness the Honorable Steven E. McCullough, Judge of the District Court, and my hand and seal of this Court, in Fargo, Cass County, North Dakota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CLERK OF THE DISTRICT COURT

6/13/2023 2:08:28 PM

By: J. Swenson, Deputy  
Deputy Clerk

APP-C

**IN THE SUPREME COURT OF NORTH DAKOTA**

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DENNIS JAMES GAEDE,	)	
	)	
Appellant/Petitioner,	)	Supreme Court No. 20230269
vs.	)	Cass County No. 09-2023-CV-01044
STATE OF NORTH DAKOTA,	)	
	)	
Appellee/Respondent.	)	
	)	

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APPEAL FROM THE JUDGMENT DENYING APPLICATION FOR POST  
CONVICTION RELIEF ENTERED IN THE DISTRICT COURT OF THE EAST  
CENTRAL JUDICIAL DISTRICT, THE HONORABLE STEVEN E.  
McCULLOUGH, PRESIDING ON JUNE 13, 2023

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**PETITION FOR REHEARING**

---

Dennis J. Gaede  
Petitioner-Appellant  
P.O. Box 5521  
Bismarck, ND 58506-5521

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## **[¶2] JURISDICTION AND VENUE**

[¶3] This Petition for Rehearing is brought and invoked pursuant to this Court's jurisdiction under N.D.R.App.P. Rule 40. This action arises through the violation of the Constitution and laws of North Dakota and the United States of America.

## **[¶4] STATEMENT OF CASE**

[¶5] In 2005, Dennis James Gaede was charged for the 2001 murder of Timothy Walker Wicks. Attorney Steven Mottinger was appointed to represent Gaede in defense of the charge. In 2006, a jury convicted Gaede of the murder of Wicks. Gaede was subsequently sentenced to serve a term of imprisonment for life without the possibility of parole. Gaede timely appealed his conviction to the North Dakota Supreme Court. See: State v. Gaede, 736 N.W.2d 418 (2007). On his direct appeal, Gaede was represented by attorney William Kirschner. On July 25, 2007, the North Dakota Supreme Court affirmed Gaede's conviction. Id. at ¶31.

[¶6] On October 13, 2008, Gaede served and filed an Application for Post-Conviction Relief with the East Central District Court in Cass County. Attorney Mark Blumer was assigned to represent Gaede in the matter on October 13, 2008.

[¶7] Gaede filed a petition for post-conviction relief which was denied on July 23, 2010; Gaede appealed the denial of the post-conviction to the North Dakota Supreme Court which was affirmed on August 24, 2011; On August 24, 2011, Gaede filed a petition for habeas corpus with United States District Court for the

District of North Dakota Southwestern Division. On October 24, 2012, Gaede filed an Amended petition for habeas corpus with the federal district court. On June 14, 2013, the federal district court denied Gaede's petition for habeas corpus. On August 12, 2013 Gaede filed an objection to the dismissal of his petition for habeas. On September 3, 2013, the district court entered a final Order dismissing the petition for habeas corpus. On October 1, 2013, Gaede filed a Notice of Appeal to the Eighth Circuit Court of Appeals. The Eighth Circuit Court of Appeals affirmed the lower Courts decision.

[¶8] Gaede has since filed four more post-convictions. The first in 2012, which was summarily affirmed on appeal [Gaede v. State, 832 N.W. 2d 334, (2013)]; the second which was summarily affirmed [Gaede v. State, 870 N.W. 2d 26, (2015)]; the third which was summarily affirmed [Gaede v. State, 973 N.W. 2d 5, (2022)] and the fourth which is the case at bar. The appellant also is filing a 28 USCA §2244 motion with the Eighth Circuit Court of Appeals to petition to have his 28 USCA §2254 Habeas Corpus petition reset because of the perjured affidavit of Christine Aman that was provided to the federal district court by the North Dakota Attorney General's office during the habeas process back in 2013. The appellant is also preparing a writ of certiorari for the United States Supreme Court.

## **[¶9] STATEMENT OF FACTS**

[¶10] In 2005 Gaede was charged with Murder. Attorney Steven Mottinger was appointed to represent Gaede at trial.

[¶11] On October 16, 2008 Gaede filed a lengthy Application for Post-Conviction Relief. There were twenty-three (23) allegations and/or issues in Gaede's Post-Conviction petition based mainly on ineffective assistance of counsel. Of those twenty-three issues one main issue stands out for purposes of this appeal: the ineffective assistance of trial counsel for not having the appellant examined by a psychiatrist/psychologist prior to trial.

[¶12] Attorney Mark Blumer was assigned to represent Gaede in this matter on October 31, 2008. The issues were heard at evidentiary hearings on May 27, 2009, and February 18-19, 2010; Gaede, Mottinger, and William Kirschner testified. At the hearing Mottinger admitted that he had been ineffective at trial, but the court still summarily dismissed the petition for post-conviction relief. This court agreed with the lower court focusing on a biblical argument rather than the defense lawyer's admissions.

[¶13] Gaede then file a lengthy petition for post-conviction relief on March 13, 2012 indicating that he suffered from PTSD after he had been told by treatment department staff that he did in fact have the disorder. This was when the Cass County State's Attorney colluded with the treatment staff member Christine Aman to generate a false affidavit swearing that the Appellant did not nor ever did suffer from PTSD. Her deception was proven after Dr. Madeline Free testified that she has been treating me since 2012 [Docket #16: page 6, lines 18-21]. The petition for post-conviction relief was dismissed based on this perjured information.

[¶14] Gaede then filed a 28 USCA §2254 Habeas Corpus petition which was also dismissed after the North Dakota Attorney General's office also provided the federal district court with the same perjured affidavit.

[¶15] Gaede tried again in 2014 by filing another petition for post-conviction relief challenging a mental health condition at the time of the crime and that now he was being treated for posttraumatic stress disorder with the drug Paxil. See "Chery J. v. Saul, 18 -CV-1292, (8<sup>th</sup> Cir. September 25, 2019). The district court again dismissed the petition for post-conviction relief based that this was not new evidence. This court upheld the decision.

[¶16] Gaede filed the third post-conviction petition in 2021 after being "*officially*" diagnosed with PTSD by Dr. Madeline Free. However the district court claimed the petition was not timely because it was filed just outside of the two year time limitation allowed by N.D.C.C. §29-32.1-01 and was also dismissed. This court also agreed with the lower court which brings us to the case at bar challenging the constitutionality of this *ex post facto* law. With N.D.C.C. §29-32 now repealed and deemed unconstitutional it automatically makes the lower court's ruling irrelevant and unconstitutional as well. This court must honor the law and reverse the lower court's decision.

[¶17] Comes Now, Dennis James Gaede, Appellant herein, and petitions this court for a rehearing of this appeal pursuant to N.D.R.App.P. Rule 40; the decision in which was rendered on December 28, 2023. The grounds for the Petition are:

**I. THE NORTH DAKOTA SUPREME COURT ERRED IN DENYING GAEDE'S APPEAL BECAUSE ITS DECISION WAS BASED ON A REPEALED UNCONSTITUTIONAL STATUTE.**

**[¶18] ARGUMENT**

[¶19] The court omitted to accord proper weight to the trend of national decisions, in the absence of statutory and judicial precedent in this state, in deciding the primary issues in this appellant's brief.

[¶20] It is also clear that this case is what the repeal of N.D.C.C. §29-32.1-01(3)(a) is based on. This concludes that this court's decision on affirming this appeal was based on an unconstitutional and repealed statute. It also means that the statute was unconstitutional when the lower court rendered its decision on the post-conviction petition being appealed. It is therefore void. This also proves that the appellant's rights were violated. And it further serves as proof that the statute was unconstitutional in 2013 when it was enacted and therefore the two-year statute of limitations imposed by the statute is and was null and void from the very beginning. Therefore it does not and cannot be used by this court or the lower court in deciding this case.

[¶21] See the following federal and U. S. Supreme Court precedents on this subject:

[¶22] "*For more than a century, 'the general rule... [has been] that when an act of legislation is repealed, it must be considered... as if it never existed.'*" Ex Parte McCardle, 74 U.S. 506, 514, 7 Wall. 506, 19 L.Ed. 264 (1868). *Even in a pending*

*action, 'no judgment could be rendered...after the repeal of the act under which it was brought and prosecuted.' Id. A statute that Congress snuffed out of existence by repeal leaves no residual clear statement of authorization. '" Yakima Valley Memorial Hosp. v. Washington State Dept. of Health, 654 F.3d 919 (9<sup>th</sup> Cir. 2011) at ¶25.*

## **II. THE NORTH DAKOTA SUPREME COURT ERRED BY NOT RULING ON ALL THE ISSUES APPEALED.**

### **[¶23] ARGUMENT**

- [¶24] This court overlooked or misapprehended issues of great importance in this appeal that must be ruled on:**
- [¶25] Whether N.D.C.C. §29-32.1-01 violated Gaede's 14th Amendment Right to Due Process by being an ex post facto statute and ultimately an unconstitutional law?**
- [¶26] Whether Gaede's 5th Amendment Right to a Grand Jury was violated when the prosecution purposely avoided it to shield a murder suspect?**
- [¶27] The 5<sup>th</sup> Amendment Right to a Grand jury issue also is raised as newly discovered evidence because it was just recently discovered through a national civil rights group that North Dakota has been denying all defendants grand juries. This is a paramount constitutional issue that the U.S Supreme Court needs to rule on for precedent case law.**

[¶28] That the appellant asks the court to rule on each of these Constitutional issues because if need be he is filing a Writ of Certiorari with the United States Supreme Court; each of these will be raised as grounds for review along with the illegal application of the unconstitutional statute to dismiss the post-conviction and this appeal.

## [¶29] CONCLUSION

[¶30] WHEREFORE, Gaede prays that the Court grants this appeal and relief to which he may be entitled to including the following:

1. That this court reverse its decision and the order denying Gaede's application for post-conviction relief.

[¶31] Dated this 3<sup>rd</sup> day of January, 2024.

/S/Dennis J. Gaede  
Dennis J. Gaede  
Appellant, pro se  
P.O. Box 5521  
Bismarck, ND 58506-5521

[¶32] This Petition for Rehearing is in compliance with the North Dakota Rules of Appellate Procedure and contains ten (10) pages total.

IN THE SUPREME COURT OF NORTH DAKOTA

Dennis James Gaede, )  
                          )  
                          )  
Appellant,            )  
                          )  
                          )  
vs.                    )  
                          )  
                          )  
State of North Dakota, )  
                          )  
                          )  
                          )  
Appellee.            )  
                          )  
                          )

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**NOTICE OF MOTION**

Supreme Court No. 20230269  
Cass Co. No. 2023-CV-01044

PLEASE TAKE NOTICE that the attached motion is in accordance with N.D.R. Ct. Rule 3.2. You have fourteen (14) days after service of this motion upon you, within which to serve and file an answer. Failure to file an answer may be deemed an admission that this motion is meritorious.

Dated this 22<sup>nd</sup> day of January, 2024.

Respectfully submitted,

/S/Dennis J. Gaede

Dennis J. Gaede, Petitioner  
P.O. Box 5521  
Bismarck, ND 58506-5521

IN THE SUPREME COURT OF NORTH DAKOTA

Comes Now, Dennis James Gaede, appellant, pro se in the above titled action and with good cause moves this court pursuant to N.D.R.App.P. Rule 41 (d) (2) for a Stay of Mandate pending his filing of a Writ of Certiorari with the United States Supreme Court.

Gaede asks this court to grant him thirty (30) days to prepare and file the petition with the United States Supreme Court and a copy thereto with this court.

Dated this 22<sup>nd</sup> day of January, 2024.

Respectfully submitted,

1/S/Dennis J. Gaede

Dennis J. Gaede, Appellant  
Pro se  
P.O. Box 5521  
Bismarck, ND 58506-5521

**Hulm, Petra**

---

**From:** Hulm, Petra  
**Sent:** Monday, January 29, 2024 8:39 AM  
**To:** 'sa-defense-notices@casscountynd.gov'  
**Subject:** Gaede v. State, Supreme Court No. 20230269  
**Attachments:** m\_stay\_mandate.pdf

*SUPREME COURT OF NORTH DAKOTA  
OFFICE OF THE CLERK  
600 E Boulevard Avenue  
Bismarck, ND 58505-0530  
(701) 328-2221 (voice) (701) 328-4480 (fax)  
1-800-366-6888 (TTY)  
supclerkofcourt@ndcourts.gov*

**VIA E-MAIL ONLY**

January 29, 2024

Dennis J. Gaede (printed directly to NDSP)  
#23184  
North Dakota State Penitentiary  
P.O. Box 5521  
Bismarck, ND 58506-5521

RE: Gaede v. State  
Supreme Court No. 20230269  
Cass Co. No. 2023-CV-01044

On January 23, 2024, I requested a service document for your motion to stay. This is in error as we do not require a service document from inmates participating in our pilot project for printing directly to NDSP and e-filing by scan. My apologies for the confusion. A copy of that motion is attached here for Mr. Samuelson.

The motion is granted.

Sincerely,

Petra H. Mandigo Hulm  
Clerk  
North Dakota Supreme Court

cc: Nicholas Steven Samuelson (w/o attachment)

29C-MP-61534

JAD:jad

1

The following investigation was conducted by Special Agent John A. Dalziel, Federal Bureau of Investigation, Minneapolis Division, Fargo, North Dakota Resident Agency on 03/11/2002

SA Pat Crouch, FBI, Omaha Division, Lincoln, NE Resident Agency faxed the attached Lancaster County Corrections Investigative Report to the writer. The report stated that Diana Gaede made a statement during the booking in process that implicated her in the murder of Timothy Wicks.

See attached report.

APP-I

1418

29C-MP-61534 35

PAGE: 1

LANCASTER COUNTY CORRECTIONS  
INVESTIGATIVE REPORT

03/07/2002

REPORT # : R200200911

DATE TIME TYPE

REPORT : 03/06/2002 23:18:42 IR  
INCIDENT : 03/06/2002 19:30:00 OTOFFICER : 5215 COTTER, SHERRI  
LOCATION : BKG/H6

## STAFF INVOLVEMENT

5092 CAULFIELD, DAVID  
5215 COTTER, SHERRI

INMATES INVOLVED	CPN	BOOKING#	POD	CELL
GAEDE, DIANA	721389	2002001793	B2	HAB05B

## NARRATIVE:

On Wednesday, 3/6/02, at approximately 1930 hours, I CSI Sherri Cotter was in the Booking Area meeting with inmate Diana Gaede who was on Behavior Observation in Holding room number six. At the beginning of our discussion I informed Gaede that it was not in her best interest to discuss any particulars or details of her case with me and that any thing she wanted to say about her case should be directed to her attorney. Gaede stated that she understood. During the course of our discussion, I allowed Gaede to read an article printed in the 3/6/02 Lincoln Journal Star pertaining to her arrest and implicating her and as a murder suspect. After reading the article, Gaede became tearful and stated that she would never be able to face her family again. When asked why she would feel this way Gaede stated, "Because I did it, he didn't". I again advised Gaede that it was not in her best interest to discuss details of her case with me and that she should discuss them with her attorney. However, Gaede also made statements regarding her and her husband "Dennis" being forced to take on other identities based upon false allegations/charges that her husband was facing in Wisconsin and that had they not been forced to do so this would not have happened. Gaede also talked about needing to order things to write with from commissary as she needed to "write a statement". Gaede then stated that she probably didn't need to write one as she had already written one and that the FBI probably already had it as it was in their trailer in which they were arrested. When asked if her husband was aware that she had written a statement, she replied that he was aware she had done so.

notified Lt. Dave Caulfield of the above information. Lt. Caulfield instructed me to contact LPD regarding this information. I contacted PD Captain Soukop and he requested that a copy of this report be sent to LPD Capt. Gary Engel.

APP-I

AGE: 2

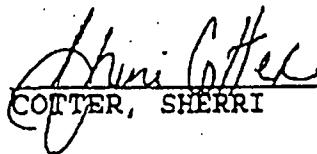
LANCASTER COUNTY CORRECTIONS  
INVESTIGATIVE REPORT

03/07/2002

REPORT # : R200200911

	DATE	TIME	TYPE	
REPORT :	03/06/2002	23:18:42	IR	OFFICER : 5215 COTTER, SHERRI
INCIDENT :	03/06/2002	19:30:00	OT	LOCATION : BKG/H6

END OF REPORT

  
COTTER, SHERRIApproved by: HEINBIGNER, BARRY  
03/07/2002

APP-I

May 5, 2021

Dennis J. Gaede #23184  
P.O. Box 5521  
Bismarck, ND 58506-5521

Birch P. Burdick  
Cass County States Attorney  
P.O. Box 2806  
211 Ninth Street, South  
Fargo, ND 58108

Dear Mr. Burdick,

Thank you for answering the letter I sent to Rick Majerus and also for letting me know about Diana's death. I actually began this on August 6, 2019 right after I heard from you, but more and more information was opened up to me so it took much longer than I thought to put it together with the discovery documents. But I did my best.

First though, I did not know about Diana's untimely death in 2012. That was and still is a shock to me. All I ever wanted was for her to accept responsibility for her true actions in Tim Wicks' death. That being said, I now want to tell you the truth about what really happened and why I believe it did. But, before I get started, there is something that I would ask that you view.

In your letter you made mention that I could have raised pertinent issues during trial, but didn't. The reason for much of this is because several important pieces of information were not discovered until well after the trial. One piece information is a movie called "*Devil in the Flesh*" staring Rose McGowen, which was released in 1997, just four years before the murder. But,

I didn't view this movie until just recently and then started putting the connection together with Diana.

In this movie Rose McGowen portrays a serial killer who murders men after they allegedly rape her. However, the most interesting part of this movie is that Rose McGowen's character name is "*Debra Strand*" the very same name that Diana was using as an alias when we were arrested in Lincoln, Nebraska.

Diana started using this alias sometime prior to that when she began to change her appearance and adopt her new identity. Evidence of the name Debra Strand and the hair dye was found at the KOA Campground in Liberty, Iowa. See Discovery documents 1416 and 1417, and also 1120-23. This is highly pertinent, so please watch it because it will connect all the dots, especially with information in the book, "*Female Serial Killers: How and Why Women Become Monsters*" that I've sent you. This book I just came across and purchased in March 2021 as you can see by date I received them in the front cover. It was inside that I discovered Diana's "other" little secret about why she referred to her and I as "*Bonnie and Clyde.*"

But it's the storyline of the movie "*Devil in the Flesh*," coupled with Diana's original claim that Tim Wicks raped her and that she shot and killed him that makes for a very plausible motive for her committing the murder. I would also challenge that when she attempted to cut off Brando's fingers/hands, as she testified too at trial that that was a test run for what actually happened with Tim Wicks.

I should also point out that Diana was infatuated with Rose McGowen and that that was the reason that she originally started coloring her hair red or auburn. More on this later, but I ask that you view this movie and compare it to the documents I referenced. This, I believe was Diana's final blueprint for murder.

Please watch this because this movie gave Diana a role to play. She adopted this character along with a preexisting serial killers' ideology. Now, I'll tell you why. And as I promised, I want to recap the events of what actually happened.

But before we begin you should ask yourself, why would Diana want to be present for everything? The real estate deal; working at Compressed Air Technologies; making all Compressed Air Technologies bank deposits; and collecting all the company's outstanding debts? Notice that she manipulated her way into every penny of the company's money and had control of it through me. Why? What was her higher agenda? And in the end, who got hung for it? Me. So was she the puppet master behind the scenes pulling the marionette's strings from the beginning? Think about all of this and keep it in mind.

First, Tim did come up to Gardner, and he was not lured or inveigled in any way. He really was going to travel up to Winnipeg to check it out and visit with some of my friends in the music scene. This is true. But the part that I tried to tell the investigators was that Tim knew all along about the house in Gardner and that I was temporarily using his identity. He gave me the birth certificate and a Social Security card to use so I could find work. Take a look at the birth certificate, date of issue, and most importantly, the address that it was sent to. It was issued right before I came up to North Dakota and it was sent to Tim's home address. He also had a Social Security card sent there for me and he gave me his driver's license number (Discovery Pgs. 1481-85). This shows that I didn't steal his identity at all. Everyone was upset at what happened in Monroe County Wisconsin with my court case and stepped up to help me escape what they were trying to do to me. Tim included.

Tim and I were close friends for a long time and we had plans of having a good business together. Diana even admitted to the investigators that I was talking with Tim about setting up an accounting office (Discovery page 1872). And using his identity was only temporary just to get some quick work. Why else

would I have purchased identity changing books November 19, 2001, right after I arrived in Fargo if had intended on using Tim's identity permanently? (Discovery Pg. 488). I would also like to point out that Diana lied to investigators about this (Discovery Pg. 1850). She said that I bought those books after Tim was killed, making it look like I was running from the murder and needed a new identity. She also said that this was part of my plan. But again, physical evidence shows that she lied only to divert the investigation away from herself.

Just look at the phone records as to how much time I would spend talking with him (Discovery pgs. 201-02, 211-12, 616). Also, why would Tim be contemplating putting in a permanent change of address if he wasn't planning on moving up here? (See Discovery Pg. 558) I was updating him on everything that was going on, including the deal I found on the HUD house in Gardner. That was the reason he brought up all his painting equipment from Milwaukee. It was to do some minor repairs so we could get the house reappraised and take a second mortgage out for working capital. In fact, I believe that Tim had some appraiser from Fargo come up to Gardner and give it a tentative look while I was at work one day. Tim came to Compressed Air Technologies and he told me about it over lunch. And also why would I risk having him come to Compressed Air Technologies if he didn't know what was going on? Especially when everyone was calling me Tim.

And further, who in their right mind would risk buying a house under some else's name without him knowing about it, then stay in constant contact with that person? Then, make plans to have that person drive 800 miles up to that house to work on it fixing it up for resale? Especially when his name was all over the house on paperwork and documents! And then stay at the house for several days on top of it? Does any of this make any sense at all?

Sure, Tim was going to travel up to Winnipeg to check out the music scene for a bit, but he was planning on living in the house in Gardner. Like me, Tim was self-employed so he could go anywhere to find or create work. And both of us together was a magic combination. The only personal problems we had were that we both were dependent on drugs: Tim, marijuana; me, cocaine: both to self-medicate PTSD symptoms. Check our histories and you will see. We both have and had skeletons in the closets (Discovery page 800(B)). Tim actually had a criminal record for violence when drinking: that's why he smoked marijuana more often. He told me all about what happened when he beat up his brother-in-law outside a restaurant after he'd been drinking.

Not many knew that Tim was bi-sexual and that he was fighting these feelings inside himself. He actually asked me to help him find a wife when he was in Fargo. I laughed and said that maybe we should start with a girlfriend first. Then we both laughed. That's how close our friendship was; we knew each other's deep secrets. This is also why Tim wanted to move up to North Dakota to be close to me.

Diana also lied to investigators and first said that we were going to drive straight through to Canada with Tim, but then said that he was doing some painting at the house in Gardner. Again, Tim knew that he was going to be doing the painting which was why he brought up all his painting equipment, but Diana tried to twist the story into something else.

Another major thing to look at is that Diana lied to investigators about when Tim came up to North Dakota. She insisted on riding in the car with him, giving the reason that she would be there just in case we got separated on the road; so that Tim wouldn't get lost. Again, what was Diana's true interest in getting Tim up here? But looking at another possibility, she might also have

been looking for sinister intent from Tim.<sup>1</sup> And this is probably true because she lied to investigators and said that she rode in the car with me and that I gave Tim a cell phone to keep in contact with us. This is completely false because the only person with me was Josh (Discovery Page 1822). And my car was also full of drum equipment.

Notice too that I contacted Tonya Tonsfeldt in October right after arriving in North Dakota about looking at real estate (Discovery Pg. 1183). I started working on our plan as soon as I could to get our business in motion. There's one more thing to consider here. How many people who steal identities purchase real estate with fixed assets? None. Why? Because they're not liquid. The whole purpose of identity theft is to get quick money, not sit on investments like real estate, especially properties that needed repairs. Plus, you're completely exposed, not operating in the shadows where most identity thieves work. This just wasn't the case with me.

But anyway, the problem came in when I told Diana that I was giving the house over to Tim and that I was looking at different places like the townhouse in Enderlin, and the three bedroom ranch out in Southheart, on the other side of Dickenson. Diana said flat out that Tim was not going to get the house in Gardner and that that was her house. This was her motive to kill Tim. She was furious.

At this point I found out that when Diana was married to Ray Fruge, they had purchased Diana's grandparents' home in South Milwaukee, but that the house ended up being repossessed. She hated Ray for letting that happen, which is why she started sleeping around with other men, including Brando and some other military officer, just to punish Ray. She told me all about this when she said that Tim was not going to get the house in Gardner. I realize

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<sup>1</sup> Ibid Page 175.

now that she was giving me some kind of warning. Diana then said that the house in Gardner was her house. I think this all happened between December 26 and 27, 2001. Ray Fruge can verify all of that about the real estate repossession and the other men she started sleeping with. Just call him down in Sulphur, Louisiana and talk with him.

So when I came home from work on the evening of December 27<sup>th</sup>, I found Diana severely angered and that's when she told me that she wanted Tim out of the house! She said that Tim had raped her. I didn't respond, so she then said that Tim had molested Josh. Again, I didn't react, so she then said, "*You kill him or I will.*" I then told her she was drunk and to relax and that no one was killing anybody and that Tim was planning to go up to Winnipeg the following morning. She then stormed upstairs and I didn't see her until the next day.

This was the first time that she started acting like serial killer Aileen Wuornos, accusing a man of raping her and wanting to kill him.<sup>2</sup>

Here I should also add that Diana knew that I had been repeatedly molested as a child and adolescent and she saw how quickly I responded when Josh really was molested by Brando's niece Lorriane back in Milwaukee. I immediately notified law enforcement and took Josh to the rape trauma center to get him examined. The molestation was confirmed by Josh at some point and Brando's niece was arrested. So, now if I had actually believed Diana, I probably would have reacted differently, I admit that, but I had seen Tim earlier during the day and we both were elated on how well things were going. And I knew that Diana had other motives for what she was telling me. That's why I just blew her off.

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<sup>2</sup> Female Serial Killers: How and Why Women Become Monsters, By Peter Vronsky; Berkley Books Publishing Group, New York 2007 (pg. 147).

So that night I ate a late supper, talked with Tim and went to bed. Diana was upstairs sleeping with Josh, and I slept alone on my king-size bed.

The next morning, on December 28<sup>th</sup> 2001, I got up, showered, dressed and left for work about 5am. As usual, I stopped at Hardees and got breakfast for everyone at Compressed Air Technologies. Then at 10:51am I got a call from Diana. She was hysterical and crying so I tried to calm her down, but I couldn't understand what was happening. She definitely sounded drunk because of her slurred speech. We talked for 13 minutes and I finally ended up calling her back on my cell phone and talked for an additional 70 minutes. See discovery pages 211 and 214.

I would also like to point out that just prior to her calling me at work in Fargo, Diana called Brando (Baranco) in Milwaukee at his salon (414-407-2121) at 9:52am and then again on his home phone (414-384-8770) at 10:24am. Then immediately after she had an incoming call at 10:27am, apparently from Brando, where she talked to him for 17 minutes and lied to him stating that I had beat her up and I had left her (See Discovery Pg. 214, lines 116-118 and Pg. 1877). Brando corroborated this by stating that Diana was hysterical when she called him (Discovery Pgs. 1877-79). I find this interesting seeing that the reason that Diana claimed to have moved up to North Dakota was to flee Brando's abuse, yet he had her phone number to call her back and talk for 17 minutes? The question is why did she call him first?

(Compare this with Diana's statement to reporter Colleen Henry where Diana tells her that I am her "*knight in shining armor*" and that I "rescued her from a very abusive relationship with her former husband." See Discovery Pg. 778.)

So I believe that she murdered Tim Wicks in the morning hours between 8-10 a.m. on December 28, 2001 and immediately called Brando for some kind of

assistance or help. When he refused or maybe came up with some kind of a plan, she then called me.

**Now look at this:** Diana admitted that she called Brando after Tim was dead (Discovery Pg. 1878). She also admits the trigger that set her off which, I will address later, was Toni Klein. Then SA John Dalziel puts words in her mouth that Tim is alive at the house (Discovery Pg. 1879). However, she's already admitted twice that she called Brando after Tim was dead! So why spoon-feed her different facts? Especially when the physical evidence and supporting facts such as Josh coming down to eat breakfast and the cereal bowl in the photograph, phone records and her own confessions to numerous individuals including two attorneys and law enforcement proves her admission.

Now, check the autopsy (Discovery Pg. 841(G) and look at Tim's stomach contents which contained, "*720 cc of **extensively** digested tan liquid material, which appears to consist of small pieces of pale tan meat and tan liquid.*" Diana corroborates this in her statement (Discovery Pgs. 1825 & 1876). The tan liquid is also explained by the beer that she said we were drinking. So the last meal he had was the chicken dinner we ate on the evening of December 27<sup>th</sup> 2001. This would also explain the extensive digestion by the early morning hours on December 28<sup>th</sup>. So there's no way that the food in his stomach would have been digested that far along in just a couple of hours as Diana explained in her version of the events if he had been killed at 10:00 p.m. on December 28<sup>th</sup>. Plus, according to the physical evidence, and based on Diana's timeline, Tim then didn't eat all day Friday. If he had, there would have been more food stuffs identifiable in his stomach when the autopsy was performed. The physical evidence just doesn't fit.

The forensic evidence shows that Tim Wicks was murdered much earlier on the morning of December 28, 2001 while I was at work at Compressed Air Technologies, probably while he was getting ready to leave for Winnipeg.

The next piece of circumstantial evidence to look at is based on Diana's timeline. Why Josh is eating breakfast at 10:30 P.M., just a few hours after eating dinner, the time that Diana said Tim was killed? She told that to Sherry Starner (Discovery Pg. 1932, Paragraph 4) and is corroborated again by the crime scene photo of the cereal bowl on the dining room table. This proves that Diana's whole statement was a lie as to the time when the murder actually took place and her involvement in it.

So after that I didn't talk with her until 3:52pm on the 28<sup>th</sup> when she called me at work and then called my cell phone at 3:53pm and talked with me for 3 minutes. Then I believe that Toni Klein called me on my cell phone at 5:00pm and we made plans to meet that evening. Because of the earlier conversations with Diana I was truly avoiding going home. We had been arguing over Toni and her drinking because she had started up again after she was released from rehab. So I forced myself to stop and buy some alcohol and then went to see if I could locate Toni Klein to talk with her. I was upset. I also should note that I met with Toni on other occasions at the restaurant/bar in West Acres Mall after and during her shift at Zale's Jewelers. She too was having marital problems with her husband and there was an immediate connection between us so we began to see each other more often. This was still a purely platonic relationship though. We became good friends and enjoyed each other's company and conversation. And being new to Fargo I didn't know very many people outside of work that I could talk with.

So after I left Fargo, I arrived in Gardner about 10:20pm or so, and pulled into my drive way. All the lights were off in the house except for the light over the sink in the kitchen. I could see this as I passed the post office on the corner. So when I pulled into the drive way I noticed that Tim's black 2002 Chevrolet Cavalier was still at the house. I thought this was odd because he was supposed to leave for Winnipeg earlier that morning. I parked my Buick and

got out of the car. I went up to the back door, opened it and ascended the stairs to the laundry area. That's when I saw Tim's lifeless body lying on the kitchen floor with a small pool of blood (approx. 4-6 inches) under his head. To me, it looked as though he had fallen backward and possibly cracked his head open.

I kneeled down and shook him and listened for any breathing sounds and then checked for a carotid pulse. (Keep in mind that I am a trained EMT) When I found neither, I touched his cheek with the back of my hand and noticed that his skin temperature was cool to the touch. I also noted that the blood on the floor was clotted and dried, as was the blood on Tim's hair and glasses on the left side of his head. I also performed a quick cursory exam on Tim's head to feel where the blood was coming from and found an indentation on the lower back-left side of his skull.

But it was apparent by the lack of vitals, body temperature and the dried blood evidence that Tim's body had been there for an extended period of time and that he was in fact deceased. But I don't remember there being any rigor mortis present. I should also note that the kitchen floor was particularly cold because of the broken and separated basement wall right below it, which may have aided in the cooling of Tim's body temperature.

I then began to panic and went to find Diana. As I entered the dining room I turned on the lights and saw my small antique .32 caliber revolver lying on the dining room table along with a cereal bowl and an ashtray with cigarette butts in it. I didn't touch anything, but just ran up the stairs and found Diana in bed with Josh. I shook her awake and asked her what she did and why Tim was lying dead on the kitchen floor. I didn't say anything about him being shot. She got up and came down stairs. This was when she said that she was trying to tell me on the phone earlier that she killed him, but I then realized that I couldn't understand her because she has hysterical. She went and sat on the

sofa and I stood just stared at Tim's body through the doorway into the kitchen.

I then started pacing back and forth and I kept asking her what she did, and she calmly said "*Don't freak out on me now, there's a dead guy on my kitchen floor.*" Diana admitted in her statement here that I was having a panic attack (Discover Pg. 1880). She, however, was completely calm about the whole situation.<sup>3</sup> I then asked her what she was going to do. She then said that we had to get the body out of the kitchen before Josh came down stairs again. That didn't even register with me at the time that Josh had witnessed that scene earlier. It was only later when Josh talked with me that I realized what he had actually witnessed.

So at the time, my shoulder was still partially handicapped and immobilized from the surgery I had done a few weeks earlier so I couldn't do very much with the use of only one arm. (See Discovery Pg. 745) There was, however, a blue painting tarp out in the laundry area that Tim had used while he was painting. Diana came into the kitchen with the tarp and opened it up. I thought she was going to cover Tim up with it, but instead she started to spread it out on the floor next to him. She then told me to help her roll his body up and get him onto the tarp. I told her that I could only use one arm and she yelled, "*Then use it and help me!*" So I did. After Tim was rolled over onto the tarp, Diana wiped up the small circle of blood on the floor with a wet rag. We both then pulled the tarp down the back steps out the back door and out to the barn. I then carefully wrapped Tim up with the rest of the tarp and I went back into the house and began drinking heavily.

At this point I want it to be known and that it has been confirmed by the medical staff at the North Dakota State Penitentiary that I do in fact suffer from

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<sup>3</sup> Ibid Page 175.

Post-Traumatic Stress Disorder and am currently under treatment for it. I feel that this is important because at my 2014 October post-conviction hearing NDSP employee Christine Aman provided a sworn statement to the court denying that claim. However, psychiatric staff have since confirmed that I do have the disorder and am currently being prescribed medication and treatment for it. This disorder played a big part in my actions in this crime and because of my treatment, I can now be as honest as possible with everything that I am telling you about it.

That being said, my actions, from the time I found Tim Wicks dead at or about 10:20pm on December 28, 2001 until I was arrested in Lincoln, Nebraska on or about March 3, 2002, were guided mainly by a “fight or flight” response system.

From that point forward we didn’t stay at the house or eat there, so everything remained as it was. My flight response and paranoia was triggering and I had to get away from there. That’s when I started staying at hotels and motels, but Diana made sure she and Josh were with me everywhere I went.

I remember thinking that our whole plan was screwed up now that she killed Tim. Tim and I were just starting out as business partners and were fixing that house up. But I know that I had planned on repairing the basement wall that caved in, so we were going to excavate the earth out from the north side of the house. So I had paid someone to operate a backhoe for me because I didn’t then and still don’t know how to operate any kind of heavy equipment. And we brought a machine to the house to try to break ground, but the ground was frozen too deep for that size of the machine. Again, I clearly didn’t know what to order. But I remember that after he tested it, the operator said I needed a much larger unit to break through the frost line or I would have to wait until spring. But at this time I don’t know where the backhoe came from because

much of that information is just a blur. I just remember it coming to and being there at the house. I don't even remember it leaving.

You also have to understand that I was in complete denial as to what was going on with Diana. So I'm not even sure where she was during this time. But I remember calling Tonya Tonsfeldt from Century 21 Realty and telling her to put the house up for sale. Tonya then verified that the child's room appeared to be freshly painted (Discovery Pg. 1184). Again, I know that was an odd thing to do, but I wasn't thinking clearly. I was just trying to remove myself from that situation that Diana was pulling me into. The backhoe was a bizarre thing at the time, but it was **not** to try to bury Tim's body as Diana claimed.

So at this point I don't know if I went to work or if I didn't. My first response was to get away from Diana, but I didn't want to leave Josh with her for fear that she would also harm him. But Diana said that she wanted to get rid of Tim's body. I said "no." Diana corroborated this in her statement where she said, "*Most people are out partying and I'm out trying to find a place to get rid of a dead body...*" (Discovery Pg. 1890-91). She then said that she wanted to pull all of his teeth out with a plyer. I was so sickened by the idea and again said "no." I then said that I wanted to take him back to Wisconsin; to take him home for a proper funeral. Diana said no way, and that we were going to get rid of his body. I said no we weren't. This was the biggest conflict we were having. Of course, at the time I hadn't thought things through of how I was going to explain this when I got Tim back to Milwaukee, but I didn't commit the murder so that wasn't really my concern. Further, the PTSD was what was driving me towards what I felt was a safe zone. It's very difficult to explain how this works when you're not thinking rationally, but it's like autopilot.

So I can't remember if we had the boxes at the house from when we moved or if I went and bought them afterward, but I used two moving boxes to fashion a coffin. It was the closest respectful, non-sacrilegious thing that I could come up

with to transport him in. Again, because of the heightened PTSD response, I can't remember how or where I got the Ryder or U-Haul truck. I know Diana said that it was in Fargo by the porno shop, but I don't know where that is? (Discovery Pg. 1832). This is confusing because I know I rented a Ryder truck in Milwaukee to move to Fargo with. But I can only remember helping Diana put Tim Wick's body into a truck, into the makeshift coffin. It was at night and cold and Josh was there.

Here I must state for the record that I am taking the medication Prazosin HCL, which has been shown to reduce flashbacks and is clearly helping to block out traumatic memories of these events. But again, I only had use of one arm and one thing I do remember is being surprised at how strong Diana was when it came to lifting Tim's body in and out of the truck. That scared me as I too had worked with the mentally ill in the past and this was known as crazy-strength; when mentally ill patients feel no pain, but have super-strength like she had.

As far as transporting Tim's body and all the other details, I think I already told you about that in court in Fargo. The only things left that I can tell the investigators are about the two places where I believe Diane dismembered Tim during the night while Josh and I slept in the motels. One was in Minnesota and the other one for sure was in Iron Mountain, Michigan. Diana made sure he wasn't going back to Milwaukee. And that, I knew nothing about it until we arrived in Michigan at my house and I went into the back of the truck and saw what she had done. That was when I tried to load up some of my personal items. This is where another of Diana's lies is proven because she told investigators that she knew that the body was dismembered, but said that she never saw it again after it was put in the truck (Discovery page 1836). So how then did she know it was dismembered?

While investigators questioned Diana about the dismemberment they asked her if Tim's feet were cut off. She gave a definite answer of "No" twice. (Discover

page 1836) Again, if she never saw the body after it put into the truck, how would she have known that? Especially, when she pulled his body out of the truck torso first.

And once I saw that Tim had been partially dismembered I started to panic and hyperventilate. Diana quickly, but calmly said, *"Let's just get rid of his body somewhere."* So I don't even remember how we got to where his body was left, all I know is that my phobia of bridges took over when I came up to a bridge. Thinking back now, I can't believe that she even let me drive by the way I was panicking. And at one point I just stopped and Diana said, *"Get out of the truck."* I remember thinking that we were switching drivers like we usually did (See Discovery Pgs. 1778), but she opened the back of the truck instead and started pulling Tim's body out. She had the upper torso end and told me to grab his legs, again because I could only use one arm. She hurried over to the guard rail and tossed his body over it. I just let go when she did. I hugged Josh and he me because I could see that Diana was full of blood. The Michigan State Police identified a child's footprints at the crime scene where Tim's body was found, yet Diana lied to the investigators and said that at no time did Josh ever get out of the truck (Discovery page 1837 & 1919-20). This is something else to be noted. Josh saw everything.

We all got back into the truck and I think I probably closed my eyes as we crossed the bridge. I believe that we drove for several hours and the next thing I remember is that we were in Milwaukee. I just remember Josh hugging me because Diana was full of blood. He was afraid of her.

It's very hazy about what exactly happened in Milwaukee, only that the money that was taken from Tim Wicks' bank account for Diana to retain an attorney. She changed her mind and took most of the money and bought an RV saying that if she went to jail, Josh would have to go back to Brando and end up being molested again. After that I was driving aimlessly and have no idea how we got

to where we were. I only have some vivid memories of certain places that I will reiterate here.

I know that I kept telling Diana that she needed a lawyer and that was how we came to taking that money out of Tim's account. There was no plan to do that before this because everything that Tim and I were planning on doing depended on that money being there. I will explain later. But I gave her ten thousand dollars, I believe, to use as a retainer fee, but instead she bought the RV with it and said we were leaving. I was so mentally troubled after disposing of Tim's body that I just went along with whatever she said.

The next place I recall we were in the mountains in Kentucky and Josh told me that he loved me. We were fishing alone by a mountain lake. I asked why he loved me so much and he answered that I protected him. I asked from who? And he said, momma. I knew right then that he saw what had happened.

I felt like I was dead or dying mentally at that point and Josh could sense it. I didn't talk to anybody. That's why I never left the RV. I isolated myself from the world and Josh wanted to stay with me. That's also why he would go fishing with me. It was just us two. Father and son.

Now, judging from Diana's letters we traveled from Wisconsin, to Illinois, Indiana, Kentucky, Tennessee, Missouri, Iowa, and Kansas and back to Nebraska. I can only recall but bits and pieces of this. I remembered the mountain lake because Josh loved to go fishing with me there.

You also know that by the police reports I was using my real name in Nashville and thereafter. I didn't murder Tim, so I wasn't running from that. Going back to Wisconsin was what I was afraid of. But what would you do if you had to go to prison where a good number of the prisoners sentenced there were put there by you? It was also in Nashville that Diana admitted covering Josh's mouth as

not to alert the authorities to us (Discovery 1883). That was why we left Nashville in a hurry. I hadn't planned on leaving, in fact I had rent paid up for the entire month (Discovery Pg. 770). It was Diana that said we were leaving right then because of what happened with the people from North Dakota. So again, it was Diana that was running from the law and not me. Yet she lies in her statement at (Discovery Pg. 1853) and says that "she can't take it anymore."

However, I was telling Diana all along that I wanted to turn myself in to the FBI and that's when I called my attorney Bridget Boyle in Milwaukee. I also tried getting an attorney for Diana at that time and she corroborates that in her statement (Discovery Pg. 1853). In that statement she lies about turning herself in because it was me that was talking to Bridgette Boyle about it and she can verify it. I told Bridgette to set it up with the FBI in Milwaukee. That's when I remember checking with Greyhound Bus for the cost of a ticket which was \$69.00, I think, from Des Moines, Iowa to Milwaukee. And that's when Diana said that if I tried to leave that she would kill me. We were in a K-Mart parking lot in Des Moines where I used the payphone to call Grey Hound Bus. She even admitted that I said we should turn ourselves in in her statement (Discovery Pg. 1853). She also admitted that she told Bridgette Boyle that she killed Tim Wicks (Discovery Pg. 1854). The question I have is can't Bridgette Boyle now talk about this conversation seeing that Diana is dead? I will waive attorney/client for my end of the conversation to prove what I said.

Also in that K-Mart parking lot was an unmarked police car watching the traffic go by on the thoroughfare. When I looked over at him and then looked back at Diana, she was staring straight at me and said, "*Don't even think about it; I'll kill you right now.*" And given the circumstances I believed her.

She said to get into the RV and directed me to drive. We headed out on some back road and it seemed like we were driving in circles because I didn't know

where we were anymore. I asked her where we were going and she said Colorado. I asked why? And all she would say is that we were going to Colorado. She lied in her statement and said that we were going to Canada or Mexico, but her plan all along was to go to Colorado. My original plan though was to go to Mexico to get away from her.

However, it was when she sold Tim's drum set out in Kansas that I knew that she was planning on killing me. I remember telling her in Nashville that I could find a job playing somewhere and make some money with it. She just kind of nodded in agreement. She also admitted that I had planned on working as a musician to make money, but lied to investigators and said that I was going to use an alias name when it was clear that in Nashville I was not hiding from the law, only she was (Discovery Pg. 1851 and 1883).

Then the closer we got to Colorado things started to change. And after the incident with the police in Des Moines in was clear that she was in control. So she said we had to sell the drum set because it was evidence. And I knew she was going to kill of me next. It should also be noted that she lied to the investigators as to where she sold the drum set. (Discovery Pg. 1851-52). The question is why? Notice that she knew exactly how much she sold them for, but not where?

But as I said, it seemed like we were driving in circles and somehow we ended up in Lincoln, Nebraska. That was where I had my one and only chance to notify law enforcement without Diane knowing about it. I walked into a Walmart store that used facial recognition and purchased something and scanned a credit card that I knew was hot. I had cash and that I could have paid for the purchase with, but I used that card specifically to alert law enforcement. Proof of this is that you can check how much money I had on my person when we were booked into the Lancaster County jail. I didn't have to use that credit card. I did it to save mine and Josh's lives. And I knew the

credit cards were being watched by the FBI because of the telegrams I sent with it. John Dalziel can verify that. He even made a comment to me that he liked the way I did that testing the card.

Within minutes the local police and FBI came into the campground and surrounded the RV. Diane looked at me and asked, *“Do you think we can take them?”* My response was, *“You’re on your own. I’m giving up and going out there so they don’t shoot in here and someone ends up getting killed”* and I opened the RV door and stepped out with my hands raised in the air. I then told the police not to shoot into the RV because there was a child in there (Discovery Pg. 1856). Diana refused to come out and finally the police dragged her out through the door and took her down. She then refused to give consent to search the RV after I told the FBI to search it.

Now, I am willing to submit to a polygraph test to anything that I have told you here. In fact, I will go one step further. I will submit to a sodium pentothal interview and will answer questions about this. I’m not sure how I’ll react with having PTSD, but it will be the truth regardless. But that’s how honest I am being here with this. All of this is the truth.

Next, the closest truthful statement that Diana ever made was to witness/inmate Sherry Annette Starner in the Lancaster County Jail (Discovery pages 1931-34). She had the weapon wrong, but almost everything else was spot on. For instance, in paragraph 4 she mentioned Diana pouring Josh a bowl of cereal when he came down stairs. Look at the crime scene photos of the dining room. There is a picture of the table with a partially eaten bowl of cereal on it.

When I came into the house that night and saw Tim dead on the floor, the first two things I looked at were the gun and the bowl of cereal on the table. I was sickened then and still am now to think that Josh, at four years old, sat there

eating breakfast while looking at a dead body in a pool of blood on the kitchen floor through the doorway. And Diana let him. She told Sherry Starner this and there is physical evidence to support. The thing to keep in mind here is that the bowl just sat there all day long from the morning until after ten o'clock at night. That goes to show Diana's state of mind at the time. She was a clean freak. But after killing Tim, she was like a completely different person; one in a state of confused shock.

That statement about the rape is exactly what Diana originally told me. And like I said, she also said that Tim molested Josh too, but I know that was to get me to react. Of course, that would have completed her plan.

The next statement where you can tell Diana was clearly bragging about her gruesome deeds was when she spoke with Cheryl Bauer, another inmate in the Milwaukee County Jail (Discovery Pgs. 812-15). At this point Diana twisted many truths pointing the blame at me, but other than that, a lot of the information is correct right down to Diana calling us modern day Bonnie and Clyde's.

Cheryl was absolutely correct that Diana did do all the planning and decision making and that I refused to listen to her.

Next, look at the Michigan State Police Laboratory report (Discovery page 1007). This of course shows the rare spermatozoa that found on Tim's penis. But look higher up the page to item #L-7 "A small piece of toilet paper tissue (folded and tucked together) recovered from victim's penis." This is important!

Now look back at Sherry Starner's statement on Discovery page 780(b) paragraph 3 where she quotes Diana saying that after Tim raped her, he went upstairs to take a shower. And we also have to consider that maybe it was sex made to look like rape, but something didn't go right.

(Personally, I think Tim was going to come to Fargo and tell me what was going on and Diana stopped him.)

So, hypothetically let's say that Tim and Diana did have sexual intercourse of some sort. Afterward Tim gets dressed and then decides to take a shower. Any adult male would know that after ejaculation there's going to be seminal fluid in the urethra that through gravity assist is going to leak out. That would probably explain why Tim had a folded piece of toilet tissue by the head of his penis. I know because I witnessed it there. This also explains the spermatozoa found on him by investigators. The shower also explains the absence of Diana's DNA on Tim, but it may have been on the clothes that she so adamantly wanted to get rid of.

The only other option here is that Tim masturbated at some point, but then the questions are what got him sexually excited and when? But either way, something did happen that caused Tim to ejaculate and there is physical evidence to prove it. But what happened? Oral sex, maybe?

I also believe that this was the reason that Diana wanted to get rid of the clothes Tim was wearing right away. Not the other clothes that he brought with him up to Gardner, just the one's he was wearing. I believe this was because there was some type of trace evidence on them that she wanted destroyed.

Diana also twice mentioned the washing machine and getting rid of evidence to Sherry Starner (Discovery Pg. 1848 and 1932-33). But taken together they could tell a different story. She may have washed away whatever evidence there was, especially if there was some type of sexual encounter. I found it strange though that she told investigators that I washed a comforter that Tim slept on (Discovery Pg. 1848) when I never once even used the washer and dryer after I bought them. Diana did all the laundry. Because of wearing suits to work every

day I became accustomed to having a laundry service do all my whites, starching and dry-cleaning. So for me to use a washing machine would be an absolute rarity in any case. And don't forget, my family operated a laundromat, so any other clothes I normally would need to do I would have had washed there. I only bought the washer and dryer for Diana and the kids. I did cook fairly often though because I'm a way better chef than she was, but I never did any of the wash. So again, something probably happened on that comforter on the couch where Tim was sleeping, which is why she washed it right away.

There was also truth in paragraph 9 of Sherry Starner's statement where Diana told her that she was raped as a child. This was corroborated by Ray Fruge's statement to the FBI (Discovery Pg.1592-95) and clearly goes to motive for the murder.

Another important piece of Sherry Starner's statement is found in paragraph 12 where she said that Diana saw an unmarked police car go by and thought her time was up. That didn't happen at the campground in Lincoln, Nebraska, but in Des Moines, Iowa at the K-Mart where I explained that she threatened to kill me. That was where an unmarked police car was close to us and I was going to alert him.

So you see, Diana lied to everyone she talked to and just twisted the truth in various forms to fit whatever narrative she was telling. And this is obvious in every single statement she made. It's just amazing how Sherry knew all these details and just how accurate they were.

After Diana killed Tim, she said that she wanted to pull all of his teeth out with a pair of pliers and then get rid of the body. I about puked at the thought. Again I said, "No!" and that I was taking him back home to Milwaukee and not disposing of his body. But isn't ironic that Diana was thinking like a 60's mobster to remove his teeth and fingerprints so the body couldn't be readily

identified, and the way he was identified was through dental records? Compare this to serial killer Richard Cottingham from the late 1970's where the women "*he mutilated, he did so not for pleasure, but to destroy their identities—severing their heads and hands not as souvenirs, but to impede the investigators.*"<sup>4</sup>

My thoughts were that with 200 lbs. of DNA who cares about fingerprints and dental records, especially when Tim had a half-dozen relatives alive in Milwaukee and Jim Uline, a second cousin, right in Fargo who's DNA could be readily matched. Yet, she says in her statement, "*[T]he only way they would identify the body was if they found his fingerprints or his dental records*" Discovery Pg. 1833.) And then she told Cheryl Bauer that you can't get fingerprints off a frozen body? (Discovery Pg. 813). This is what she was thinking, not me. This is an amateur criminal at work; someone unschooled in any of the sciences.

Now there is yet another piece of evidence that slipped by the investigators. Diana stated to them, "*If you shoot someone in the head, you'd expect them not to be breathing. I mean, that was just always my thought*" (Discovery Pg. 1880).

First, why would she be always thinking about that, and then secondly, how did she know that he was shot in the back of the head? I didn't. I thought he just fell backwards and cracked his head open by the fall according to the small amount of blood that was present. I didn't see a bullet hole. I felt it when I did a cursory examination on his head when I first was checking for injuries. There's no way Diana could have known that unless she was the one who shot him. And look at the angle and trajectory of the bullet path in the crime scene photos. The bullet travelled on an upward path, indicating that the shooter was shorter than Tim. I am just shy of 6'3, and Tim was shorter than me. So if I were the shooter the bullet would have been on a downward trajectory path.

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<sup>4</sup> Ibid Page 34.

Further, the weapon that he was killed with was tiny and way too small for my hands. I never could nor would chance shooting an antique like that. It was unsafe to use. And given the chance, I will prove to investigators that this gun was so unsafe that I would never have shot it by taking them to where Diana disposed of it. I know where the gun is right now and will assist law enforcement in recovering it.

This gun is of evidentiary value and can prove that it should have been nothing more than a wall hanger. Only someone who didn't know anything about gun safety and manufacturing would have discharged it. I was taught by my father from the time that I was a child to never, ever try to shoot that gun because it would probably blow up in my hands. My Dad bought that .32 when he was young so he knew it well. And it was so worn that it was unsafe to shoot. That gun was also made for a woman or someone with very small hands like my dad had.

Even my Smith and Wesson 9mm. service weapon had to have special grips put on it because my hands are so large. I couldn't shoot it properly on the firing range with standard grips. My former detective sergeant at the Monroe County Sheriff's Department is who set that gun up for me and could verify this.

Also note that Diana claimed, "*I've never really been like...really m--...into guns,*" (Discovery page 1866) yet she correctly identified the murder weapon as a revolver (Discovery page 1825). And she also knew the difference between ammunition, correctly identifying shotgun shells in an ammo box (Discovery page 1874).

Note too that when the R.V was searched in Lincoln, Nebraska that thirteen rounds of .22 ammunition were found in it (Discovery page 661). This is just

the correct number for a clip refill for a small semi-auto handgun, exactly the right amount for the gun that I told investigators that Diana had with her when we were traveling. The same gun that she pulled on me when she said that if I tried to leave that she would kill me, and I mistakenly thought was a .25 caliber. This was the first time I saw the pistol. Notice that Diana quickly tried to say that those rounds of ammo were mine when I didn't even have a firearm anywhere near that R.V.

And now I'll show you her serial killer mentor who she no doubt emulated in her homicidal endeavor. One that Diana very likely studied or followed while she lived in Florida in the 1990'S (Discovery Pg. 1785B).

### SERIAL KILLER AILEEN WUORNOS

#### The Florida Highway Killer

First, keep in mind Aileen Wuonos' famous last words before her execution on October 9, 2002: "*I'd just like to say I'm sailing with the Rock and I'll be back like Independence Day with Jesus, June 6, like the movie, big mothership and all. I'll be back.*"<sup>5</sup>

But the most important piece of evidence here comes from the same book where the author states, "*Both Ed and Jay Watts recall that Aileen also had a fantasy about being like Bonnie and Clyde, admiring the bandits' violent migratory careers. She was fascinated with outlaws and bikers and the violent subculture that enveloped them.*"<sup>6</sup>

The next most important thing I would like to point out is Diana's fascination with serial killers. First, the obvious *Debra Strand* at the campgrounds, but look at how many times she compared her and I to "*Bonnie and Clyde.*" She

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<sup>5</sup> Ibid. Pg. 178.

<sup>6</sup> Ibid Page 147.

told this to numerous inmates in jail and in several letters to me (Discovery Pgs. 780c or 1933 and 1641). So you have to ask yourself, “Who fantasizes about being a serial killer?” Then recently, during my investigation I discovered that Serial Killer Aileen Wuornos did. In fact, her fantasy was to be “*like Bonnie and Clyde, admiring the bandits’ violent migratory careers.*”<sup>7</sup> So it’s clear that Diana compared herself to two different women, one actual and one fiction.

And like Bonnie Parker, a serial killer who was on the run from the law, I contend that Diana was a true sociopath with a psychopathic yearning for serial murder of men. It’s also important to note that the movie “*Devil in the Flesh*” was released in 1997, right after Aileen Wuornos’s killing spree ended and she too used the same defense in court that when men had attempted to rape her, she shot and killed them. This is also where Diana got the idea for that defense, not from me. It is very interesting that in one of Diana’s letters to me she muses about a “*movie like good vs. evil or something*” and says that the girl she’s referencing is a “*Miracle in the Flesh*” (Discovery Pg. 1734). Coincidence? I don’t think so. Especially when just a few sentences prior to this she’s referencing “Satan’s workers.”

But it was Aileen Wuornos that came up with the idea of self-defense after being raped.<sup>8</sup> But Diana talked about it with her lawyer in Nebraska and then abandoned the idea. And it was that same lawyer in Nebraska who told her that her timeline was no good and that she could end up getting the death penalty (Discovery Pg. 1652-53). So you can see that I didn’t coach her in any way. I only attempted to help her after the fact and referred her to Bridgette Boyle for legal counsel (Discovery Pg. 1642). Again, this was what the money was for.

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<sup>7</sup>

<sup>8</sup> Ibid Page 159.

## WHAT TRIGGERED DIANA ON THE DAY OF THE KILLING?

As I stated earlier, Diana hated Tim and saw him as a threat back in Milwaukee and now he was at our home in Gardner. I still say that the reason she rode up to North Dakota with him in his car was that she needed to convince herself that he was going to rape her and thus deserved to die. Just like serial killer Aileen Wuornos, it is unlikely that she made up the motive as an afterthought—she was probably deluding herself as she went along—looking hopefully for some sign that Tim, or her victim harbored some sinister intent and therefore deserved to die. But the trigger that set her off that day was Toni Klein.

To begin though, and I don't know why, but I seemed to be Diana's first significant relationship that appeared be functional on some normal level. But it might have also been the elixir that set this whole murder into motion.

Because we know that “*fantasies, facilitators, and triggers are the three pillars of serial murder,*”<sup>9</sup> there is probably little doubt that Diana fantasized about revenge against the males who sexually abused her throughout her life. And truthfully, one does not need a psychology degree to figure out what kind of fantasies she or any victim might have who was sexually abused from age nine the way Diana was.

These facilitators are the “*lubricants*”—*pornography, drugs alcohol—which enhance the fantasy and lower the inhibitions to realize the fantasy.*”<sup>10</sup> First, notice in Diana's statement to the investigators that she immediately identified a location in Fargo not being far from a porn shop (Discovery Page 1832-33). To

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<sup>9</sup> Ibid Page 176.

<sup>10</sup> Ibid Page 176.

know this information off-hand and given the cumulative history, is evidence to her psychopathy.

Next, Diana was drinking when she killed Tim (although Diana was almost always drinking when she did anything). *But the trigger is usually a series or combination of pressures in daily life that law enforcement call “stressors,” which at some point drive the predisposed individual to crack and act upon their fantasy.*<sup>11</sup> This is where my relationship with Diana could easily have served as the stressor for the murder.

When we were in Milwaukee I saved her from an abusive relationship with Brando who beat her regularly. That’s why she told Colleen Henry from Channel 12 News in Milwaukee that I was her “*Knight in Shining Armor*” (Discovery page 778).

Then Tim Wicks, who she apparently identified as a homosexual, comes into my business to get his taxes done and he and I end up going out to music clubs together. We spent time drinking alcohol and doing cocaine together, listening to live music and reminiscing about old times. Tim and I also were talking about what I saw up in Fargo when I spent an eight-hour layover there. We also talked about Canada and the music scene up there. Diana saw this as a real threat and she said it to me. She did not want me hanging around with Tim or going out to bars and drinking with him. But there it probably is. Why Diana committed murder shortly thereafter and not before. This falls under what’s termed, “homosexual overkill,” which fits with Diana’s admitted bisexuality and apparent hatred toward other homosexual individuals, particularly men. In this case when he threatened her marriage and security.

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<sup>11</sup> Ibid Page 176.

Even before we were married, Diana saw me as her husband and she was the wife who craved security. But it was Diana who took on miserable little jobs like working at the laundry service in Fargo to guarantee a minimum flow of income while she relentlessly nagged me about my free-spirited lifestyle. This was odd to me, especially when she was such an accomplished hairdresser. But all this did was threaten the only long-term intimate relationship that she had ever known and managed to form in her entire life; the only loving family she felt she had. It just didn't make any sense to me.

This story parallels like a Greek tragedy of epic proportion: After taking a life of abuse and rejection, it was only when Diana finally found true love that she became a killing monster. Diana killed in rage for love and in the end that same love would betray and kill her. And ironically, Diana died on October 13<sup>th</sup> at age 46 (Ex. 1), while her mentor Aileen Wuornos died on October 9<sup>th</sup> at age 46<sup>12</sup>. (Just another bit of numerology. Diana died on October 13<sup>th</sup>, 2012, almost exactly six years and six months to the day since she testified against me in 2006. That calculates to "666" or the mark of the beast. And if you recall, I did say in court at sentencing that she was a "Lamia," or female demon and that she would burn in hell for all the lies she voiced against me. So maybe the Devil did come and claim his prize after all? Just a thought.) And even more ironically just three months after she got off probation.

But, back in Milwaukee the problem came up in Monroe County, Wisconsin when trouble from the past caught up with me. Tim and I already had plans on going into business together and he did not want to see me going to prison. So we devised a plan to just leave and start over somewhere else. And Fargo sounded good. As I said, Tim and I were both self-employed so we could find work wherever we went. I just needed an identity to use for a brief time until I could establish a new one. This was so I could work in accounting and have a

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<sup>12</sup> Ibid Page 178.

place to live and something to eat. Tim said, "No problem" and stepped up and offered to help his friend of many years who was in trouble.

This is why we stayed in constant contact as evidenced by the phone records. It is also why I purchased the identity changing books from Paladin Press on November 19<sup>th</sup>, 2001 (Discovery page 488). So anyone can see that Diana's story about Tim finding out about some fraudulent credit card charge was another fabrication in her plan to kill Tim and set me up (Discovery Pgs. 1802 & 1810). The only credit card account that was active was Zales Jewelers, and if there was any fraud detected, how would I have been able to keep using it? And if that were the case don't you think that they would have alerted Tim as to where it was being used, like say in Fargo, North Dakota? The whole credit card story concocted by Diana was a lie from the beginning and now the other evidence shows us why she did it.

But take note how Diana evaded the whole subject of Tim knowing about the house when she was questioned by SA John Dalziel:

**Dalziel:** *"What, what what is your conversation about what Timothy's gonna do? Didn't you ask him (Gaede) what's Tim gonna do when he gets here and realize that everything is in, in his name?"*

**Fruge:** *"I really tried not to ask too many questions at that time. I was too scared of what, what was gonna happen."*

Scared? Yet if this were true, she had ample time in over 1400 miles of travel to leave or *escape* if she felt threatened, but she didn't. She could have alerted Tim at any time if this were true, but she didn't. She could have notified law enforcement at any time, but she didn't. Why? Because she was the one with the plan to murder Tim Wicks.

Now sure, Tim was going to travel up to Winnipeg to check out the music scene, but he was ultimately planning on moving up to North Dakota if everything looked good and was in motion. Why do you think he told his postal carrier that he was “taking off for 1-2 weeks or longer” and wasn’t sure if he should place his mail on hold or make a change of address (Discovery page 558)? And that change of address was going to be to Gardner to his new house. The problem was at the time neither of us knew what the actual address was in Gardner yet to even have any mail sent there.

But when Diana heard about the change of address Tim was going to put in, that was the final “straw” or trigger that set her off. I had made plans with Tim and she wasn’t having it. She said that the house in Gardner was her home and that Tim was not going to get it. That’s why I was looking at the other houses in Southheart and Enderlin. This is also why I bought her the heart-shaped diamond ring and the Tanzanite necklace at Zales Jewelers. It was to keep her happy. But apparently it didn’t work.

## **PSYCHOLOGICAL PROFILE**

*Psychopathology is defined as manifestations of mental disorders. Distinguishing psychopathology from normality is usually easy, although on occasion it can be difficult.<sup>13</sup>*

*While for many serial killers, death is only a conclusion to their fantasy or a function of it, females kill to kill. One frequent reason given by male serial killers as to why they did not kill a particular victim is because they learned something about them. This triggers a personalization of the victim in the offender’s*

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<sup>13</sup> Essential Psychopathology & Its Treatments; Jerrod S. Maxmen, Nicholas G. Ward, and Marck Kingus: W.W. Norton & Company ©2009.

*perception and misdirects their killing desire. This phenomenon reflects the proclivity of male serial killer to target strangers whom they objectify, imposing their own lethal fantasy upon them. Yet if they come to somehow see the victim for who they really are, the fantasy can be interrupted.*<sup>14</sup>

So as anyone can see that based on this theory alone I would have had absolutely no reason to want to kill Tim. He was my close friend and if I did, why bring him up to North Dakota to do it? Why not do in Wisconsin in my own backyard, my comfort zone, where I grew up and was overly familiar with every place in the entire state? Further, then risk taking him all the way back there? If this isn't evidence that I didn't plan this, than what is? This also removes the element of premeditation. Who in the world would plan to bring someone across three states, murder them, and then take them back across the same three states? Especially in a truck that I knew would be subject to D.O.T. inspections and scale crossings. If I was guilty, would I expose myself like that? This just ludicrous.

But now, look at the typical female serial killer. First, it is probable that the female killer is already intimately familiar with her victim just as Diana was with Tim. She is working, living, or sleeping with him; she already knows who he really is—there is no victim fantasy. It's the wolf stalking its prey, looking for the right time to attack.

Next, Tim, like the sheep, didn't even realize that he was in danger as Diana used the cover of the established killer victim relationship, (a wolf in sheep's clothing) within which to kill him. Thus, the attack occurred in an accepted social relationship while the means was surreptitious; a blitz attack. Inside of our home the murder was invisible and look how she got away with it: In a town of seventy-five residents, on a cold winter morning, no one heard the

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<sup>14</sup> Female Serial Killers: How and Why Women Become Monsters, by Peter Vronsky, Page 35

sound of a small caliber gunshot, only the crackling of the burning logs in their fireplaces. And a serial killer was born.

And just like a typical female serial killer, Diana did not bother with torture or rituals, but went straight for the kill, therefore there was no time for unsuspecting Tim to respond, even if he had realized that he was in danger.

Now, I want to list the following categories that I feel that Diana qualifies for and I will give evidence to support it:

**Hedonist-comfort Killer** – is one who murders simply to profit materially from the victim's death. The hedonist-comfort killer is, of course, the category with which we have most frequently in the past associated female serial killers. The stereotypical female serial killer remains one that uses her feminine charm to get close to her male victim, gain control of his property, and then murder him moving on to the next victim—Black Widow.

**Anger-Retalatory Killer** – is one who has a need to avenge, or get even with or retaliate against a female, or her substitute, who somehow offended the killer in her perception.

**Explosive Avenger Killer** – is one who is driven to murder a particular type of victim reminding them of past abusers in their life.

**Cult Disciple Killer** – is one who is led by a charismatic leader just as Diana clearly followed Aileen Wournos.

**Covertly Hostile Killer** – is one who suppresses rage and expresses it secretly, often targeting their own children or other vulnerable victims in a killing rage.

**Amoral** offenders commit premeditated murders with no remorse for personal or material gain. They could be described as psychopaths or sociopaths—a personality disorder rather than a mental illness. They are aware of the acts they commit but do not care. Most serial killers, female or male, can be diagnosed as sociopaths, or as suffering from Antisocial Personality Disorder.

**Beta Females** – are ones who are provoked to kill by emotions such as jealousy and hatred or who provoke to some degree their own victimization, resulting in an impulsive murder.

All these different categories can exclude or overlap each other. There is no single one-size-fits-all definition for a serial killer, nor is there a single universal system of categorizing serial killers, male or female. And now as I will demonstrate, every one of these categories applies to Diana.

But first, we have to look at what triggered her to commit the murder. Aside from Tim threatening to take the house from her, an even greater threat was Toni Klein.

Just look at the numerous times she mentioned Toni in her letters to me, venting her jealous anger that I was even remotely interested in another female. Then look at where investigators questioned Diana about our relationship (Discovery pgs. 1805-06). Diana was so enraged that she couldn't even remember Toni Klein's name just saying, "*then he had another situation with a woman who just thought he was God's, you know, gift to women and she was real, real, real on to him even though she was married also.*"

This is what triggered Diana to murder Tim Wicks. However, there is one piece of information that isn't in the police reports, but I do believe that I told it to Justin Yagow at work at Compressed Air Technologies. And that is that Diana was so furious over Toni that she told me that she was going to go to West

Acres Mall and wait for her to appear in the parking lot and run her down and kill her. Diana also said that she was going to find a way to kill Toni's kids. (And you can ask me about any of this under a polygraph exam! This is the absolute truth!)

That was when I realized that I had made a mistake bringing her up here or even getting involved with her. I mean, I've had jealous girlfriends before, but none that would murder the other girl or especially her children. This was why I was trying to get away from Diana. This was also why I was buying her the jewelry gifts to try to appease or make her happy. And Tim knew about all of this. But it was just by chance that I met Toni in the process at the bar in West Acres one day when I went there for lunch. Then I found out that she was the manager at Zales. I didn't meet her at Zales first, but we hit it off. But after what Diana said about killing her and I then when found out that she had went to West Acres to confront Toni (Discovery page 30), I started spending more time around her to make sure nothing was going to happen to Toni or her kids. Like I said though, I believe that I talked about this with Justin at work. I vaguely remember telling him that Diana was crazy and threatened Toni.

In this case with Toni Klein, Diana demonstrated traits of the both the **Beta** and **Anger-Retaliatory** killer. With the willingness to kill Toni's children and probably Josh too as not to let Brando get custody of him shows traits of the **Covertly Hostile Killer**.

With the murder of Tim Wicks she demonstrated traits of the **Hedonistic-comfort** the **Explosive Avenger Killers**. Here Diana obviously used her vampire-like feminine charm to get close to him and probably lured Tim into sex while focusing on cashing in on his death. As I mentioned earlier, she kept the rare Tanzanite necklace as a trophy. This qualifies her as the **Amoral Killer**.

It too was apparent that Hales Corners Police Department detective Kent Schoonover fell prey to her seductress charms at some point also. Look at how guarded he was in his report dated November, 6<sup>th</sup> 2003:

*(She sat on the couch on the south side of the living room I sat on the padded chair type thing on the west side of the living room about 6 feet away from her. We had no physical contact as shaking hands or sitting on the same piece of furniture at all" (Discovery pgs. 805-07)."*

But this is what "Lamia" or "Succubus" do. They are demonic vampires who through their dark powers murder all who fall into their mesmerizing gaze. This was Diana for sure. Compare this to the letter she wrote to her girlfriend Trina Thomas (Discovery 1606-08). She used her beauty and charm to attract her prey and then to profit from them. And it infuriated her that she thought that I had that same magical power over women, especially with Toni Klein. *"Then he had another situation with a woman who just thought he was God's, you know, gift to women and she was real, real, real on to him even though she was married also."* Trigger? Oh yes, this was the trigger that started her murdering and Tim just happened to be in the path of her storm.

So, as her (first?) victim she exacts her revenge on a "faggot"; one, that in her eyes is no different than the "hairdressing faggot" (Discovery Pg. 1725) that for the past few years beat her repeatedly. One who she tried to kill once with a butcher's knife, but failed. But this one poses an even greater threat than the prior: he's coming in between her and her new husband to take "her" new home away. Hmm, no problem. This budding serial killer can use this murder as a trial run to get things rolling until she can get at the blonde bitch that she really wants: The one who's trying to steal *away* her new husband! This was the motive and the fuel stoking the fire.

Lastly, she exhibited traits of the **Cult Disciple Killer**. This was evident with her following the traits of many different serial killers, but especially Aileen Wuornos. Diana copying Aileen's Number One fantasy of being just like "*Bonnie and Clyde*" is just one major point. Second, she originally carbon copied Aileen's defense of claiming she was raped and saying that that was the reason she committed the murder. Diana identified with Aileen because they both came from broken homes; both hated their fathers; both were molested and raped at young ages; they both sold their bodies for cigarettes and drugs; and with both of them their major drug of choice was beer.

The gun that Aileen committed all of her murders with was a .22 caliber handgun, the same caliber that Diana obtained from some unknown source and had on her person, which the extra rounds in the RV were for (Discovery page 661). Both Diana and Aileen were bisexual. Both women had sex with hundreds of men and women. And Diana and Aileen were both extremely jealous and possessive of their spouses. Diana also lived in Florida during the time of Aileen Wuornos' murder trial (Discovery page 1785B) and apparently fell in love as a cult follower.

It's clear that Diana identified with Aileen and then when she saw the movie "*Devil in the Flesh*" she adopted the alternate identity or personality of "*Debra Strand*" (Discovery pgs. 1120-23, 1416-17). There she fell into the character role of a fictitious serial killer who again, like Aileen Wuornos, kills her victims after claiming that they raped her. Same—Same. And all of this is highly plausible because she has already admitted to taking on the identity of "*Bonnie Parker*" in the "*Bonnie and Clyde*" duo. So it's not a far stretch to connect her from a migratory violent bank robbing bandit to a murderer on the run who exacted revenge on those who in your life you envision as tormenters and abusers. Especially when you have a Hollywood script to follow as a blueprint when it's laid out for you.

Another possible motive for Diana murdering Tim was that this was a hate crime. A few things that she said jump out of her statements, like calling one gentleman “*another hairdressing faggot*” (Discovery Pg. 1725). But that’s just icing on the cake.

Then she jumped on me for something I apparently said in a letter about homosexuality. And then you can see her hatred toward pedophiles in the same letter (Discovery Pgs.1729-29B).

But the letter that really speaks her true feelings was when Diana said that if any of the guys in here were in prison for sexual assault on their own kids, she wouldn’t have a lot of mercy for them. She also confirms that she was raped as a child and says that there is nothing that she can do about it (Discovery Pgs.1756B-57). Now put that together with the letter where she said that staff at the jail asked her if she was sure she wasn’t going to hurt herself? Diana answered, “*No, I just think about hurting other people that hurt me*” (Discovery Pg. 1644B). As you can see, Diana decided as a defense mechanism to hurt others long before they hurt her. And that is exactly what Aileen Wuornos did!

Then Diana talked about being picked on in the jail and inmates teasing her with jokes about dismembering a body (Discovery Pg. 1646). And she was quick to say that those girls were lucky that she had a sense of humor.

Now, look at Diana’s visit with the Catholic priest (Discovery Pgs. 1668B-69). She said, “*I confessed my sins, yes, the big one!*” ...”*I will tell you that it was extremely difficult to confess that to a human being, even if he is of the cloth...*” So what could she have possibly been confessing that was so shocking to the priest? We see murder every day on T.V. so I doubt that it would have been that. But now confessing the dismemberment, or the defiling of the Lord’s

Temple would be shocking to even the most hardened criminals, let alone a priest.

So what's the common denominator here? Violence is.

*She was socialized to modulate her own emotions through detachment and to control her environment through aggression and violence. In spite of the abuse she endured, [Diana] learned to identify with the aggressor. The world was made of two kinds of people: victims and offenders. She chose the latter category. Her rigid internal working model of herself and the world she inhabited did not allow for anything in between. She no longer would be the victim.*<sup>15</sup>

One other thing that Diana did to cover her tracks was her attempt to use Detective Kent Schoonover to accomplish it. She made a point of telling him that she was going to return the heart-shaped diamond ring that I bought for her to Zales Jewelers. However, she made no such offer to return the rare Tanzanite necklace that I had custom made for her. But isn't it just like a serial killer to keep a trophy or memento from their victim(s)? And technically it was Tim that bought it for her, wasn't it? (Discover Pages 659-60).

This is conclusive evidence that Diana saw herself as a serial killer when she murdered Tim Wicks and when she was planning to kill Toni Klein. And if this doesn't qualify as newly discovered evidence, I don't know what does?

Recently, after I viewed the movie "*Devil in the Flesh*" I began investigating female serial killers. Then just a couple of months ago in March of 2021, I came across the information about Aileen Wuornos and found out about the "*Bonnie and Clyde*" connection. Then it all made sense. Diana was following Aileen's lead in avenging her abuse and when "*Devil in the Flesh*" came out, she had a script and character role to follow. This was murder made to order. And

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<sup>15</sup> Ibid Page 165. Emphasis added.

it was when she met me that she thought she found her partner in crime to complete the duo.

Then when I was very honest and open with her about my past, as you probably well know, and having spent time in prison and had affiliations with outlaw motorcycle clubs, I was the perfect candidate as a husband. She just needed to mold me into the partner she needed. And she almost did, except that I'm not a murderer, nor will I ever be one. I may enjoy the game of cat and mouse from time to time, I will admit that, but the mouse has to survive to play again tomorrow and not become the entree for today's dinner. Diana, on the other hand, goes straight for the kill. As I said, she would no longer be the victim with me standing behind her. I protected her and the kids so she could become Debra Strand, serial killer. And I saw that confidence in her eyes when she stood up to Brando and he was afraid to put his hands on her because of me. Right there she knew she won against the "*Hairdressing Faggot*." The game now had a whole new set of rules. The only problem was that Diana was the only one who knew them. But it was her game and we were all forced to play.

So here it is. The evidence, the real story and how we all fit into it. As I said, I will take a polygraph as to anything I've told you here. This is the absolute truth. Like I said, I will take the investigators to any and all places referenced here and show them exactly what I'm talking about. With help, I will also turn over the weapon that Tim was murdered with which will prove that (1) I couldn't have shot him, and (2) wouldn't have shot him with it.

There's probably a thousand other questions that you and the investigators will have for me, so fire away. I've given you everything. This is the truth and the truth doesn't waiver.

You also said that Diana is dead so that she couldn't defend anything that I'm saying here. But these are her own words I am using against her. Everything I

said here is based on her own statements and writings. That way she doesn't have to defend it because she already has—she initiated it when she spoke all these lies against me. There just wasn't any compelling evidence available at the time to expose what Diana's true agenda really was. Now there is. And not finding it before this was not for a lack of due diligence because this was like looking for a needle in a haystack when you didn't know the needle or the haystack existed. It was all by chance that I came across it and connected the dots.

So I filed a new post-conviction based on the PTSD diagnosis and this serial killer information. However, I am asking that you hold off on any type of response to the petition until after the investigator(s) look into what I've sent you. But please have the investigators contact me if there are any questions that I can help answer.

I've also sent you two copies of "*Female Serial Killers: How and Why Women Become Monsters*," by Peter Vronsky. One copy is for you and one is for the investigators at the Sheriff's Department. These are my gifts to you because the information inside is invaluable to a prosecutor and to law enforcement. I feel that with the way that society is changing, we are going to see way more women murderers coming forth and that book is a goldmine of information. Especially the psychological profile sections. I hope it finds a place on your bookshelf. DJG.

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) SS.

VERIFICATION

COUNTY OF BURLEIGH

)

Dennis James Gaede, being duly sworn, deposes and says that he is the defendant in the foregoing statement; that he has read the foregoing statement and knows the contents thereof and that the same is true of his own knowledge, except as to those matters stated therein upon information and belief and, as to such matters, he believes to be true.

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Dennis J. Gaede

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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Notary Public

My Commission Expires:

Cc: Cass County District Court

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STATE OF NORTH DAKOTA IN DISTRICT COURT  
 COUNTY OF CASS EAST CENTRAL JUDICIAL DISTRICT  
 STATE OF NORTH DAKOTA, ) 27  
 vs. ) Hearing  
 Plaintiff, )  
 )  
 DENNIS JAMES GAED, ) Case No. 09-2021-CV-01619  
 )  
 Defendant. )

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE STEVEN E MCCULLOUGH, DISTRICT JUDGE  
 Cass County Courthouse  
 South Fargo, North Dakota  
 November 19, 2021

A P P E A R A N C E S

FOR PLAINTIFF:  
 Birch Peterson Burdick, ESQUIRE  
 Attorney at Law  
 Cass County Courthouse  
 Fargo, ND 58108

FOR DEFENDANT:  
 Kyle R. Craig, ESQUIRE  
 Attorney at Law  
 Craig Law Firm, P.L.L.C.  
 1600 2nd Avenue, SW  
 Suite #30  
 Minot, ND 58701

RECORDED/TRANSCRIBED BY:  
 Deanna Hinchy  
 Electronic Court Recorder

Page 2

1 as well.  
 2 As indicated, this is the time set for the  
 3 evidentiary hearing in this matter. Mr. Gaede was convicted in  
 4 the underlying criminal offense in file 0905K2878. He filed an  
 5 initial application for post-conviction relief in file  
 6 0908C4458. He filed a second petition for post-conviction  
 7 relief in 09-2012-CV-345. He filed a third petition for post-  
 8 conviction relief in 09-2014-CV-1350.

9 This, then, would be his fourth petition for post-  
 10 conviction relief, not counting federal matters. And the basis  
 11 for the motion in this case is newly discovered -- or the  
 12 Petitioner in this case is newly discovered evidence,  
 13 particularly a diagnosis of post-traumatic stress disorder of  
 14 Dr. Madeline Free on 6/18 of 2019.

15 Mr. Craig, you're the Plaintiff in this matter, so  
 16 you may proceed first.

17 MR. CRAIG: I am so sorry, Your Honor, I was having  
 18 some audio issues there for the past minute or two. And I  
 19 could see the recording picking up and I missed the last maybe  
 20 50 seconds of what you said. I apologize, I was having some  
 21 technical issues.

22 THE COURT: I was just going through the procedural  
 23 history, noting the underlying case and the prior existence --  
 24 I didn't go into the details, but the existence of the prior  
 25 petitions for post-conviction relief. And then outlined that

1 (The before-entitled matter came on for hearing  
 2 before the Court, the Honorable Steven E McCullough, district  
 3 judge, presiding, commencing at 8:59 a.m. on November 19, 2021,  
 4 in the Cass County Courthouse in South Fargo, North Dakota.  
 5 Present were Birch P. Burdick of Fargo, North Dakota,  
 6 representing the plaintiff, State of North Dakota; and Kyle  
 7 Craig of Minot, North Dakota, representing the defendant,  
 8 Dennis James Gaede.)

9 THE COURT: Go ahead and call court to order, then.  
 10 This is the East Central Judicial District Court for the State  
 11 of North Dakota, County of Cass, Steven McCullough presiding.  
 12 The case we have on this morning is Dennis James  
 13 Gaede v. the State of North Dakota, 09-2021-CV-1619. This is  
 14 the time set for an evidentiary hearing, in a post-conviction  
 15 relief proceeding. The hearing is being conducted pursuant to  
 16 request of the parties, via Zoom. Mr. Burdick appears for the  
 17 State. Mr. Craig appears for the Plaintiff, Mr. Gaede. I see  
 18 Mr. Gaede has now signed on; we'll admit him. There's also  
 19 someone on the line who's name shows up as M. Free.

20 MR. BURDICK: May I explain that, Your Honor?  
 21 THE COURT: You may.  
 22 MR. BURDICK: M. Free is Dr. Madeline Free, the  
 23 psychologist who has evaluated Dennis Gaede for the last six,  
 24 seven years.  
 25 THE COURT: All right. Mr. Gaede is now on the line

1 Q And before I jump into the, I guess, nuts and bolts  
2 of your testimony, do you require any kind of order from the  
3 Court to disclose any protected medical information regarding  
4 Mr. Gaede?

5 A No. Not at this point.

6 Q Okay. So we'll just jump right into it then. I just  
7 received yesterday, a whole stack of records from your contacts  
8 with Mr. Gaede. And a question I have is, I see this diagnosis  
9 for a post-traumatic stress disorder appear -- I think it was

10 January 2018, does that sound correct?

11 A That ball park, yes.

12 Q Okay. So my question for you first is how did this  
13 diagnosis come about, because -- well, I'll take a step back.  
14 You've been evaluating Mr. Gaede for a number of years, is that  
15 right?

16 A Correct.

17 Q And when did that start?

18 A I don't know exactly. It could have been 2012 or  
19 something like that. I don't really recall. I was a full-time  
20 employee for the Department of Corrections for four or five  
21 years. And then I switched to be a consultant. So back in  
22 time, I saw him regularly. Just when I was employed there.  
23 And I don't remember the start date.

24 Q Sure. But back in, I think 2012, 2013, whatever it  
25 was, you didn't at that point diagnose Mr. Gaede with post-

1 this is the fourth application for post-conviction relief, not  
2 counting any federal cases. And that the basis asserted is  
3 that of newly discovered evidence, specifically, a diagnoses of  
4 post-traumatic stress disorder by Dr. Madeline Free, on or  
5 about June 18th, 2019. And so Mr. Craig, it's your evidentiary  
6 hearing, or you're the Plaintiff, I should say. So you may  
7 proceed first. Do you wish to call any witnesses?

8 MR. CRAIG: Thank you, Your Honor. I apologize for  
9 those -- oh sorry.

10 THE COURT: Do you wish to call any witnesses?

11 MR. CRAIG: Yes, Your Honor. I have Dr. Free here on  
12 the line. So I would call her as a witness.

13 THE COURT: Dr., I'll need you to raise your right  
14 hand and be sworn. Thank you. I'll just do the oath, Alex  
15 (ph.).

16 DR. MADELINE FREE

17 having been duly sworn, testified as follows:

18 MS. FREE: Yes.

19 THE COURT: Thank you.

20 Mr. Craig, you may proceed.

21 DIRECT EXAMINATION

22 BY MR. CRAIG:

23 Q Dr. Free, could we please have you state and spell  
24 your name -- full name for the record?

25 A Madeline M-A-D-E-L-I-N-E, Free F-R-E-E.

1 was that included this post-traumatic stress disorder  
2 diagnosis?

3 A Well, I think it was the fact that he brought up the  
4 stuff that had happened in Boy Scout camp and how it  
5 precipitated events then when he went to school, because the  
6 same boys were at school and he was afraid that they were going  
7 to sexual molest him again. And so, yeah, there's some sense  
8 of a traumatic reaction to difficult experiences in his life.

9 Q And that would have stemmed from some sort of  
10 childhood trauma, then?

11 A Yeah.

12 Q Which is --

13 A That was the sexual abuse in Boy Scout camp.

14 Q Which is well before the conviction that we're  
15 talking about here, correct?

16 Q Yes. Yes. Yes.

17 A So can you explain to the Court why that diagnosis  
18 wasn't made sooner, like why did that only come about in 2018?

19 Q Because whoever, myself included -- who was  
20 interviewing him, those issues never surfaced. Questions might  
21 have been asked and then a part of it is his own entitlement  
22 and sophistication where he will relitigate and then propose that  
23 yes, I'm having flashbacks; yes, I'm having this problem; yes,  
24 I'm having that problem.

25 And so you know, mental disorders are kind of on a

1 traumatic stress disorder, correct?

2 A That is correct.

3 Q What explains how you diagnosed him in 2018 with that  
4 disorder, versus like 2012 when you didn't?

5 A He presents with different personas at different  
6 times. And he will -- he's very skilled in dialogue to engage  
7 one, and give his narcissistic nature, he's always entitled and  
8 wanting to make his dialogue make him look good. There's times  
9 when I've you know, looked at him and thought you know, are you  
10 delusional about things?

11 He presents with a lot of anxiety issues and then you  
12 know, over the time of knowing him, he'll periodically come up  
13 with events from his past that he would proportionately cause him  
14 difficulties now. You know, sexual abuse as a child at a Boy  
15 Scout camp or whatever. And he'll say that impacted me and my  
16 inability to handle situations, or whatever.

17 And given the fact that he tends to ruminate on a lot  
18 of things is why I eventually started topiramate, his  
19 medication, to help that.

20 Q So was there some kind of different testing that took  
21 place in early 2018 that you conducted or how did you come to  
22 that diagnosis?

23 A No. It was just the routine psychiatric interviews.  
24 You know.

25 Q Do you recall what specifically the new revelation

1 Q But despite that concern, you've stood by at least at  
2 this point, the diagnosis of the post-traumatic stress  
3 disorder, is that right?

4 A Yes, because I was providing medications to treat  
5 ruminating thoughts and anxiety issues.

6 Q Okay. And that -- he's currently receiving those  
7 medications, as well?

8 A Yes. And he claims he has flashbacks, and so he is  
9 on medication to help with that, too.

10 Q Okay. Obviously, this is an issue -- he's raised an  
11 issue about competency. You don't perform competency  
12 evaluations for the State of North Dakota, do you?

13 A I do not.

14 Q To determine if criminal defendant -- oh, sorry. I  
15 know we were kind of talking over each other. But to finish my  
16 question, you don't perform competency evaluations to determine  
17 if a defendant is criminally responsible for their conduct, is  
18 that right?

19 A That is correct. I do not.

20 Q The only thing you can really explain to this Court  
21 is that Mr. Gaede has this PTSD diagnosis that you've  
22 identified?

23 A Correct.

24 Q Okay. I think that's all I have, Your Honor, for  
25 this witness.

1 spectrum of things. He's always had anxiety issues. PTSD is  
2 on that spectrum of anxiety issues. You know, I honed in, I  
3 guess, on his periodic reports of the abuse in the past and  
4 that he felt that it was triggering things in the here and now.

5 And you know, I look at symptoms more than I look at  
6 diagnosis. A diagnosis is a label. When I write for  
7 medications, I try to treat symptoms. So I was treating his  
8 ruminating thoughts. I was treating his anxiety issues.

9 Q And I think he has had a variety of different  
10 anxiety-based disorders as well, based on your treatment of  
11 him, is that correct?

12 A Correct.

13 Q And those have dated back probably over a decade or  
14 more at this point, is that right?

15 A Yes. At least to 2012.

16 Q Is there a concern about -- just kind of reading  
17 between the lines a little bit in your last answer, is there  
18 some concern that he's malingering or fabricating symptoms? To  
19 get a --

20 A I have one -- I have wondered from time to time. You  
21 know, he presents -- because he's good in his dialogue and  
22 storytelling and he engages one easily, it's -- he can easily  
23 suck people in. And I think that's happened a lot in the past.  
24 And yes, I think he embellishes symptoms in order to look good.  
25 Which is part of his narcissism.

1 personality disorder, anxiety disorder, NOS, or PTSD, you're  
2 listening to what the patient is telling you and then trying to  
3 treat the symptoms that patient is explaining, is that correct?

4 A Yeah. That's accurate.

5 Q Okay. So you can't actually add the two plus two and  
6 get PTSD, so to speak?

7 A Correct.

8 Q Okay. So as Counsel just explained a moment ago,  
9 earlier in time, in fact up and through 2018, he was not  
10 diagnosed with PTSD. Now he has been so you can treat the  
11 symptoms?

12 A Correct.

13 Q Okay. Mr. Gaede hasn't spoken yet this morning.  
14 Based on the pleadings he has made, which you may not have  
15 seen, it appears that he's trying to say that this discovery of  
16 PTSD is something that prior to that, made it -- made him  
17 unable to fully determine where he was at and what things were  
18 going on so that he now should be able to bring this late-  
19 arising claim to the Court.

20 He argues that he did not commit the crime for which  
21 he is convicted but that his wife did. Are you at least aware  
22 of that background?

23 A To a degree, yes.

24 Q Okay.

25 A Yes.

1 A Mr. Burdick?

2 MR. BURDICK: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. BURDICK:

5 Q Dr. Free, just a couple of additional questions. If  
6 I understood you right, clarify if I didn't. The diagnosis of  
7 PTSD more recently, in 2018/19 now, is -- I think what you  
8 described as a label; essentially, does that mean that you use  
9 it to -- through which you are able to treat the symptoms that  
10 you're seeing?

11 A Yes, I would say, sometimes we -- unfortunately, in  
12 mental health, give labels and diagnosis to justify the  
13 medications that we are using. Especially if they are  
14 medications that are used for off-label purpose. And  
15 topiramate, we use for a mood stabilizer, for ruminating  
16 thoughts and such. It's designed as an anti-convulsant. And  
17 so when I'm using it for off-label purposes, for many insurance  
18 purposes, you have to have a diagnosis that matches your  
19 medications.

20 Q Thank you.

21 A It's very sad, but that's the way it's written, so.

22 Q Okay. So it's different than a mathematical equation  
23 where you can add two plus two and know that you've got an  
24 answer, which is four? What I interpret you to be saying is  
25 when you are, in fact, diagnosing whether it's anti-social

1 pages 142 and 143 --

2 THE COURT: Before you do that Mr. Burdick, are you  
3 offering the exhibit that was pre-filed?  
4 MR. BURDICK: Your Honor, I would like to offer that  
5 now. I would explain to the Court, as I did in the  
6 accompanying document, that these are the records provided to  
7 us by the penitentiary that are Mr. Gaede's psychiatric history  
8 with them.

9 THE COURT: Any object, Mr. Craig?

10 MR. CRAIG: No, Your Honor, I believe that's actually  
11 what he wanted to introduce, so we have no problem with that.

12 THE COURT: Then the exhibits that were filed on  
13 11/18 of 2001 will be received as Exhibit Number One.

14 (Whereupon, Defendant's Exhibit No. 1  
15 was admitted into evidence.)

16 MR. BURDICK: Thank you, Your Honor.

17 Dr. Free, I didn't send you all of that exhibit but I  
18 would like to send you to pages 142 and 143, if you're able to  
19 see that.

20 MS. FREE: Yes, I'm getting there. Yeah?

21 MR. BURDICK: Okay. On page 142, about three inches  
22 up from the bottom, there's a paragraph that starts out, the  
23 client currently works as a CIT. Do you see that?

24 A Yes.

25 Q In the middle of that paragraph, it says, he spends

1 Q So does his PTSD diagnosis now somehow relieve his  
2 conviction back in 2006 for the behavior in 2001? Is it an  
3 answer for that, does it explain why he did it, is it something  
4 the Court should determine that he was incompetent at the time?  
5 A The diagnosis of PTSD has no bearing on his crime or  
6 his competency.

7 Q Would it have had any bearing on his ability to  
8 understand what was going on during a trial, as best you can  
9 tell? I mean, a late-arising PTSD diagnosis?

10 A I do not believe so, no.

11 Q Are there any other observations that you have about  
12 Mr. Gaede that you've not had an opportunity to express this  
13 morning, that you think the Court should know?

14 A In many respects, in my work with him, he's a very  
15 gifted individual in terms of coming up with dialogues to  
16 justify whatever end he is pursuing. He's able to weave a  
17 story and present himself in such a light that he rescues other  
18 people and helps them. He's served as a mentor in the pen and  
19 so he believes he can solve lots of people's problems,  
20 including his own.

21 Q Did you have an opportunity to review any of the  
22 material that I sent you, just belatedly, but since you --

23 A I was able to -- I was able to glance at some of it,  
24 yes.

25 Q So I want to send you, if you've got it there, to

1 Q I understand that's what that redaction to be. But  
2 explain the other things that you've diagnosed there.

3 A Generalized anxiety disorder; pervasive sense of  
4 excessive worry, sometimes producing symptoms of shortness of  
5 breath or profuse sweating or rapid heartbeat. I listed post-  
6 traumatic stress disorder, which is generally, they've  
7 experienced some kind of a trauma in their life; in his case,  
8 he proposed it was sexual molestation by a group of boys while  
9 he was at scout camp. And that he has flashbacks from it. And  
10 that it triggers reactions in various scenarios with him.  
11 History of sexual abuse as a child also by -- which was also by  
12 an uncle, reported to me.

13 And then the narcissistic traits -- at times I said  
14 outright narcissistic personality disorder. An individual who  
15 presents with a sense of entitlement. An individual who tends  
16 to have a wanton disregard for societal norms.

17 Q Let me send you just a couple of pages further on to  
18 page 146.

19 A Okay. I'm there.

20 Q Okay. This is a report that, it looks like you  
21 prepared from April of - April 12th of 2019, does that look  
22 correct?

23 A Mine says March 8th of 2019, for the page I'm looking  
24 at.

25 Q Oh, yeah - I guess the difference between visit date

1 his time reading up on things like personality disorders.  
2 That's similar to what you were explaining before, is that  
3 right?

4 A Yes. Yes.

5 Q Let me ask you this question, and don't leave those  
6 pages yet. Is a person who spends a lot of time reading on  
7 these kinds of things -- I realize this might seem speculative,  
8 are they able to -- would a person conceivably be able to  
9 present the diagnosis -- the symptoms for a diagnosis after  
10 having read about what that diagnosis sometimes shows as?

11 A Absolutely. Sophisticated people do it all the time.  
12 Sometimes I can tell they've been reading or looking on the  
13 internet or whatever and coming up with the precise symptoms  
14 that would give them a diagnosis.

15 Q On page 143, the following page, this is your report  
16 as the previous page was, dated December 14th, 2016. In the  
17 lower third of the page you've got a diagnosis. Do you see it  
18 there?

19 A Um-hum.

20 Q You'll note that part of that is redacted for the  
21 Court's information. The Department of Corrections indicated  
22 to me that they were redacting some things that related to a  
23 controlled substance diagnosis, because they felt under the  
24 law, they needed to.

25 A Um-hum.

1 THE COURT: Mr. Craig, redirect?  
2 MR. CRAIG: No redirect, Your Honor.  
3 THE COURT: Thank you. May the witness be released  
4 and excused, Mr. Craig?  
5 MR. CRAIG: Yes, Your Honor, she can be excused.  
6 THE COURT: Mr. Burdick?  
7 MR. BURDICK: Yes, I don't know what Mr. Gaede is  
8 going to say when we get him on the line, but I think that's  
9 fine.  
10 THE COURT: Ma'am, that means you can hang up or no  
11 longer needed on the -- at the hearing, so.  
12 MS. FREE: Thank you very much.  
(At 9:22 a.m., witness excused.)  
14 THE COURT: Yep.  
15 Mr. Craig, call your next witness.  
16 MR. CRAIG: I guess Your Honor, my only other witness  
17 would be Mr. Gaede, if he wishes to testify. Obviously, that's  
18 completely his decision if he elects to do so.  
19 THE COURT: Well, you need to either call him or not.  
20 Do you want to have a brief discussion with him, that's fine.  
21 MR. CRAIG: I'm not planning on calling him unless he  
22 voices an opposition to it, no. That's not something him and I  
23 have discussed.  
24 THE COURT: I know. But you're the attorney.  
25 MR. CRAIG: Correct.

1 and reporting --  
2 A Okay.  
3 Q -- note date. You're correct.  
4 A Okay. Yep.  
5 Q The diagnosis there is what?  
6 A Post-traumatic stress disorder. This is the history  
7 of sexual abuse as a child, and narcissistic traits.  
8 Q Okay. The difference between the one that we looked  
9 at a moment ago - I see that among other things, PTSD has gone  
10 from the second item on the list to the first item on the list.  
11 Is that somehow important?  
12 A Well, because PTSD is on a spectrum of anxiety  
13 disorders, on that particular day, I probably just decided to  
14 group everything together and not list generalized anxiety  
15 disorder, just covered it with PTSD.  
16 It kind of depends, I guess, on where I'm at that day  
17 and what I felt he was most presenting to me or what he wanted  
18 me to hear.  
19 Q Okay. I have no further questions..  
20 A Unfortunately, diagnosis in mental health can be a  
21 little bit fluid.  
22 To me it -- to me it was --  
23 THE COURT: Mr. Craig, any redirect? There's no  
24 question pending anymore, Doctor.  
25 MS. FREE: Okay.

1 prior witnesses that testified that identified he did not have  
2 post-traumatic stress when he now currently has this diagnosis.  
3 He's contending that this is new information that he  
4 now has, that calls into question his criminal responsibility.  
5 And as such, that he was incapable of having criminal  
6 responsibility or assisting in his defense at the time of  
7 trial. And he's asserting that he should be entitled to a new  
8 trial on that basis.  
9 THE COURT: Mr. Burdick?  
10 MR. BURDICK: Thank you, Your Honor.  
11 Obviously, in order to be entitled to post-conviction  
12 relief, you have to meet the statutory requirements for it.  
13 One of those statutory requirements deals with the statute of  
14 limitations. In 29-32.1-02, you've got to file your post-  
15 conviction relief application within two years of the finality  
16 of the conviction. This law went into effect August 1st, 2013.  
17 As the Court is well aware, Mr. Gaede filed multiple  
18 applications; 2008, 2012, 2014, et cetera.  
19 There's nothing here to indicate that there is any  
20 reason to extend the exceptions that apply to that two-year  
21 statute of limitations, which passed long, long, ago, to Mr.  
22 Gaede's current situation. There is no new evidence here. The  
23 things that he relies on and the material that he has sent are  
24 the discovery documents that were available to him during his  
25 trial -- before his trial in 2006. And he's certainly referred

1 THE COURT: You have to make the decision to call him  
2 or not.  
3 MR. CRAIG: Correct.  
4 THE COURT: So I just need to know --.  
5 MR. CRAIG: Correct.  
6 THE COURT: What your decision is.  
7 MR. CRAIG: So I am declining to call him --  
8 THE COURT: You're going to call him?  
9 MR. CRAIG: -- at this point, Your Honor.  
10 THE COURT: You're calling him then, right?  
11 MR. CRAIG: I'm declining to call him, Your Honor, I  
12 apologize.  
13 THE COURT: You're declining. Okay. Do you have any  
14 other witnesses?  
15 MR. CRAIG: No, just argument.  
16 THE COURT: Mr. Burdick?  
17 MR. BURDICK: No, Your Honor, thank you.  
18 THE COURT: All right. I'll take arguments starting  
19 with you, Mr. Craig.  
20 MR. CRAIG: Your Honor, as Mr. Gaede outlined in his  
21 petition, he's asserting that based on this newest diagnosis of  
22 post-traumatic stress, that he lacked criminal responsibility.  
23 I understand that we haven't received an evaluation or anything  
24 of that nature that would address the exact issue of criminal  
25 responsibility. But Mr. Gaede takes significant issue with

1 here.

2 Mr. Gaede has proven himself to be a con man. He's  
3 doing it again. The State asserts that he is not entitled to  
4 post-conviction relief.

5 THE COURT: All right. As I indicated, I've looked  
6 at the underlying criminal matter. I also took a look at the  
7 prior post-conviction relief proceedings.

8 The first post-conviction relief proceeding, there  
9 was an allegation, at page 18 of the application that was filed  
10 in that case, that Mr. Gaede suffered from some psychological  
11 condition, particularly in that case, it was gephyrophobia, a  
12 fear of driving over bridges.

13 That was, as I indicated the first application for  
14 post-conviction relief proceedings. In of that case, extensive  
15 testimony was taken from both Mr. Gaede as well as Mr.  
16 Mottinger, his trial counsel, as well as Mr. Kirschner, his  
17 appellate counsel.

18 Mr. Gaede testified in that proceeding as follows,  
19 this is at pages 39 to 40, lines 25 to 4...

20 "Question by Mr. Blumer, do you feel that your  
21 attorney should have requested that psychologist? Did you ever  
22 talk to him about having a psychologist or psychiatrist examine  
23 you prior to trial?

24 Answer: I don't remember."

25 Then there were the following discussions held

1 to liberally, throughout time and his prior post-conviction  
2 applications. He's had all that material.

3 There's nothing new here. He makes reference to some  
4 movie, to his ex-wife, he blames his ex-wife for having done  
5 all these things. His ex-wife, as the Court may understand  
6 now, passed away many years ago. She is not here to speak  
7 otherwise, but she certainly did at the trial which is -- which  
8 this Court sat over.

9 He has expressed that he had, as if, I think, a  
10 mental disease or defect precluding him from timely asserting  
11 the claims that he's making now. But these claims are just  
12 repeats of things he's made for well over a decade.

13 I would note that the testimony today from Dr. Free  
14 indicates that the information that he received, should PTSD as  
15 a diagnosis be important -- I argue it's not, but if it were,  
16 were things that came out in early 2018. More than two years  
17 before he filed his application this year, in May.

18 The State asserted the defenses of the statute of  
19 limitations, we assert the defenses of res judicata, misuse of  
20 process and/or laches. State argues that all the claims he is  
21 making now have been raised in one variation or another in the  
22 past and been finally decided upon, and res judicata should  
23 apply. If the Court were to find there was any claim he was  
24 making here, to which that did not apply, the State would  
25 assert that it is a misuse of process. There is nothing new

1 criminal responsibility. It wasn't a case that the State's  
2 evidence was overwhelming and led me to the conclusion that  
3 there was no way, shape or form, that we were going to have  
4 any -- be able to put on any kind of reasonable defense".

5 And then at page 103, lines 13 through 16, Mr.  
6 Mottinger states: "If I would have thought there were any  
7 psychiatric or psychological issues, we might have approached  
8 the whole thing differently. But again, Dennis was denying any  
9 involvement in this".

10 The second petition for post-conviction relief, 09-  
11 2012-CV-345, also alleged newly found evidence relating to  
12 post-traumatic stress disorder, which Mr. Gaede alleged could  
13 have been an affirmative defense, could have negated any  
14 requisite intent for the crime. It could have proved Mr. Gaede  
15 was not responsible for the murder, i.e. lacked the criminal  
16 responsibility.

17 He provided copies of documents from 2006 to 2008  
18 from the Wisconsin Department of Corrections. He also, like in  
19 this case, asked for some sort of a competency evaluation. In  
20 that case specifically, because "Gaede has been diagnosed with  
21 PTSD among other mental diseases and/or defects".

22 In an affidavit filed in that case, dated February  
23 23rd, 2012, Mr. Gaede stated at paragraph 2 that on January  
24 26th, 2011, he was prescribed Paxil for PTSD and buspirone -- I  
25 don't know if I got that pronounced correctly, buspirone, an

1 between Counsel and Mr. Mottinger:

2 "Answer by Mr. Mottinger: Mr. Gaede and I had --"  
3 Again, this is page 65 lines 23 to 25.  
4 "Question by Mr. Banning: How did you prepare this  
5 case for trial with Mr. Gaede?

6 Answer by Mr. Mottinger: Mr. Gaede and I had  
7 extensive conversations."

8 Then at pages 79-80, lines 13 through 9, the  
9 following exchange occurred:

10 "By the Court: Mr. Mottinger, would you explain to  
11 me in regard to the psychiatrist and the fear of bridges, what  
12 your recollection is to that -- those issues.

13 Answer: First I ever heard of it was today, Judge.

14 Question: Now do you mean the fear of bridges or the  
15 psychiatrist issue?

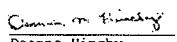
16 Answer: The fear of bridges.

17 Question: How about just generally a psychiatrist or  
18 psychiatric issue?

19 Answer: I don't think Dennis ever suggested that we  
20 have him evaluated. I didn't see anything in this particular  
21 case that would lead me to believe an evaluation in regard to  
22 ability to assist in his own defense, which obviously he has in  
23 spades, or his alleged competency at the time the act took  
24 place, was even relevant. It wasn't a situation where he was  
25 admitting that he did something but felt that he somehow lacked

1 just need to get that recording; I didn't take complete notes.  
2 THE COURT: I don't need you -- you can do it as  
3 stated on the record. I went through adequately on the record,  
4 both the facts and the law in this case. And so I don't think  
5 we need to have a written order that spells it out. My oral  
6 order from the bench, I think, will allow any reviewing court  
7 the adequate grounds to understand the basis for my decision.  
8 So you can submit the order as stated on the record.  
9 MR. BURDICK: Is it fine that I provide it the Court  
10 and to Mr. Craig at the same time? Or would you like me to  
11 give a copy to Mr. Craig in advance, for his input?  
12 THE COURT: You can provide them at the same time.  
13 MR. BURDICK: Thank you.  
14 THE COURT: Anything else then, Mr. Burdick?  
15 MR. BURDICK: Nothing for the State.  
16 THE COURT: Mr. Craig?  
17 MR. CRAIG: Nothing from me, Your Honor, thank you.  
18 THE COURT: We're adjourned. Thank you. I'm signing  
19 everybody off.  
20 MR. BURDICK: Thank you, Judge.  
21 (WHEREUPON, the above proceedings concluded.)  
22  
23  
24  
25

1 little different because it involved a plea and not a trial.  
2 But that is a difference without a distinction, for present  
3 purposes.  
4 Paragraph 16 reads: "Moreover, Moore's psychiatrist  
5 specifically testified that he did not make any assessment or  
6 diagnosis regarding whether Moore was competent to stand trial  
7 or whether he could have formed the requisite intent to commit  
8 the crime. There is also no expert, medical testimony that  
9 Moore was suffering from post-traumatic stress disorder when he  
10 entered his voluntary plea or that the post-traumatic stress  
11 disorder somehow effected the voluntariness of the plea".  
12 So similar to Moore, we don't have the testimony from  
13 Dr. Free. And similar to Moore, there is no medical expert  
14 testimony indicating that Moore suffered from any post-  
15 traumatic stress disorder at the time of trial, or that it  
16 effected his ability to assist in his defense.  
17 Therefore, for all of those alternative reasons, the  
18 Court denies the post-conviction request and orders that the  
19 case be dismissed with prejudice and without costs. Mr.  
20 Burdick, you'll prepare the appropriate order?  
21 MR. BURDICK: I would be glad to, Your Honor. Just  
22 as a point of clarity, you have spoken at some length and I've  
23 got two options in that order, simply to deny it by referring  
24 to what was on the record, or getting a recording and going  
25 through those details, which I would be glad to do, but I'll

1 CERTIFICATE  
2 I, Deanna Hinchy, DO CERTIFY that the foregoing and  
3 attached pages numbered 3 through 30 contain a true, accurate,  
4 and complete transcript from the electronic sound recording  
5 then and there taken.  
6  
7 Dated this 14th day of December, 2021.  
8  
9  
10  
11  
12   
13 Deanna Hinchy  
14  
15  
16  
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25

ATTORNEY'S CERTIFICATE OF SERVICE

CASE NO. 1:11-cv-068

I hereby certify that on the 3rd day of February, 2012, the following documents:

**OBJECTION TO MOTION FOR STAY AND ABEYANCE and AFFIDAVIT OF  
CHRISTINE M. AMAN**

were filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to the following:

N/A

I further certify that copies of the foregoing documents will be mailed by first class mail, postage paid, to the following non-ECF participant:

DENNIS JAMES GAEDE  
NORTH DAKOTA STATE PENITENTIARY  
PO BOX 5521  
BISMARCK, ND 58506-5521

Dated February 3, 2012.

/s/ Ken R. Sorenson  
Ken R. Sorenson, No. 03621  
Assistant Attorney General

UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Dennis James Gaede, )  
Petitioner, ) Case No. 1:11-cv-068  
vs. )  
Robyn Schmalenberger, )  
Respondent. )  
.....  
State of North Dakota )  
 ) ss  
County of Burleigh )

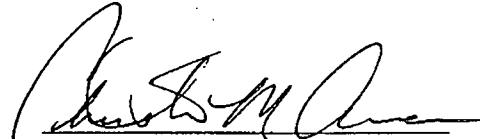
**AFFIDAVIT OF  
CHRISTINE M. AMAN**

Christine M. Aman deposes and states as follows:

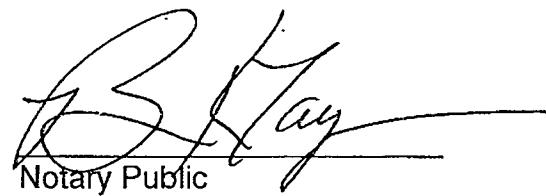
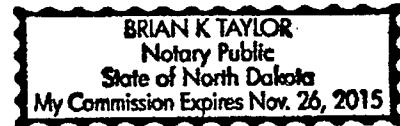
1. I am the Supervisor of Behavioral Services for the North Dakota Department of Corrections and Rehabilitation.
2. I hold degrees as Master of Business Administration, Master of Science in Nursing. I am an Advanced Practice Registered Nurse, and Nurse Practitioner-certified.
3. My duties as Supervisor of Behavioral Services include supervision of the mental health counselors and I handle a case load of inmates for psychiatric services, including assessment, evaluation, counseling, diagnosis and treatment.
4. I am familiar with Dennis James Gaede ("Gaede"), an inmate at the North Dakota State Penitentiary ("NDSP"), and I am familiar with his psychiatric progress notes maintained at the NDSP.

5. Gaede has requested on a number of occasions that he have a diagnosis of Post Traumatic Stress Disorder.
6. Gaede has incorrectly self-diagnosed himself as having Post Traumatic Stress Order.
7. Gaede does not present the symptoms for Post Traumatic Stress Disorder and no psychiatrist, clinical psychologist, or other mental health professional or medical professional has ever diagnosed Gaede as having Post Traumatic Stress Disorder.
8. Because Gaede has never presented symptoms for Post Traumatic Stress Disorder and has never been diagnosed as having Post Traumatic Stress Disorder, no treatment is necessary for his self-diagnosed, but non-existent condition.

Further affiant sayeth not.

  
Christine M. Aman

Subscribed and sworn to before me, a notary public, this 2nd day of February, 2012.

  
Notary Public

VOLUME II  
CHAPTERS 344 THROUGH 872

# LAWS

PASSED AT  
The Forty-Ninth Session  
OF THE  
Legislative Assembly  
OF THE  
STATE OF NORTH DAKOTA

BEGUN AND HELD AT BISMARCK, THE CAPITAL OF SAID  
STATE, ON TUESDAY, JANUARY 8, 1985, AND  
CONCLUDING FRIDAY, APRIL 5, 1985

APP-M

## **AUTHENTICATION**

### **STATE OF NORTH DAKOTA**

Department of State, Bismarck

I, Ben Meier, Secretary of State, hereby certify that the laws contained in these two volumes are true and correct copies, except clerical errors, of the laws and resolutions passed at the Forty-ninth Session of the Legislative Assembly of the State of North Dakota, beginning Tuesday, January 8, 1985, and terminating Friday, April 5, 1985, and also of the constitutional amendments and referred measure submitted at the primary election held June 12, 1984, and the constitutional amendments and initiated measures submitted at the general election held November 6, 1984.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of North Dakota, this first day of July 1985.

(SEAL)

**BEN MEIER**  
Secretary of State

John D. Olsrud, Katherine M. Chester, and John Walstad of the Legislative Council hereby certify that we have prepared the contents of these volumes and that the measures, laws, and resolutions contained herein are true and correct copies of the original measures, laws, and resolutions on file in the office of the Secretary of State in the State Capitol at Bismarck, North Dakota, clerical errors excepted.

**JOHN D. OLSRUD**  
**KATHERINE M. CHESTER**  
**JOHN WALSTAD**

Copyright 1985  
by  
Ben Meier, Secretary of State  
State of North Dakota

APP-M

## CHAPTER 366

SENATE BILL NO. 2181  
(Committee on Judiciary)  
(At the request of the Commission on Uniform State Laws)

## UNIFORM POSTCONVICTION PROCEDURE ACT

AN ACT to adopt the Uniform Postconviction Procedure Act (1980), relating to a remedy to a person convicted of and sentenced for a crime and the procedure for challenging the validity of the conviction or sentence; to repeal chapter 29-32 of the North Dakota Century Code, relating to the Uniform Postconviction Procedure Act; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Remedy - To whom available - Conditions.

1. A person who has been convicted of and sentenced for a crime may institute a proceeding applying for relief under this Act upon the ground that:
  - a. The conviction was obtained or the sentence was imposed in violation of the laws or the Constitution of the United States or of the laws or Constitution of North Dakota;
  - b. The conviction was obtained under a statute that is in violation of the Constitution of the United States or the Constitution of North Dakota, or that the conduct for which the applicant was prosecuted is constitutionally protected;
  - c. The court that rendered the judgment of conviction and sentence was without jurisdiction over the person of the applicant or the subject matter;
  - d. The sentence is not authorized by law;
  - e. Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice;

APP-M

- f. A significant change in substantive or procedural law has occurred which, in the interest of justice, should be applied retrospectively;
- g. The sentence has expired, probation or parole or conditional release was unlawfully revoked, or the applicant is otherwise unlawfully in custody or restrained; or
- h. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error available before July 1, 1985, under any common law, statutory or other writ, motion, proceeding, or remedy.

2. A proceeding under this Act is not a substitute for and does not affect any remedy incident to the prosecution in the trial court or direct review of the judgment of conviction or sentence in an appellate court. Except as otherwise provided in this Act, a proceeding under this Act replaces all other common law, statutory, or other remedies available before July 1, 1985, for collaterally challenging the validity of the judgment of conviction or sentence. It is to be used exclusively in place of them. A proceeding under this Act is not available to provide relief for disciplinary measures, custodial treatment, or other violations of civil rights of a convicted person occurring after the imposition of sentence.

SECTION 2. Exercise of original jurisdiction in habeas corpus. A court in which original jurisdiction in habeas corpus is vested may entertain a habeas corpus proceeding under chapter 32-22 or this Act. This Act, to the extent appropriate, governs the proceeding.

SECTION 3. Commencement of proceedings - Filing - Service.

1. A proceeding is commenced by filing an application with the clerk of the court in which the conviction and sentence took place. The state must be named as respondent. No filing fee is required.
2. An application may be filed at any time.
3. If an application is filed before the time for appeal from the judgment of conviction or sentence has expired, the court, on motion of the applicant, may extend the time for appeal until a final order has been entered in the proceeding under this Act.
4. If an application is filed while an appeal or other review is pending, the appellate court, on motion of either party or on its own motion, may defer further action on the appeal or other review until the determination of the application by the trial court or may order the

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application certified and consolidated with the pending appeal or other review.

5. Upon receipt of an application, the clerk shall forthwith file it, make an entry in the appropriate docket, and deliver a copy to the state's attorney of the county in which the criminal action was, venued.
6. If the applicant is not represented by counsel, the clerk shall notify the applicant that assistance of counsel may be available to persons unable to obtain counsel. The clerk shall also inform the applicant of the procedure for obtaining counsel.
7. The application may be considered by any judge of the court in which the conviction took place.

#### SECTION 4. Application - Contents.

1. The application must identify the proceedings in which the applicant was convicted and sentenced, give the date of the judgment and sentence complained of, set forth a concise statement of each ground for relief, and specify the relief requested. Argument, citations, and discussion of authorities are unnecessary.
2. The application must identify all proceedings for direct review of the judgment of conviction or sentence and all previous postconviction proceedings taken by the applicant to secure relief from the conviction or sentence, the grounds asserted therein, and the orders or judgments entered. The application must refer to the portions of the record of prior proceedings pertinent to the alleged grounds for relief. If the cited record is not in the files of the court, the applicant shall attach that record or portions thereof to the application or state why it is not attached. Affidavits or other material supporting the application may be attached, but are unnecessary.

#### SECTION 5. Appointment of counsel - Applicant's inability to pay costs and litigation expenses.

1. If an applicant requests appointment of counsel and the court is satisfied that the applicant is unable to obtain adequate representation, the court shall appoint counsel to represent the applicant.
2. Costs and expenses incident to a proceeding under this Act, including fees for appointed counsel, must be reimbursed in the same manner as are costs and expenses incurred in the defense of criminal prosecutions.

#### SECTION 6. Response by answer or motion.

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1. Within thirty days after the docketing of an application or within any further time the court may allow, the state shall respond by answer or motion.
2. The state may move to dismiss an application on the ground that it is evident from the application that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings. In considering the motion, the court shall take account of substance regardless of defects of form.
3. The following defenses may be raised by answer or motion:
  - a. The claim has been fully and finally determined in a previous proceeding in accordance with subsection 1 of section 12; or
  - b. The application constitutes misuse of process in accordance with subsection 2 of section 12.

#### SECTION 7. Amended and supplemental pleadings.

1. The court may make appropriate orders allowing amendment of the application or any pleading or motion, allowing further pleadings or motions, or extending the time for filing any pleading.
2. At any time before the entry of judgment, the court, for good cause, may grant leave to withdraw the application without prejudice.

SECTION 8. Discovery. The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

#### SECTION 9. Summary disposition.

1. The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.
2. If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.

#### SECTION 10. Hearing - Evidence.

1. Evidence must be presented in open court, recorded, and preserved as part of the record of the proceedings.

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2. A certified record of previous proceedings may be used as evidence of facts and occurrences established therein, but use of that record does not preclude either party from offering additional evidence, as to those facts and occurrences.
3. The deposition of a witness may be received in evidence, without regard to the availability of the witness, if written notice of intention to use the deposition was given in advance of the hearing and the deposition was taken subject to the right of cross-examination.

#### SECTION 11. Findings of fact - Conclusions of law - Order.

1. The court shall make explicit findings on material questions of fact and state expressly its conclusions of law relating to each issue presented.
2. If the court rules that the applicant is not entitled to relief, its order must indicate whether the decision is based upon the pleadings, is by summary disposition, or is the result of an evidentiary hearing.
3. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the previous proceedings, and any supplementary orders as to rearrangement, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

#### SECTION 12. Affirmative defenses - Res judicata - Misuse of process.

1. An application for postconviction relief may be denied on the ground that the same claim or claims were fully and finally determined in a previous proceeding.
2. A court may deny relief on the ground of misuse of process. Process is misused when the applicant:
  - a. Presents a claim for relief which the applicant inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous postconviction proceeding; or
  - b. Files multiple applications containing a claim so lacking in factual support or legal basis as to be frivolous.
3. Res judicata and misuse of process are affirmative defenses to be pleaded by the state. The burden of proof is also upon the state, but, as to any ground for relief which, by statute or rule of court, must be presented as a defense or objection at a specified stage of a criminal

APP-M

prosecution, the applicant shall show good cause for noncompliance with the statute or rule.

**SECTION 13.** Reimbursement of costs and litigation expenses. If an application is denied, the state may move for an order requiring the applicant to reimburse the state for costs and for litigation expenses paid for the applicant from public funds. The court may grant the motion if it finds that the applicant's claim is so completely lacking in factual support or legal basis as to be frivolous or that the applicant has deliberately misused process. The court may require reimbursement of costs and expenses only to the extent reasonable in light of the applicant's present and probable future financial resources.

**SECTION 14.** Review. A final judgment entered under this Act may be reviewed by the supreme court of this state upon appeal filed either by the applicant within ten days or by the state within thirty days after the entry of judgment.

**SECTION 15.** EFFECTIVE DATE. This Act governs all convictions occurring after June 30, 1985.

**SECTION 16.** REPEAL. Chapter 29-32 of the North Dakota Century Code is hereby repealed.

Approved March 30, 1985

APP-M

VOLUME I  
CHAPTERS 1 THROUGH 259

# **LAWS**

PASSED AT  
**The Sixty-third Session**  
OF THE  
**Legislative Assembly**  
OF THE  
**STATE OF NORTH DAKOTA**

BEGUN AND HELD AT BISMARCK, THE CAPITAL, ON  
TUESDAY, JANUARY 8, 2013, AND  
CONCLUDING SATURDAY, MAY 4, 2013

APP-N

# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 248

### SENATE BILL NO. 2227

(Senators Carlisle, Flakoll, Warner)  
(Representatives Grande, Klemin, Amerman)

AN ACT to amend and reenact sections 29-32.1-01 and 29-32.1-09 of the North Dakota Century Code, relating to limitations and summary disposition for postconviction relief proceedings.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 29-32.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### 29-32.1-01. Remedy - To whom available - Conditions.

1. A person who has been convicted of and sentenced for a crime may institute a proceeding applying for relief under this chapter upon the ground that:
  - a. The conviction was obtained or the sentence was imposed in violation of the laws or the Constitution of the United States or of the laws or Constitution of North Dakota;
  - b. The conviction was obtained under a statute that is in violation of the Constitution of the United States or the Constitution of North Dakota, or that the conduct for which the applicant was prosecuted is constitutionally protected;
  - c. The court that rendered the judgment of conviction and sentence was without jurisdiction over the person of the applicant or the subject matter;
  - d. The sentence is not authorized by law;
  - e. Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice;
  - f. A significant change in substantive or procedural law has occurred which, in the interest of justice, should be applied retrospectively;
  - g. The sentence has expired, probation or parole or conditional release was unlawfully revoked, or the applicant is otherwise unlawfully in custody or restrained; or
  - h. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error available before July 1, 1985, under any common law, statutory or other writ, motion, proceeding, or remedy.

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2. Except as provided in subsection 3, an application for relief under this chapter must be filed within two years of the date the conviction becomes final. A conviction becomes final for purposes of this chapter when:

- The time for appeal of the conviction to the North Dakota supreme court expires;
- If an appeal was taken to the North Dakota supreme court, the time for petitioning the United States supreme court for review expires; or
- If review was sought in the United States supreme court, the date the supreme court issues a final order in the case.

3. a. Notwithstanding subsection 2, a court may consider an application for relief under this chapter if:

- The petition alleges the existence of newly discovered evidence, including DNA evidence, which if proved and reviewed in light of the evidence as a whole, would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted;
- The petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief; or
- The petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States supreme court or a North Dakota appellate court and the petitioner establishes that the interpretation is retroactively applicable to the petitioner's case.

b. An application under this subsection must be filed within two years of the date the petitioner discovers or reasonably should have discovered the existence of the new evidence, the disability or disease ceases, or the effective date of the retroactive application of law.

4. A proceeding under this chapter is not a substitute for and does not affect any remedy incident to the prosecution in the trial court or direct review of the judgment of conviction or sentence in an appellate court. Except as otherwise provided in this chapter, a proceeding under this chapter replaces all other common law, statutory, or other remedies available before July 1, 1985, for collaterally challenging the validity of the judgment of conviction or sentence. It is to be used exclusively in place of them. A proceeding under this chapter is not available to provide relief for disciplinary measures, custodial treatment, or other violations of civil rights of a convicted person occurring after the imposition of sentence.

**SECTION 2. AMENDMENT.** Section 29-32.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**29-32.1-09. Summary disposition.**

- The court, on its own motion, may enter a judgment denying a meritless application on any and all issues raised in the application before any response by the state. The court also may summarily deny a second or successive application for similar relief on behalf of the same applicant and may

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summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case.

2. The court, on its own motion, may dismiss any grounds of an application which allege ineffective assistance of postconviction counsel. An applicant may not claim constitutionally ineffective assistance of postconviction counsel in proceedings under this chapter.
3. The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.
- 2.4. If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.

Approved April 26, 2013  
Filed April 26, 2013

APP-N

## CAMP-A-WAY

200 Ogden Rd Lincoln, NE 68521  
(402) 476-2282

NAME	Debra Spain		
ADDRESS	1028 E. Main		
CITY & STATE	East Troy	WI	ZIP 53120
SIGNATURE	Debra Spain		
CAR LIC. NO.	915		
CAR MAKE	STATE		
YEAR			
Check <input type="checkbox"/> One <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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UNIT LIC. NO.	STATE		
NO.	DATE IN		
PERSONS:	ADULTS	DATE OUT	
	CHILDREN	NO. OF DAYS	
We agree to abide by the rules and regulations of the State of Wisconsin.			

WE RESERVE THE RIGHT TO REFUSE SERVICE TO ANYONE AND WILL NOT BE RESPONSIBLE FOR ACCIDENTS OR INJURY TO OUR GUESTS OR FOR LOSS OF MONEY, JEWELRY OR VALUABLES OF ANY KIND.	
REPEAT FRIEND DIRECTORY CAMP SHOW ROAD SIGN OTHER  SITE NO. <span style="border: 1px solid black; padding: 2px;">C-17</span>	REPEAT
	<input type="checkbox"/>
CAMPING CHARGE <span style="float: right;">\$ <span style="border-bottom: 1px solid black; padding: 0 5px;">14.25</span></span>	
EXTRA PERSONS <span style="float: right;">\$ <span style="border-bottom: 1px solid black; padding: 0 5px;">0.00</span></span>	
TAX <span style="float: right;">\$ <span style="border-bottom: 1px solid black; padding: 0 5px;">0.00</span></span>	
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PAID BY <input type="checkbox"/> CASH <input type="checkbox"/> CHECK <input type="checkbox"/> CREDIT CARD	
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902 Central Business Forms, P.O. Box 220, Bondurant, IA 50035 1-800-545-4122

- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 03/07/2002

DAVE QUEEN, white male, owner of CAMP-A-WAY (CAW) motor home park, 200 Ogden Road, Lincoln, Nebraska, phone number (402) 476-2282, was advised of the identity of the interviewing agent and the purpose of the interview. QUEEN provided the following information.

On the evening of March 3, 2002 at approximately 8:00 p.m., QUEEN observed a motor home pull into CAW. QUEEN assumed the vehicle was looking for a rental space in which to park the motor home so he opened CAW's business office. The motor home parked in front of the business office and a white female came into the office. The female identified herself as DEBRA STRAND and completed a CAW registration form to rent a parking space at CAW. QUEEN provided a copy of the registration form, which is attached and made a part hereof.

The registration form reflected that STRAND listed a home address of 1028 East Main, East Troy, Wisconsin, zip code 53120. On the registration, STRAND listed the motor home as a 1989 Chevrolet, Wisconsin license A 1539. The registration reflects only 2 adults in the vehicle.

QUEEN advised that STRAND paid for the parking space in cash for the night of March 3rd. According to QUEEN, STRAND's motor home left CAW on the morning of March 4th and was gone most of the day. Late in the afternoon of March 4th (shortly before the LPD arrived at CAW) the motor home returned to CAW and STRAND paid for another night's rental on a parking space. As before, STRAND paid the rental fee in cash.

QUEEN stated that a couple of days later he saw the photograph of DIANA GAEDE in the newspaper. QUEEN stated that, based on GAEDE's photograph, he is sure that STRAND and GAEDE are the same person. At the time of STRAND/GAEDE's CAW check in, QUEEN observed a white male get out of the motor home and get a pop from the pop machines near the CAW office. Because of it was night time and because he only got a brief look at the male, QUEEN could not tell if the male was DENNIS GAEDE. QUEEN described the male as very large and fat.

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Investigation on 03/06/02 at Lincoln, NebraskaFile # 88C-MP-61639 -16 Date dictated 03/07/02by SA Patrick Crouch: pc

- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 03/04/2002

MELISSA WELSCH, white female, home address 1997 KOA Drive, West Liberty, Iowa, home phone 319-627-2224, work phone 319-627-2676, employed by the KOA Campground, West Liberty, Iowa was contacted at her place of employment. Also present during the interview were WELSCH'S parents ELLA MAE GANDT and RICHARD GANDT of 1961 Garfield, West Liberty, Iowa, phone 319-627-2676. After being advised of the identity of the interviewing Agent and the nature of the investigation, WELSCH provided the following information:

WELSCH was shown the photographs of DENNIS GAEDE, DIANE GAEDE and her son. After viewing the photographs, WELSCH said that the three had been staying at the campgrounds for several days in a motor home they were traveling in and that they had left west bound on I-80 between 11:00 a.m. and 12:30 p.m. on 03/03/2002. (It should be noted that both of WELSCH'S parents viewed the photographs also and confirmed the people pictured had been at the campgrounds when WELSCH said they were.)

WELSCH pulled the receipt GAEDE used when they checked in and it indicated that they arrived on 02/22/2002 at 7:04. The female(DIANE GAEDE) registered under the name DEBRA STRAND of 1028 East Main, East Troy, Wisconsin 53120. She also listed her license plate number as A2139. WELSCH said that no one checked to see if the tag number was correct. She did say that the photograph she was shown of GAEDE also pictured a motor home and she thought that it was similar to the one they were traveling in. The registration receipt will be put into a 1A envelope to be made part of the file.

WELSCH said that the boy whose picture SA KITSMILLER showed her was also with the man and woman and she thought his name was JOSH or JOSHUA. WELSCH said that the boy stayed in the trailer almost the whole time they were there but did come out to shower. WELSCH said that the boy did play with her daughter on the campground's playground on Wednesday 02/27/2002.

WELSCH said that her father drove the man to the Phillips 66 in West Branch at around 3 or 4 p.m. on Friday 03/01/2002 so the man could use the ATM machine there. She said that they had a lot of cash and paid for everything in cash using mostly \$20 bills. She

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Investigation on 03/03/2002 at West Liberty, IowaFile # 88C-MP-61639, 12Date dictated 03/04/2002by SA Michael R. Kitsmiller, M

88C-MP-61639

Continuation of FD-302 of

Melissa Welsch

On 03/03/2002

, Page

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said that the trailer remained at the lot the whole time they were there

WELSCH said that the female told them that they were traveling around and had been down south. They were supposed to be going somewhere to catch up with some friends from Canada. The woman claimed that the two liked to stay at KOA campgrounds and said they had once stayed at the KOA campground in Altoona, Iowa near Adventure Land amusement park. The man said they had been in Georgia prior to coming to Iowa. WELSCH said that the two were heavy drinkers and she thought the man said that he was a diabetic. The man claimed that he owned several businesses including bait shops and that he was a computer expert. He also claimed to own some property in Canada. The woman said that her parents owned a business and she worked for them. The woman claimed that she and the man were married and WELSCH noticed she did wear a wedding band.

WELSCH said that the two purchased several phone cards and used them at the pay phone on the campground property. The number at the pay phone is 319-627-9758. WELSCH said as far as she knows they were the only two using the pay phone during the week or so they were there.

The man said that they were almost out of LP gas and could not get it at the campground.

When asked if the appearance of the two had changed from the photos, WELSCH said that the female had light brown hair when they arrived but darkened it prior to them leaving. The man has dark hair and a mustache.

WELSCH said that business was slow and that the two had left trash at the campgrounds. WELSCH retrieved three bags of trash and she, SA KITSMILLER, and ELLA MAE GANDT went through it and found the following items:

A box of hair coloring dye.

A burned campground receipt (unreadable)

A business card from STEVE LAYTON and Associates, Technical Specialty Sales, PO Box 1095, Bismark, North Dakota 58502, phone numbers 877-258-4070 and 701-258-4070. On the back of the card written in black ink was Gary 799-2899 and Hems?239-5897.

Devil in the Flesh (1998 film)

From Wikipedia, the free encyclopedia

Jump to navigationJump to search

For the Raymond Radiguet novel and films based thereon, see *Le Diable au corps*.

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Devil in the Flesh

Devilinfleshus.jpg

Directed by Steve Cohen

Produced by Robert Baruc

John Fremes

Written by Kurt Anderson and Richard Brandes

Starring

Rose McGowan

Alex McArthur

Peg Shirley

J.C. Brandy

Phil Morris

Robert Silver

Sherrie Rose

Ryan Bittle

Distributed by Le Monde Entertainment

Release date August 21, 1998

Running time 99 minutes

CountryUnited States

Language English

Devil in the Flesh is a 1998 American erotic thriller film starring Rose McGowan. The film was also released under the title Dearly Devoted. It was co-scripted by Kelly Carlin-McCall but is not based on the twice-filmed Raymond Radiguet novel *Le Diable au corps* (The Devil in the Flesh).

## Contents

- 1 Plot
- 2 Cast
- 3 Sequel
- 4 External links

### Plot

A beautiful, troubled young girl, Debbie Strand (Rose McGowan), is being brought up by her previously estranged grandmother (Peg Shirley) in Los Angeles after her mother and her mother's boyfriend die in a suspicious house fire. Her grandmother is an extremely strict, fundamentalist Christian who believes that her granddaughter is exactly like her mother. She forces Debbie to wear the grandmother's old clothes instead of buying her new ones, and abuses her by beating her with the grandmother's walking cane. When she tells Debbie she's putting her in a reform school, Debbie yanks her cane out of her hands and kills her with it.

Debbie becomes enthralled with Peter Rinaldi (Alex McArthur), an English teacher at her new school. However, Peter has a fiancée and strong scruples, so rejects Debbie's repeated advances. Peter finds that his life is ruined and bodies are piling up. During the hectic climax, Debbie breaks into his fiancée, Marilyn's, home with the intention of killing her. Peter realizes Debbie has gone there and follows her. While he is on his way, Debbie confronts Marilyn, who attempts to flee through the kitchen, but is brought down by Debbie, who knocks her unconscious. As Debbie attempts to murder her, Peter rushes in and stops her.

### Cast

Rose McGowan as Debbie Strand

Alex McArthur as Peter Rinaldi

Peg Shirley as Fiona Long

Phil Morris as Detective Joe Rosales

Robert Silver as Detective Phil Archer

Sherrie Rose as Marilyn

Ryan Bittle as Greg Straffer

Julia Nickson as Anna Nakashi

Rick Overton as Dr. Mileston

J.C. Brandy as Janie Magray

Wendy Robie as Principal Joyce Saunders

Ryan Bittle as Greg Straffer

Krissy Carlson as Meegan

Philip Boyd as Todd Sauser

Milton James as Mr. Monsour

Morgan DiStefano as Student

Aloma Wright as Secretary

Carrick O'Quinn as Motorcycle Cop

Ed Berke as Fire Chief

Tom Simmons as Fireman #2

Ken Fording as Investigator

James Jude Courtney as Mr. Roberts

Sequel

In 2000, the sequel Devil in the Flesh 2 was released with actress Jodi Lyn O'Keefe replacing McGowan.

APP-O



**CRAIG**  
— LAW FIRM —

Attorney at Law

Kyle R. Craig

Paralegal

Molly Guy

October 20, 2021

Dennis Gaede  
3100 E Railroad Avenue  
Bismarck, ND 58506

**Re: Dennis Gaede v. State 09-2021-CV-01619**

Mr. Gaede,

I am forwarding for your review an Order Denying our Request for a Competency Evaluation. I am somewhat disheartened by it, because I intended to obtain the exact type of private evaluation through the Indigent Defense Commission, and was denied that request and told that I needed to move forward with the State Hospital. At this point, I have exhausted the two avenues that I have available to have this evaluation done, whether that be through the State Hospital or having the Indigent Defense Commission cover that cost. I have no other means of obtaining a mental health or competency evaluation for you, in light of that situation. I am concerned that if we do not demonstrate some sort of mental health problem, your post-conviction relief case will likely be summarily disposed of. There is little room for any argument, given the age of this case unless we can show an exception to the 2-year statute of limitations on a post-conviction relief case. Feel free to give me a call on this, or we can set up a time to speak and figure out where to go from here.

Sincerely,

**CRAIG LAW FIRM**

**/s/ Kyle R. Craig**

Kyle R. Craig  
KRC/brz

**Enc: Order Denying Request for Competency Evaluation**

**REPLY TO:**

1600 2<sup>nd</sup> Ave SW STE. 30  
Minot ND 58701  
(701)838-3325  
(701)838-0064 FAX

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

Dennis James Gaede,

Petitioner,

vs.

State of North Dakota,

Respondent.

File No. 09-2021-CV-01619

ORDER DENYING PETITIONER'S  
MOTION FOR REQUEST OF  
COMPETENCY EVALUATION

[¶1] The above-entitled matter came before the Court on the Petitioner's APPLICATION FOR POST-CONVICTION RELIEF, which was filed on May 25, 2021. Thereafter the Petitioner filed a MOTION FOR REQUEST OF COMPETENCY EVALUATION so as to determine whether he was suffering from a mental disease or defect at the time of his initial criminal trial. This Motion is however based on Rule 35(a) of the North Dakota Rules of Civil Procedure, which provides as follows:

(a) Order for an Examination.

(1) In General. **The court** where the action is pending **may order a party** whose mental or physical condition—including blood group—is in controversy to **submit to a physical or mental examination** by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) Motion and Notice; Contents of the Order. The order:

- (A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and
- (B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

[¶2] The plain text of the Rule authorizes a party to an action to require another party to submit to a physical or mental examination. Indeed, the North Dakota Supreme Court's Rule 35 interpretative case law has only considered such. See E.g., Gepner v. Fujicolor

Processing, Inc. of Sioux Falls, S. Dakota, U.S.A., 2001 ND 207, ¶ 26, 637 N.W.2d 681. Fortunately, Rule 35 is derived from the corresponding federal rule, and thus the court may look to interpretive federal caselaw for guidance in construing ours. E.g., Polum v. N. Dakota Dist. Ct., Stark Cty., Sw. Jud. Dist., 450 N.W.2d 761, 763 (N.D. 1990). Numerous federal courts have concluded that Rule 35 does not authorize the court to order an examination of the moving party himself. Haley v. Blackwood, 338 F.R.D. 512, 515 (N.D. Fla. 2021) ("Rule 35 clearly 'does not vest the court with authority to appoint an expert to examine a party wishing an examination of himself.'"); Berg v. Prison Health Servs., 376 F. App'x 723, 724 (9th Cir. 2010) (noting that "Rule 35 does not allow for a physical examination of oneself"); Brown v. United States, 74 F. App'x 611, 614 (7th Cir. 2003) ("Rule 35 ... does not vest the court with authority to appoint an expert to examine a party wishing an examination of himself."). The Court agrees. Such authorization would be superfluous. That is, there is no need for the court to order a party to submit to the very examination the party desires; in such situations, there is no invasion of the party's privacy such that court intervention is required. See N.D.R.Civ.P. 35, Explanatory Note.

[¶3] The Petitioner is free to arrange for a mental examination without burdening the Court. Accordingly, it is hereby

[¶4] **ORDERED AND DECREED** that Petitioner's, Dennis James Gaede, MOTION FOR REQUEST OF COMPETENCY EVALUATION be DENIED.

Dated this 14th day of October, 2021.

BY THE COURT:



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Hon. Steven E. McCullough  
Judge of the District Court