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OFFICE OF APPELLATE COURTS OFFICE OF APPELLATE COURTS

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STATE OF MINNESOTA
IN SUPREME COURT

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State of Minnesota,

Respondent,

Pro Se Brief in Appeal

vs.

D.C. File No. 04048817

Appellate Court File No. A05-190

Michael C. Francis,

Appellant.

APPELLANT'S BRIEF

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A05-190

STATE OF MINNESOTA
IN SUPREME COURT

State of Minnesota,

vs.

Respondent,

D. C. File No. 04048817
4th Judicial District Court,
Hennepin County

Michael C. Francis,

Appellant.

PROCEDURAL HISTORY

05/24/04 DATE OF SHOOTING

06/25/04 COMPLAINT FILED IN HENNEPIN COUNTY DISTRICT COURT CHARGING APPELLANT WITH ONE COUNT OF SECOND DEGREE INTENTIONAL MURDER IN VIOLATION OF MINN. STAT. §609.19 SUBD. 1 (1); ONE COUNT OF SECOND DEGREE UNINTENTIONAL MURDER BY DRIVE-BY SHOOTING IN VIOLATION OF MINNESOTA STAT. §609.19 SUBD. 2 (1) WITH REFERENCE TO MINN. STAT. §609.66 SUBD. 1E; ONE COUNT OF ATTEMPTED SECOND DEGREE INTENTIONAL MURDER IN VIOLATION OF MINN. STAT. §609.19 SUBD. 1 (1); AND ONE COUNT OF ATTEMPTED SECOND DEGREE UNINTENTIONAL MURDER BY DRIVE-BY SHOOTING IN VIOLATION OF MINN. STAT. §609.19 SUBD. 2 (1) WITH REFERENCE TO MINN. STAT. §609.66 SUBD. 1E.

07/29/04 GRAND JURY INDICTED APPELLANT ON ONE COUNT OF FIRST DEGREE PREMEDITATED MURDER IN VIOLATION OF MINN. STAT. §609.185 (A) (1); ONE COUNT OF FIRST DEGREE INTENTIONAL MURDER DURING A DRIVE-BY

SHOOTING IN VIOLATION OF MINN. STAT. §609.185 (A) (3);
ONE COUNT OF ATTEMPTED FIRST DEGREE PREMEDITATED MURDER IN
VIOLATION OF MINN. STAT. §609.185 (A) (1); AND ONE COUNT OF
ATTEMPTED FIRST DEGREE PREMEDITATED MURDER DURING A DRIVE-BY
SHOOTING IN VIOLATION OF MINN. STAT. §609.185 (A) (3).

08/02/04 STATE FILED NOTICE OF INTENT TO PROVE THAT APPELLANT HAD BEEN
ACCUSED OF ADDITIONAL CRIMES AND MISCONDUCT ON OTHER
OCCASIONS, AND DISMISSAL OF COMPLAINT DUE TO INDICTMENT BY GRAND
JURY.

08/10/04 ARRAIGNMENT HEARING. COURT GRANTED STATE'S REQUEST FOR TWO-
WEEK CONTINUANCE FOR TRIAL. APPELLANT GAVE ORAL
NOTICE OF ALIBI DEFENSE. STATE GAVE ORAL NOTICE OF SPREIGL
INCIDENT WHERE APPELLANT WAS ARRESTED AND CHARGED WITH
HAVING A GUN AND LARGE AMOUNTS OF CASH IN A VEHICLE.

08/12/04 APPELLANT FILED NOTICE OF DEFENSE OF ALIBI.

09/04/04 STATE FILED MOTION TO PRECLUDE APPELLANT FROM INTRODUCING
EVIDENCE THAT SURVIVING VICTIM HAD BEEN ACQUITTED OF
MURDER CHARGES, THAT DECEASED VICTIM MAY HAVE BEEN
ENGAGED IN PROSTITUTION, AND /OR THAT DECEASED VICTIM'S
BOYFRIEND WAS AND HAD PREVIOUSLY ASSAULTED RESPONSIBLE FOR HER
MURDER AND HAD PREVIOUSLY ASSAULTED HER.

09/13/04 PRE-TRIAL HEARING. APPELLANT GAVE ORAL NOTICE OF THIRD-PARTY
PERPETRATOR EVIDENCE.

09/24/04 STATE FILED MEMORANDUM TO EXCLUDE THIRD-PARTY

PERPETRATOR EVIDENCE. APPELLANT FILED MOTION IN LIMINE
AND MOTION TO ADMIT EVIDENCE OF THIRD-PARTY PERPETRATOR.
09/27/04 HEARING ON ADMISSIBILITY OF THIRD-PARTY PERPETRATOR
EVIDENCE. APPELLANT DEMANDED SPREIGL HEARING.
09/28/04 COURT FOUND APPELLANT FAILED TO ESTABLISH FOUNDATION FOR
ADMISSIBILITY OF THIRD-PARTY PERPETRATOR EVIDENCE.
VOIR DIRE COMMENCED.
10/01/04 OPENING STATEMENTS GIVEN.
10/08/04 JURY FOUND APPELLANT GUILTY ON ALL FOUR COUNTS AS INDICTED.
11/01/04 SENTENCING HEARING.
01/31/05 NOTICE OF APPEAL FILED IN THE COURT OF APPEALS.
05/02/05 COMPLETED TRANSCRIPTS RECEIVED IN THE OFFICE OF STATE PUBLIC
DEFENDER: BUT MISSING PHOTOGRAPHS USED AT TRIAL OF SUPPOSED BLUE
TRUCK CAUGHT ON VIDEO CAMERA AROUND THE CRIME SCENE THE NIGHT
OF THE CRIME.
06/06/05 APPELLANT'S BRIEF FILED WITH THE MINNESOTA SUPREME COURT BY
STATE APPOINTED COUNSEL ANN MCCAUGHAN: APPELLANT GRIEVES
TO HER THE INSUFFICIENCY OF THE BRIEF AND REQUESTS HER TO
ADD ADDITIONAL CLAIMS HE FEELS HAVE MERIT. SHE REFUSES.
07/26/05 APPELLANT PREPARES PRO SE BRIEF AND FIRES APPELLANT'S COUNSEL.
07/28/05 APPELLANT'S PRO SE BRIEF AND MOTIONS FILED WITH THE
MINNESOTA SUPREME COURT.

STATEMENT OF THE CASE

The Grand Jury indicted appellant, Michael C. Francis, on one count each of first degree premeditated murder and first degree intentional murder during the commission of a drive-by shooting in connection with the death of F [REDACTED] R [REDACTED], and one count each of attempted first degree premeditated murder and attempted first degree murder during the commission of a drive-by shooting with the intent to cause death in connection with the shooting of M [REDACTED] P [REDACTED].

Francis filed Notice of an Alibi Defense. His Motion to Introduce Third-Party Perpetrator evidence was denied after the Trial Court found that he had not met the required foundational grounds connecting the other party with the crimes with which Francis was charged.

Following a Jury Trial in Hennepin County District Court, the Honorable Thor Anderson presiding, Francis was found guilty on all four counts as indicted. The Trial Court denied Francis' motion to instruct the Jury on the lesser-included offenses.

Francis, who is presently incarcerated in the Minnesota Correctional Facility at Stillwater, hereby appeals from these Judgments of Conviction.

LEGAL ISSUES

L. IS APPELLANT ENTITLED TO A NEW TRIAL BECAUSE THE PROSECUTOR COMMITTED MISCONDUCT THROUGHOUT TRIAL?

A. The Trial Court sua sponte admonish the Prosecutor numerous times and sustained a number of Defense objections, but denied Defense Counsel repeated Motions for a Mistrial. The Trial Court allowed the Prosecutor to continually stated as facts what was not facts and stated irrelevant comments that sought to inflame the Jury and not serve the interest of Justice.

Apposite Law: *State v. Underwood*, 281 N.W.2d 337 (Minn. 1979).

State v. Buggs, 581 N.W.2d 329 (Minn. 1998).

State v. Porter, 526 N.W.2d 359 (Minn 1995).

State v. Ture, 681 N.W.2d 9 (Minn. 2004).

State v. Watts, app. 1990 452 N. W.2d 728.

State v. Whelan, 1971, 291 Minn. 83, 189 N.W.2d 170.

State v. Haney, 1945, 219 Minn. 518, 18 N.W.2d 315.

State v. Tosney, 1879, 26 Minn. 262, 3 N.W.2d 345.

Brady v. Maryland, 373 U.S. 83 (1963) U.S. Supreme Court.

Rules of Evidence, 601, 605, 606

II. IS THE APPELLANT ENTITLED TO A NEW TRIAL, REVERSAL OF CONVICTION, VACATION OF SENTENCE, ETC., BECAUSE THE STATE FAILED TO ESTABLISH APPELLANT'S GUILT BY RELYING ON "SINGLE-WITNESS IDENTIFICATION OF DEFENDANT MADE AFTER ONLY FLEETING OR LIMITED OBSERVATION WITHOUT ANY CORROBORATION?" AND ON STATE'S VICTIM INABILITY TO TRUTHFULLY SEE THE PERPETRATOR BECAUSE HE HAD INADEQUATE

OPPORTUNITY FOR OBSERVATION?

Apposite Law: *State v. Spann*, 287, N.W.2d 406, 407-408 (Minn. 1979).

State v. Walker, 310 N.W.2d 89 (Minn. 1981).

State v. Gluff, 172 N.W.2d 63, 285, 148 (Minn. 1969).

State v. Johnson, 324 N.W.2d 199 (Minn. 1982).

III. IS APPELLANT ENTITLED TO NEW TRIAL OR GIVEN A REVERSAL OF HIS CONVICTION BECAUSE THE PHOTOGRAPH OF THE SUV TYPE VEHICLE TAKEN FROM A VIDEO CAMERA FOCUSED ON THE INTERSECTION OF 31ST AND PORTLAND NOT ON 33RD AND PORTLAND WHERE THE CRIME WAS COMMITTED; WAS IRRELEVANT, INACCURATE, UNPROVEN, MISLEADING, PREJUDICIAL AND COMPLETELY SPECULATIVE AND NOT PROVEN TO BE THE TAHOE THE STATE CLAIMED APPELLANT DROVE TO COMMIT THIS CRIME?

Apposite Law: *Minnesota Rule Evidence*, 401, 402, 403, 901

IV. WAS APPELLANT PREJUDICED BY THE TESTIMONY OF THE EXPERT WITNESS ON THE PHONE SATELLITE? WHERE HE INTERJECTED HIS OWN OPINIONS, AND THE EXPERT ALSO ADMITTED THAT THE SATELLITE CANNOT PINPOINT A CELL PHONE CALLS EXACT LOCATION: AND THERE WAS NO TECHNOLOGY TO PINPOINT LOCATION. FURTHER, THE ISSUE OF THE CELL PHONE, IT WAS NOT REGISTERED IN APPELLANT'S NAME BUT IN LISA JONES' NAME AND USED BY HER. THE INSUFFICIENCY OF THE TESTIMONY REQUIRES NEW TRIAL OR REVERSAL?

Apposite Law: *Minn Rules Evidence*, 401, 402, 403

V. IS APPELLANT ENTITLED TO A NEW TRIAL OR REVERSAL BECAUSE THE

TRIAL COURT ERRED WHEN IT REFUSED TO INSTRUCT THE JURY ON LESSER-INCLUDED OFFENSES REQUESTED BY THE APPELLANT? THE TRIAL COURT ONLY INSTRUCT THE JURY ON PREMEDITATED MURDER AND ATTEMPTED MURDER AND INTENTIONAL SECOND DEGREE MURDER AND ATTEMPTED MURDER?

Apposite Law: *State v. Dahlin*, 695 N.W.2d 588 (Minn. 2005).

Minn. Stat. 609.19 subd. 1

Minn. Stat. 609.66 subd. 1e

CRIMJIG. 11.28

VI. IS APPELLANT ENTITLED TO A NEW TRIAL OR REVERSAL BECAUSE THE TRIAL COURT ALLOWED THE STATE TO OFFER INTO EVIDENCE AND THE JURY, THE PHONE RECORDS OF LISA JONES, THE PHONE EXPERT TESTIMONY, VIDEO RECORDING AND STILL PHOTOS OF THE SUV TYPE VEHICLE, THE STATE CLAIMED WAS THE SUV, APPELLANT SUPPOSEDLY DROVE TO COMMITTED THE CRIME?

Apposite Law: *Minn. Rules Evidence, 401,402,403, 901*

VII. DID THE TRIAL COURT ERROR IN NOT GIVING CURATIVE STATEMENTS TO THE JURY; AFTER THE STATE TOLD THE JURY IN HER CLOSING ARGUMENTS THAT BEYOND A REASONABLE DOUBT; DID NOT MEAN BEYOND ALL SHADOW OF A DOUBT?

VIII. BY THE COURT REFUSAL TO ALLOW APPELLANT TO USE THE THIRD-PARTY PERPETRATOR DEFENSE, OR POSSIBLE THIRD-PARTY PERPETRATOR DEFENSE, AND ALSO ALLOWING TO THE JURY EVIDENCE OF THE DEAD VICTIM'S EX-BOYFRIEND WHO HAD IN CLOSE PROXIMATE TO THE CRIME

MADE ASSAULTS AGAINST HER AND THREATENED TO KILL HER AND WHERE A POSSIBLE ORDER FOR PROTECTION WAS ACTIVE AGAINST HIM BY THE DEAD VICTIM. WAS APPELLANT PREJUDICED BY HIS INABILITY TO RAISE A DEFENSE, AND TO RAISE REASONABLE DOUBT ON HIS BEHALF. IS APPELLANT ENTITLED TO A NEW TRIAL OR COMPLETE REVERSAL OF HIS CONVICTION?

Apposite Law: United States Constitution 6th Amend.

IX. IS APPELLANT ENTITLED TO A NEW TRIAL OR REVERSAL OF HIS CONVICTION DUE TO TRIAL COURT ERROR IN REFUSING TO ALLOW APPELLANT TO QUESTION WITNESS/VICTIM M [REDACTED] F [REDACTED] AS HOSTILE AND BIAS DUE TO HIS ARREST BY THE COURT FOR REFUSING TO COME TESTIFY AT APPELLANT'S TRIAL AND THE HIGH BAIL PUT ON M [REDACTED] F [REDACTED] CAUSING HIM TO TESTIFY AGAINST HIS WILL?

Apposite Law: United States Constitution 6th Amend.

Davis v. Alaska, 415 US 308, 315, 94, S Ct. 1105, 39 L. Ed 2d, 347 (1974).

X. IS THE APPELLANT ENTITLED TO A NEW TRIAL, OR REVERSAL OF HIS CONVICTION OR VACATION OF SENTENCING, BECAUSE THE STATE FAILED TO ESTABLISH PROBABLE CAUSE IN THEIR INVESTIGATORY LEVEL ARREST OF APPELLANT, CONFISCATION OF THE BLUE TAHOE, TRESPASSING ON LISA JONES' RESIDENCE TO GET THE NAME OF APPELLANT? WAS THIS A VIOLATION OF THE 4TH AMEND. OF THE UNITED STATES CONSTITUTION AND OUR MINNESOTA CONSTITUTION REQUIRING ALL THAT STEM FROM IT TO BE BARRED FROM ALL PROCEEDINGS AGAINST THE APPELLANT

UNDER THE FRUIT FROM THE POISON TREE DOCTRINE OF THE HIGH COURTS?

Apposite Law: *The United States Constitution 4th Amend. And 14th Amend.*

Illinois v. Gates, 463 U.S. 213 (1983).

Katz v. United States, 389 U.S. 347 (1967).

Mincey v. Arizona, 98 S. Ct. 2408 (1978).

XI. IS APPELLANT ENTITLED TO A NEW TRIAL, A REVERSAL OR VACATED SENTENCE DUE TO THE UNCONSTITUTIONALITY OF HIS JURY BEING SEEN TALKING TO SGT. JACKSON OUTSIDE THE COURT ROOM AND BEING ALLOWED TO GO HOME EACH DAY OF TRIAL TO HAVE UNFILTERED ACCESS TO THE INFLAMMATORY NEWS MEDIA REPORTING ON APPELLANT'S CASE DEPICTING HIM AS A "WOMAN-MURDERER", AND DRUG DEALER: AND WHERE AT LEAST ONE JUROR ADMITTED IN COURT TO WRONGFUL CONDUCT, BUT APPELLANT WAS NOT ALLOWED TO QUESTION HIM.?

Apposite Law: *U.S.C.A. Const. 6th Amend. State Const.;*

State v. Georgian, 124 Minn 515, 145 N.W.2d 385.

State v. Sanders, 1985, 376 N.W.2d 196.

XII. WAS APPELLANT PREJUDICED AND DENIED A FAIR TRIAL AND UNBIASED, UNPREJUDICED JURY, AN IMPARTIAL JURY, BY THE TRIAL COURT'S REFUSAL TO RE-POOL AND HAVE A NEW JURY SELECTED WHEN APPELLANT COMPLAINED THAT JURY WAS NOT MADE UP OF HIS PEERS AND HAD NOT ENOUGH MINORITIES ON IT? DOES THIS MANDATE HIM A NEW TRIAL OR COMPLETE REVERSAL? SHOULD THE JURY POOL THAT, THE JURY WAS SELECTED FROM HAD BEEN MADE UP OF A PERCENT OF AFRICAN

AMERICANS, HISPANICS, ASIANS, ARABIANS, ETC. COMPARED TO THE PERCENT OF THE POPULATION IN THE DISTRICT THE JURY WAS PULLED FROM? ARE THE METHODS FOR CHOOSING JURY POOL SELECTIONS UNCONSTITUTIONAL BECAUSE THEY REQUIRE PROSPECTIVE JURORS TO BE VOTER, ETC?

Apposite Law: US Constitution 6th Amend and 14th Amend.

XIII. IS THE APPELLANT ENTITLED TO A NEW TRIAL DUE TO THE STATE BEING ALLOWED TO SUBMIT IN FRONT OF THE JURY MUG SHOTS OF APPELLANT FROM PREVIOUS CRIMINAL CONVICTION THAT WAS MISDEMEANOR CHARGES? IS APPELLANT ENTITLED TO MORE THAN A NEW TRIAL TO PROTECT HIM FROM DOUBLE JEOPARDY VIOLATION?

Apposite Law: State v. Gluff, (1969), 285 Minn. 148, 172 N.W.2d 63

Bruton v. US (1968), 391 U.S. 123, 88 S. Ct. 1620, 20 LD 2D 476

Commonwealth v. Jamison, (1969), 215 Pa. Super 370, 258, A 2d 529

State v. Breedlove, 271 NE 2d 238 (OHIO Supreme Court) June 23, 1971, 26 Ohio St. 2d 178

XIV. WAS APPELLANT PREJUDICED BY INEFFECTIVE ASSISTANCE OF HIS TRIAL COUNSEL, RICHARD J. COLEMAN WHEN HE FAILED TO CROSS-EXAMINE WITNESSES, CALL ALIBI WITNESSES, COUNTER STATE EVIDENCE AND SIMPLY AGREE TO THE STATE'S VERSION OF THE FACTS? QUESTION APPELLANT ON THE STAND ABOUT HIS DEALING DRUGS IN THE PAST DESPITE APPELLANT TELLING DEFENSE COUNSEL NOT TO ASK HIM ABOUT THESE THINGS ON THE STAND AND DEFENSE COUNSEL AGREEING NOT TO, YET HE DID ANYWAY. IS APPELLANT ENTITLED TO A NEW TRIAL OR

**REVERSAL OF HIS CASE BECAUSE OF THE MAGNITUDE OF HIS TRIAL
LAWYERS INEFFECTIVENESS?**

Apposite Law: *United States Constitution 6th Amend.*

Strickland v. Washington, 466 U.S. 668, 104, S. Ct. 2052, 80
L.ed 674 (1984).

State v. Grey, 256 N.W.2d 74, 76 (Minn 1977).

State v. Charles, 634 N.W.2d 425 (Minn. App. 2001).

Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55, 77 L.ED 158 (1932).

Adams v. U.S. ex rel. McCann, 317 U.S. 269, 63 S. Ct. 236, 87 L.ED
268 (1942).

State v. Groff, 510 N.W.2d 212 (Minn. App. 1993)

Lochart v. Fretwell, 506 U.S. 354, 113, S.Ct. 838, 122 L.Ed, 2d 180
(1993).

Garza v. Wolff, 528 F 2d 208 (8th Cir. 1975).

U.S. v. Matos, 905 F. 2d 30 (2nd Cir 1990).

Berry v. Gramley, 74 F. Supp. 2d 808 (N.D. Ill. 1999).

Kemp v. Leggett, 635 F. 2d 453 (1981).

**XV. IS APPELLANT BEING UNDULY PREJUDICED BY HIS PUBLIC DEFENSE
ATTORNEY ON APPEAL, FAILURE TO APPEAL ALL ISSUES THAT ARE WITH
MERIT ON APPELLANT'S APPEAL? IS APPELLANT ENTITLED TO A NEW
COUNSEL TO BE PAID FOR BY THE STATE IN ORDER TO PROCURE A TRUE
APPEAL?**

Apposite Law: *United States Constitution 6th Amend.*

Strickland v. Washington, 466 U.S. 668, 104, S. Ct. 2052, 80 L.ed
674 (1984).

XVI. IS THE APPELLANT ENTITLED TO A NEW TRIAL OR REVERSAL OF HIS

CONVICTION BECAUSE STATE AND COURT ERRED BY PRESENTING TO THE JURY APPELLANT'S LIABILITY IN INTENT TO COMMIT FIRST DEGREE MURDER FOR THE SHOOTING OF P [REDACTED] R [REDACTED] WHO WAS SITTING IN A CAR WHERE THE SHOOTING OF SUPPOSED VICTIM M [REDACTED] P [REDACTED] WAS SHOT? DID APPELLANT'S INTENT GET PROVEN BY THE STATE SIMPLY BECAUSE THEY PRESENTED A MINOR ARGUMENT OF THE BEHALF AND UNCORROBORATED TESTIMONY FROM SURVIVING VICTIM? CAN THE STATE TRANSFER INTENT TO MAKE APPELLANT RESPONSIBLE BECAUSE STATE CLAIMED HE SHOT TO KILL M [REDACTED] P [REDACTED] BUT INADVERTENTLY MURDERED THE DRIVER OF A CAR PARKED NEAR THE CRIME AREA. IS APPELLANT ENTITLED TO A NEW TRIAL OR REVERSAL OF HIS CONVICTION AND VACATION OF HIS SENTENCE BECAUSE HE IS NOT GUILTY OF INTENT WHICH IS THE REQUIREMENT OF FIRST DEGREE MURDER? WAS THERE SUFFICIENT EVIDENCE TO PROVE FIRST DEGREE MURDER OF P [REDACTED] R [REDACTED]?

Apposite Law: State v Hough, 585 N.W.2d 393 (Minn 1998).

Cheek v. U.S., 498 U.S. 192 (1991).

In Re Winship, 397 U.S. 357.

XVII DID THE TRIAL COURT ABUSE HIS DISCRETION BY RULING WITNESS MOANNA TEPPEN AS COMPETENT AND ADMITTING HER TESTIMONY? HER TESTIMONY WAS IRRELEVANT AND SHOULD HAVE BEEN EXCLUDED.

Apposite Law: Minn. Rules Evidence 401

Minn. Rules Evidence 402

Minn. Rules evidence 403

**XVIII DID TRIAL COURT ABUSE HIS DISCRETION IN DENYING APPELLANT POST
CONVICTION RELIEF AND NOT GRANTING AN EVIDENTIARY HEARING?**

STATEMENT OF THE FACTS

MICHAEL C. FRANCIS, THE APPELLANT, WAS IN 2004 ENROLLED IN HENNEPIN TECH COMMUNITY COLLEGE TO EARN A DEGREE IN AUTO MECHANICS AND AUTO BODY. HE HAD A GIRLFRIEND NAMED PAIGE JONES-SMITH. HIS LIFE WAS GOING GOOD AND HE HAD ONLY ONE SMALL LEGAL PROBLEM; HE WAS CHARGED WITH HAVING A FIREARM IN THE CAR HE WAS DRIVING: HE PLEAD GUILTY TO A MISDEMEANOR WITH THE SENTENCE BEING PROBATION AND THE CHARGES BEING ERASED FROM HIS RECORD UPON COMPLETION OF PROBATION.

ON JUNE 29TH, 2004 THE PRESIDING JUDGE FOUND THERE TO BE NO PROBABLE CAUSE, YET HE REMANDED APPELLANT BACK TO THE JAIL FOR DETAINMENT. MUCH LONGER THAN 48 HRS. HAD ELAPSED FROM APPELLANT'S ARREST AND HIS BEING ALLOWED TO ENTER A PLEA IN COURT UNDER OATH.

M [REDACTED] P [REDACTED] and F [REDACTED] R [REDACTED] met around January of 2004 and began seeing each other on a fairly regular basis. (T 1166, 1168-69, 1245). P [REDACTED] claimed he was self-employed working in the music business. (T 966, 1164, 1244). Although he lived in St. Louis Park, his equipment was in a kind of studio in a home belonging to friends located at [REDACTED] in Minneapolis. (T 966, 993, 1164, 1245-47). F [REDACTED] was at the house on Portland nearly every day and would sometimes meet R [REDACTED] there. (T 965, 967, 993-94, 1165, 1168-69, 1245-46).

¹ "T" refers to the consecutively paginated ten-volume transcript of pretrial, trial, and sentencing proceedings.

On the evening of May 24, 2004 R [REDACTED] drove to the house at [REDACTED] to meet P [REDACTED] at about 8 PM. (T 1192). They had planned to go bowling, however, finding the lanes crowded, instead had dinner at a Caribbean restaurant. (T 1192-94, 1247). After dinner, R [REDACTED] drove back to the Portland house and parked her Mitsubishi facing southbound on Portland in front of P [REDACTED]'s Yukon truck on the east side of the one-way street. (T 1091, 1196-97). P [REDACTED] was going to talk to his friends for awhile, so P [REDACTED] and R [REDACTED] agreed to meet again later in the evening. (T 1197, 1247-48).

P [REDACTED] opened the front passenger door and exited the car, standing to talk to R [REDACTED] for a few more moments. (T 1201-03, 1241). As he stood, facing north a vehicle driving south bound on Portland pulled close alongside. (T 1201-04). The vehicle slowed, P [REDACTED] claimed he looked at the driver before it came to a stop. (T 1206). Shots were fired. (T 1207). P [REDACTED] was hit three times in the left thigh and abdomen, and fell to the ground face-down. (T 1208-09, 1219-20). P [REDACTED] looked up and saw a blue truck with silver exhaust pipes. (T 1210). P [REDACTED] then looked and saw that R [REDACTED] had been shot and was bleeding. (T 1211).

P [REDACTED]'s friend, D [REDACTED] E [REDACTED], was in his second floor bedroom at [REDACTED] when he heard what sounded like someone shooting at the house, and then tires screeching away. (T 973, 976, 985). He ran down stairs to the front porch and, not being able to see very well into the street, turned off the porch lights. (T 976, 997, 1004). Another resident of the house, D [REDACTED] H [REDACTED], also heard the shots and joined E [REDACTED] on the porch; they saw both R [REDACTED]'s and P [REDACTED]'s vehicles parked at the curb. (T 976, 996-97). The engine of R [REDACTED]'s car was racing. (T 976, 996-97, 1005). E [REDACTED] and H [REDACTED] saw R [REDACTED] slumped over; they ran around the car and found P [REDACTED] lying on the ground. (T 977-78, 999). The passenger door was open. (T 978, 998). E [REDACTED] tried to talk to P [REDACTED] and keep him awake; P [REDACTED] could not get up. (T 979, 1212-13). H [REDACTED] opened the driver's door, and lifted R [REDACTED]'s leg off the accelerator to stop the car from racing. (T 999-1000).

E [REDACTED] was hysterical, but after H [REDACTED] told him to call 911, he grabbed his brother, Starrell's, cell phone and called the police. (T 980, 1001). The police and medical responders arrived within two to

three minutes. (T 980-81, 1002).

M ■ D ■, who lived nearby on the west, or opposite side, at ■, was at home watching television when he heard gunshots. (T 1008-09). He muted his TV, listened, and heard a vehicle accelerate down Portland. (T 1009-1010). As he looked out his window, he saw an SUV with a blue glow on the dashboard pass by in front of his home. (T 1010-12). He could not see the color of the SUV, but thought that it was dark. (T 1015).

When the 911 call came in shortly before 11 PM, Officer Gerlicher was on patrol proceeding eastbound on Lake Street, approaching Portland Avenue. (T 1019). He heard the call about a shooting, turned on his siren, and turned south onto Portland driving three blocks, arriving at the scene in less than a minute from the time of the dispatch. (T 1021-22). Officer Gerlicher observed the passenger side door of the Mitsubishi open to the street and a person lying on the ground. (T 1023-24). Officer Gerlicher saw that the man was shot in his leg and abdomen, and was in a lot of pain and bleeding profusely, so he called for an ambulance. (T 1025). Officer Gerlicher asked P ■ who shot him and all P ■ said was "It was a blue truck." (T 1026). Officer Gerlicher checked on the driver, who was lying across the center console, and was that she had been shot in the head and was bleeding profusely. (T 1026-27).

An ambulance arrived and P ■ was taken to the emergency room. Riding along in the ambulance was Officer Matthew Hobbs. (T 1273). P ■ thought that he was going to die and told Officer Hobbs that someone in a blue Tahoe had shot him; he later said the shooter's name was "Mike." (T 1212-14, 1226-27, 1274-76, 1592-93). P ■ had emergency surgery and could not be interviewed for a few days. (T 1416, 1590-91). He was hospitalized for about three weeks. (T 1215).

Officer Gerlicher stayed at the crime scene for some time and found a bullet fragment on the ground near where P ■ had been lying. 2 (T 1029). He talked to D ■ and S ■ E ■ and D ■ H ■, but no one saw the vehicle or the driver who had sped away from the shooting. (T 1037-38, 1078). An inspection of the car revealed that the rear passenger window had been struck by a bullet, as

well as the front passenger door. (T 1088, 1092-93,1097-98, 1115).

After hearing of the shooting on the news, Shannon Haralson, who lives on the southeast corner of 31st Street and Portland Avenue, called the police. (T 1380, 1382-84). Haralson designs and installs video systems for security for businesses. (T 1379). For demonstration purposes, he has four video cameras continuously recording the area around his home-based business. (T 1379-80). One of these cameras is aimed at and records the activity north and northwest on Portland and 31st Street. (T 1382).

² Other than that fragment, no shell casings were found during a search of Portland Avenue between 33rd and 34th Streets. (T 1075). No gun was ever found, despite the execution of search warrants for a number of locations and vehicles. (T 1662-64, 1688).

Sgt. Jackson obtained a photograph of Michael C. Francis and arranged for a photographic lineup to be shown to P [REDACTED]. (T 1658). On June 18, Sergeant Gerhard Wehr, an officer who was not involved in this investigation, showed several photographs one-by-one to P [REDACTED]. (T 1265-69). P [REDACTED] picked Francis' photograph out of this lineup as the person who shot him. (T 1217, 1269). P [REDACTED] later told Sgt. Jackson that Francis had threatened him during the argument over rims. (T 1661-62, 1682-84). Sgt. Jackson subsequently put out an alert to all officers to stop the Tahoe.

Officer Mack Jeffrey Dominguez saw a Tahoe that matched the description given by Sgt. Jackson, being driven at 28th and Lyndale Avenue. (T 1280). Officer Dominguez arranged for backup and stopped the Tahoe. (T 1282). Francis was driving the Tahoe, and a Jesse Kaplan was riding as a passenger. (T 1283, 1657). The Tahoe was towed to the police forensics garage where it was searched under warrant. (T 1283). Francis was not taken into custody at the time. (T 1286).

Based on P [REDACTED]'s identification during the photographic lineup, Sgt. Jackson contacted Francis' friends and family members and told them he would like to talk to Francis. (T 1771-72). Francis voluntarily went to talk to Sgt. Jackson. (T 1687, 1772).

5 The Tahoe was never processed for gunshot residue. (T 1308, 1321, 1458). William James, the examiner, noted the after-market radio with blue illuminations. (T 1304-06). R [REDACTED]'s Mitsubishi was also examined at the forensics garage. (T 1231). The back passenger window had been struck by a bullet, and there was a bullet hole in the right front passenger door. (T 1294-98). The Tahoe also was sitting in the impound for a few weeks without a warrant nor probable cause which is a violation of the 4th Amend.

Before interrogation Francis was arrested for second-degree and attempted murder. During the interrogation, Francis denied being involved in the shootings. (T 1851-52). Francis was subsequently indicted for four charges stemming from this incident.

At Trial, P ■ testified that he had been introduced to someone that he knew as Mike by a person named Charles or "C" when Charles brought Mike over to ■ several months before this incident. 6 (T 1170, 1249). P ■ would see Mike around different places, and would oftentimes see him with Paige, and sometimes with Charles. (T 1171-72).

P ■ testified that he had arranged to buy his own Yukon in November from William Walker, but that he needed to make arrangements for financing. (T 1177-79, 1231). At the time, the Yukon had special rims on it, and that was why P ■ wanted that truck. (T 1179, 1232). The rims were worth somewhere between \$500 to \$1000 each. (T 1180). By the time P ■ could purchase the truck, 7 However, Walker had sold the rims to Francis. (T 1180-81, 1232).

6 During cross-examination, when asked how P ■ met Francis, P ■ said that Francis was selling marijuana. (T 1249). 6(a) It is a well known fact that there are many other Tahoes including blue Tahoes that are outfitted in the same manner.

7 At the time of this shooting, the Yukon was still registered in William Walker's name, but also had a second license plate registered as of April, 2004. (T 1032-33). Sgt. Jackson testified that the Yukon had been sold in late March or April, 2004. (T 1676).

P█ was unhappy with this, but negotiated a lower price on the Yukon; Walker said that he would try to get the rims back from Francis. (T 1181-82, 1232-33, 1251-52, 1255). P█ would see Francis driving around in the Tahoe with the special rims on that truck. (T 1183, 1251).

Sometime around the end of April, P█ claimed he drove R█'s Mitsubishi to a Mini Mart in South Minneapolis. (T 1183-85, 1234-35). P█ claimed, Francis was parked in the parking lot in his Tahoe. (T 1186). According to P█, Francis began a confrontation saying that he knew P█ wanted his rims and was mad that Francis had them instead. (T 1187, 1250). P█ denied being mad, but Francis taunted him and they argued back and forth. (T 1187-88, 1252, 1256-58). According to P█, Francis told P█ that he couldn't have the rims, and P█ retorted that if he wanted them, he would take them. (T 1188-89). P█ claimed that Francis told him something to the effect that "You're a dead man." (T 1190, 1236-37). P█ did not feel threatened. 8 (T 1191).

During his testimony at Trial, P█ identified Francis as the person who drove the Tahoe and fired shots at him as he stood outside R█'s car. (T 1206-07). P█'s friends testified as to what they saw and heard that evening. The clip from the CD was played for the jury, and still photos taken from the CD were introduced as evidence. (T 1670-73). The license plates on the video were not legible, and , although software exists that could enhance the images, this was never done. 9 (T 1396).

8 This argument was never corroborated by any other evidence at trial.

9 If the state was going to claim the SUV type vehicle in the video-type was the one Francis drove at times, why wouldn't they take every possible way to make sure the SUV they claimed it to be was actually it and leave no room for speculation.

Medical personnel testified about P [REDACTED]'s life-threatening injuries, and the medical examiner testified that R [REDACTED] died of a gunshot wound to the head during a homicide. (T 1133-42, 1414-36). Bullet fragments removed from R [REDACTED] and P [REDACTED], along with the fragment found on the ground, were consistent with a .44 caliber weapon. (T 1430, 1449-52). No gun was ever found.

Moana Teppen testified that she was Jesse Kaplan's roommate in May, 2004. (T 1326). She met Francis through Kaplan; Kaplan and Francis would hang out at the apartment at Larpenteur Avenue in St. Paul, smoking marijuana. (T 1327-28). Teppen saw Francis driving both the Tahoe and the Caprice, and met Francis' girlfriend, Paige. (T 1329-30). Teppen said that Jay and Mike would sometimes drive Teppen's black Ford Focus. (T 1330). The Prosecutor asked why Kaplan and Francis would use Teppen's vehicle, and Teppen responded "Ah, for dugs, probably." (T 13330). When pressed further by the Prosecutor, Teppen said that her vehicle was in better condition. (T 1331).

According to Teppen, sometime during June, Francis told her that his Tahoe had been taken because it was believed to have been involved in a shooting incident. (T 1331-32). Francis then drove his Caprice and Kaplan drove her Focus. (T 1332). According to Teppen, a few days after the Tahoe was seized, a group of people – including Francis and Kaplan – were invited over to the Larpenteur apartment; they were all smoking marijuana. (T 1332-33). Teppen remained in the bedroom, but heard Francis say something to the effect "If this guy wants to mess with me, I'll pop that nigger, too." (T 1334).

Teppen also testified that, after Francis had been arrested, she called the police because she found a gun in a shoe box in her Focus after Kaplan drove the vehicle. (T 1335-1337, 1353). The police searched the car and the apartment, but did not find any gun. (T 1336, 1353). Kaplan told Teppen that the gun was a BB gun and that he had thrown it away. ¹⁰ (T 1336).

¹⁰ Teppen was seriously mentally ill; The medications she were taking to treat her mental illness, caused serious side effects that made her an incompetent witness who cannot be trusted on the stand nor be ruled competent.

Over Defense's objection (T 1508-11), the State introduced expert testimony from a Qwest wireless engineer, Rickey Dobbe. (T 1524). Dobbe testified about the general operation of cell phone towers. (T 1526-31). He testified that each tower has three faces, each one generally transmitting 120 degrees for a distance of three miles. (T 1527-28, 1564). However, where there is a lake that is relatively open and unobstructed, a phone might send or receive a signal over a larger area. (T 1537, 1564). According to Dobbe, cell phones are programmed to continuously seek the strongest signal, however, the closest signal geographically may not be the strongest signal. (T 1530-31, 1565). For example, the strongest signal might be coming down the road two or three miles where the closest signal might be two blocks away, but be partially obstructed by buildings or trees. (T 1531, 1565). It is also possible to be in the same spot geographically on two different days and get a signal from different towers or transmitters. (T 1568).

Using the cell phone records of Lisa Jones, along with a map of cell-tower sites in the area around Lake Street and 35W, Dobbe testified that calls were made from and placed to phones generally located within the area of the shooting on Portland around the time that R [REDACTED] and P [REDACTED] were shot.¹¹ (T 1532, 1535-60). Dobbe could not pinpoint the exact location of the cell phones when those calls were made. (T 1560).

¹¹ Lisa Jones' house was within a mile of the crime scene and Francis home was within three to four miles of the crime scene.

After Dobbe's testimony, but before the close of the State's case, the Prosecutor argued for the admission of Spreigl evidence against Francis. Francis had been charged with gross-misdemeanor possession of a .22 caliber pistol without a permit, and driving violations for an incident on September 7, 2003. (T 1580-81). He pled guilty to that offense on February 4, 2004. (T 1581). The State wanted the evidence because it showed that Francis possessed a gun while in a motor vehicle.¹² (T 1582-83). The Court ruled the evidence was not admissible because illegal possession was not relevant to show that Francis committed this offense. (T 1585).

At the close of the State's case-in-chief, the Court denied Francis' Motion for a Mistrial made because of improper and prejudicial testimony by Sgt. Jackson.¹³ (T 1693-94). The Court concluded that the incidents were isolated in the whole of the State's case, and that, while Sgt. Jackson should have known better, the testimony was inadvertent.¹⁴ (T 1694). The Trial Court also denied Defense counsel's Motion for Judgment of Acquittal based on insufficient evidence as to premeditation and intent. (T 1694).

Francis called witnesses to testify. Two employees from Auto Max, Michael Carlson and Timothy Kruse, testified that they had worked on the blue Tahoe on a cash basis installing various accessories for Francis. (T 1710-11), 1714-15, 1788-89, 1791-95).

¹² As long as you are of proper age, no felonies and go through the proper registration it is legal to carry a hand gun. Carrying a gun doesn't make a person a cold-blooded murder.

¹³ See Argument 1 that follows.

¹⁴ The incident was not isolated and continued when the state admitted mug-shots of Francis into evidence.

Carlson testified that there are “Lots of Tahoes and Yukons running around with rims and stuff like that” so he could not be absolutely sure that the photograph from the CD shown to him depicted Francis’ Tahoe. (T 1707, 1713). On cross-examination, Carlson testified that it was possible the Tahoe was at Auto Max being worked on from May 23 to May 25. (T 1716).

Francis’ mother, Cynthia Hudson, testified that her son was a good son and was not a violent person unless someone started something with him first, in which case he would defend himself. (T 1722, 1724-25). Hudson said that her son “got off on the wrong foot and sold drugs.” (T 1721). Hudson admitted that she and Francis “buted heads” because she knew what was best for him and wanted to tell him what to do and because she thought that Francis should listen to her until he turns twenty-five years of age. (T 1723-25).

Evertz testified that Walker sold the rims off his 95 Yukon to Francis in December, 2003. (T 1751-53). Evertz also testified that he drove Walker’s Yukon for a few weeks beginning at the end of January while he was moving to a different apartment (T 1754).

Francis testified that he did not shoot either R [REDACTED] or P [REDACTED]. (T 1764, 1806). He testified that he could not remember exactly what he was doing at the exact time of the shootings, but that his usual habit on a school night between 9 and 11 PM was to either pick up his girlfriend at her mother’s house in South Minneapolis and drive with her to his home in St. Louis Park, or meet her there in St. Louis Park. (T 1801-03, 1830-34, 1839-41, 1847-49). Francis denied that there was any argument over the rims on his Tahoe and denied ever threatening P [REDACTED]. (T 1764, 1769, 1829). Francis said that he had met P [REDACTED], but that the last time he had seen him was around September or October of 2003. (T 1769, 1829).

Francis admitted using the cell phone to make arrangements to sell marijuana, and that was how he made money to support himself and pay for school and fix up the Tahoe. (T 1766-67). Francis testified that the truck in the still photograph taken from the CD was not his truck because the color looked different and the truck in the photograph had lights on the front that Francis did not have on his Tahoe. (T 1800).

Francis admitted that he and Kaplan kept the marijuana they sold over in an apartment on Larpeur Avenue in St. Paul where Teppen stayed. (T 1804-05). He denied ever making the statements that Teppen attributed to him. (T 1805).

The Court denied Francis' Motion for Judgment of Acquittal on counts two and four, first degree intentional murder and attempted first degree intentional murder during the commission of a drive-by shooting. (T 1904).

During discussions about how to instruct the Jury, the Court asked if it was possible to charge a crime of drive-by shooting that is a second degree rather than a first degree murder. (T 1879). The Prosecutor responded that it was not possible because "if it's an intentional murder and a drive-by that makes it first degree, and what makes it second degree." ¹⁵ (T 1879).

¹⁵ However, before the Grand Jury indictment, the State had originally charged Francis with second-degree intentional *and* unintentional murder during the commission of a drive-by shooting for the death of R [REDACTED], and attempted intentional second-degree murder and attempted second-degree murder during the commission of a drive-by *but without intent to effect death*.

The Court stated “In order to be murder in the first degree while committing a drive-by shooting, first degree murder, one has to be committing the crime of drive-by shooting, but the crime of drive-by shooting does not require the intent to kill, but first degree does, so you have to find the intent to kill and you have to find drive-by shooting; and drive-by shooting is just a crime that doesn’t require that.” (T 1880). The Court was concerned about complicating the instructions so much that it would confuse the Jury. (T 1881, 1902).

Defense counsel requested that the Jury be instructed in first degree assault, first and second degree manslaughter, and second degree unintentional murder by drive-by shooting. (T 1866, 1872, 1901, 1907, 1913, 1927, 1932, 1936-37). Defense counsel requested a lesser-included offense instruction of attempted second degree felony murder during the commission of an assault on count three (premeditated attempted murder of P ■ while using a firearm), on the theory that a person is necessarily committing a first degree assault in committing a murder. (T 1910-12). Defense counsel specifically asked for CRIMJIG 11.28, attempted second degree murder during a drive-by shooting with no intent to kill. (T 1936-37).

The Court denied the request for an instruction of felony murder on counts one and three (first degree and attempted first degree premeditated murder) because the Court did “not believe that felony murder is a lesser-included offense [of first degree murder].” (T 1913). The Court also denied the motions for instructions on manslaughter and assault. (T 1919, 1927-28).

The Court instructed the Jury on premeditated murder and attempted premeditated murder, first degree intentional murder and attempted murder during a drive-by shooting, and second degree intentional murder and attempted second degree murder. (T 2051-69).

Three hours after beginning deliberations, the Jury asked to view the CD of the video taken by Haralson of 31st Street and Portland Avenue. (T 2081). The Court allowed a replay within the courtroom in the presence of all parties. (T 2093). Two hours later, the Jury found Francis guilty as charged by indictment. (T 2098-2101).

At sentencing, Defense Counsel objected to consecutive sentencing under Blakely v. Washington. (T 2123). The Court sentenced Francis to 180 months for attempted first degree murder of P ■, and then a consecutive life sentence for the first degree murder of R ■. (T 2128-29). The Court ordered restitution of \$9,000 for funeral and other expenses. (T 2130).

ARGUMENTS

I. APPELLANT IS ENTITLED TO A NEW TRIAL BECAUSE THE PROSECUTOR COMMITTED MISCONDUCT THROUGHOUT TRIAL.

This was a very contentious Trial, marred by the Prosecutor's incivility. Pretrial, the Prosecutor accused Defense counsel of not preparing for Trial. (T 12-19, 26). During Trial, the Prosecutor would frequently interrupt or talk over witnesses, counsel, and the Court to the extent that the Court asked the prosecutor if she would permit the Court to preside. The prosecutor at times argued at sidebar so vociferously that it was audible to the jury. The prosecutor also ridiculed the defendant and his witnesses.

This Court has summarized the law on prosecutorial misconduct.

"This Court reviews claims of prosecutorial misconduct and will reverse only if the misconduct, when considered in light of the whole trial, impaired The Defendant's Right to a Fair Trial." State v. Powers, 654 N.W. 2d 667, 678 (Minn. 2003) (citing State v. Johnson, 616 N.W.2d 720, 727-28 (Minn. 2000)). In determining whether prosecutorial misconduct deprived a defendant of a fair trial, there are two distinct standards. Id. In cases in which the misconduct was serious, the standard is whether that misconduct is harmless beyond a reasonable doubt. Id. "[M]isconduct is harmless beyond a reasonable doubt if the verdict rendered was surely unattributable to the error." Id. (citing State v. Hunt, 615 N.W.2d 294, 302 (Minn. 2000)). In cases involving less serious misconduct, the standard is whether the misconduct likely played a substantial part in influencing the jury to convict. Id.

State v. Roman Nose, 667 N.W.2d 386, 401 (Minn. 2003).

"A prosecutor's duty is not simply to convict, but to do justice." State v. Sha, 193 N.W.2d 829, 831 (Minn. 1972) (citations omitted). While prosecutors may "strike hard blows, [they] are not at liberty to strike foul ones. It is as much [their] duty to refrain

from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” State v. Silvers, 40 N.W.2d 630, 632 (Minn. 1950).

A. The prosecutor did not properly prepare and/or control her witnesses.

It is misconduct for a prosecutor “to offer inadmissible evidence, ask legally objectionable questions, or make other impermissible comments or arguments in the presence of the Judge or Jury.” State v. Richardson, 514 N.W.2d 573, 577 (Minn. App. 1994); see also, State v. Flowers, 261 N.W.2d 88, 89 (Minn. 1977) (stating when prosecutors and police officer try to inject into “Trial indirectly matters which they know they cannot introduce directly, the only solution is to *** try the case over”); State v. Jahnke, 353 N.W.2d 606 (Minn. 1984). The State has a duty to properly prepare its witnesses prior to Trial to avoid the problem of witnesses blurting out inadmissible or prejudicial testimony. State v. Underwood, 281 N.W.2d 337, 342 (Minn. 1979). The State did not prepare it’s witnesses.

First, during cross-examination, P ■ said that he met Francis when he was selling marijuana. This was irrelevant and the State should have instructed P ■ not to refer to this. Id. Next, during direct examination of Teppen, the prosecutor elicited Teppen’s guess that Kaplan and Francis used her Focus “for drugs.” This was also irrelevant and unnecessary to the State’s burden of proof because there were no allegations that the use or sale of drugs had anything to do with these shootings.

Then, during direct examination of the lead homicide investigator, Sgt. Jackson, the prosecutor elicited information that an officer from the gang unit gave Sgt. Jackson information that matched the description given to Jackson by P ■. (T 1597). Defense counsel objected both on hearsay grounds, and because there had been no indication that Francis had any affiliation with any gang, and the witness’ testimony interjected an irrelevant and overly prejudicial matter into the Trial. (T 1597-98). Defense counsel argued that the jury would infer that Francis was a member of a gang because the gang unit officer provided Francis’ license number to Sgt. Jackson. (T1600). After side bar, still during direct examination,

the prosecutor asked Sgt. Jackson if he did anything to try to identify Michael C. Francis after seeing that name on the mailbox at Lisa Jones' home. (T 1605).

The Court sua sponte called for a conference and admonished the prosecutor "Don't you see the danger in what you're doing? Now [Sgt. Jackson has] gotten out that he's found [Francis] picture in an arrest folder." (T 1606). The prosecutor responded that she was not trying to elicit that information.

(T 1606). The Court again inquired "Well, what other information could possibly – didn't you see that coming? Haven't you interviewed this fellow?" (T 1606). Defense counsel made its own objection, noting that this was a very experienced homicide detective who has testified in courtrooms before and would know what is prejudicial, and also that the prosecutor knew that there would be only one answer to her question. (T 1606).

The Court asked the prosecutor how it should correct Sgt. Jackson's testimony, and the prosecutor responded that the Court could advise the jury to disregard the question. (T 1607). The Court told the prosecutor that it was "irrelevant whether this officer thinks that some picture [Sgt. Jackson] finds meets the description of what he gets from P [REDACTED]."

Defense counsel could not think of anything to undo this prejudicial testimony, so the Court excused the jury and then made a record that it had sua sponte interrupted the testimony because the Court had "some responsibility to try to prevent at least plain error from coming into the case." (T 1610-11). The Court said that it was attempting to prevent Sgt. Jackson from saying that he found Francis' photograph in the arrest record. (1611-12). Defense counsel countered that Sgt. Jackson had not been prevented from testifying improperly and had, in fact, stated that he looked in the arrest database to see if Francis' photo met the description given him by P [REDACTED]. (T 1612). Defense counsel moved for a Mistrial based upon prosecutorial misconduct. (T1613).

The Court did not think that the prosecutor was engaged in a "deliberate plot to slip in prejudicial" evidence, and believed that the Court's corrective instruction on gangs "solved" that error.

(T 1615).

(T 1617). The Court instructed the prosecutor that it is not necessary to introduce evidence as to where the police obtained Francis' photograph to put into the photographic lineup. (T 1621).

Because of this highly prejudicial testimony, the Court wanted an offer of proof as to what other questions the prosecutor intended to ask Sgt. Jackson. The prosecutor informed the Court that she intended to introduce evidence that Francis legally applied for a permit to purchase a firearm after he turned 21, and that the phone number that Francis provided on that application was that of a cell phone that he used that belonged to Lisa Jones. (T 1632). Defense counsel objected to this evidence and agreed to stipulate that Francis used that cell phone. (T 1640). The Court instructed the prosecutor that the evidence regarding the application for a gun permit was unnecessary. (T 1640-41).

The Court ruled the evidence regarding the gun permit was too prejudicial and unnecessary since Defense counsel had stipulated to the phone number on the application, and that it would be improper and irrelevant to have Sgt. Jackson testify about motivations for homicides. (T 1648-49). Defense counsel renewed his Motion for a Mistrial due to prosecutorial misconduct, and, in the event the Court denied that motion, asked that a curative instruction be given and the testimony stricken. (T 1652). The Court implicitly denied the Motion for a Mistrial and instructed the jury to disregard St. Jackson's testimony about looking for an arrest record. (T 1655).

B. The prosecutor did not properly impeach during cross-examination of a defense witness.

After Francis' mother testified that Francis was not a violent person, the prosecutor asked her if she was aware of specific incidents in the past when Francis had been violent.

However, if Hudson did not remember or disputed the allegations, the prosecutor would "testify" as to Francis prior bad acts. ¹⁶

¹⁶ The State had not given Spreigl notice on any of these alleged prior bad acts, and all of the alleged acts were unproven and except for the incidents where Francis mother called the police for discipline reasons only Francis' mother was not there or a witness too.

(T 1727-34). The Court did not rule on this motion for a mistrial, but sustained Defense counsel's objection. (T 1735). While any party may attack the credibility of a witness, Minn. R. Evid. 607, specific instances of conduct of the witness, for the purpose of attaching credibility, may not be proven by extrinsic evidence. Minn. R. Evid. 608(b).

Even though the Court sustained Defense counsel's objection, the prosecutor immediately resumed this improper questioning. It is error for a prosecutor to persist in asking questions ruled improper or elicit evidence ruled inadmissible.

State v. Buggs, 581 N.W.2d 329, 340 (Minn. 1998) (citing State v. Harris, 521 N.W.2d 348, 354 (Minn. 1994); see also State v. Ture, 681 N.W.2d 9, 19 (Minn. 2004) (State's mention of other rapes committed by defendant but ruled inadmissible at trial was "clearly improper"). Notwithstanding the Court's ruling, the prosecutor continued making these kinds of testimonial statements.

(T 1739). After this exchange, the Court instructed the jury that the questions of counsel were not evidence and that Francis was not on trial for assaulting anyone or distributing drugs, he was on trial for murder and attempted murder. (T 1741). However, the Court's instruction was not sufficient to override the prosecutor's misconduct. See, State v. Porter, 526 N.W.2d 359, 365-66 (Minn. 1995) (strong curative instruction did not cure possible harm to defendant where the juror's prejudice and passions have been invoked and instruction did not address all of misconduct.).

The prosecutor continued this kind of testimonial questioning with Evertz (T 1757-61) and resumed it again when cross-examining Francis. When questioning Francis about Jones' cell phone number.

(T 1810). During cross-examination, the prosecutor attempted to impeach Francis with some kind of transcript. (T 1810-12)

C. The prosecutor impermissibly attempted to prejudice the jury against Francis.

It is impermissible for the prosecutor to inflame the passions and prejudices of the jury against the defendant. See e.g. State v. Porter, 526 N.W.2d 359 (Minn. 1995) (reference to the “James Porter School of Sex Education”); State v. Walker, 235 N.W.2d 810 (Minn. 1975) (“the gravity of human interests at stake in a criminal trial demands that the proceedings be conducted, so far as possible, in an orderly and dignified manner.”); State v. Haney, 23 N.W.2d 369, 370 (Minn. 1997) (improper to distract the jury from deciding proof beyond a reasonable doubt by appealing to passion or prejudice).

P█ had first revealed that Francis sold marijuana, followed by Hudson’s comment that her son, Francis, “got off on the wrong foot and sold drugs.” The prosecutor attempted to exploit that testimony during cross-examination of Francis in an attempt to prejudice the jury against Francis and introduce irrelevant and inadmissible information. (T 1813-17).

Although the Court had already ruled that evidence of illegal gun possession and the legal application to carry a gun were irrelevant and inadmissible, the prosecutor again sought to introduce evidence into trial that Francis had a gun. (T 1813-24). State v. Volk, 421 N.W.2d 360 (Minn App. 1988) (Possession of firearms inadmissible).

D. The prosecutor compounded her misconduct during trial by improper closing argument.

(T 1997, 1981, 1997) It is improper to make character attacks during closing argument. See State v. Ture, 681 N.W.2d 9, 19-20 (Minn. 2004) (“argument regarding ‘what kind of man [defendant] is’ appears to strike at the heart of the potential for prejudice inherent with Spreigl evidence .”) The prosecutor referred to Francis’ “drug-dealing partner [Kaplan]” during closing argument. (1967). The prosecutor also talked about Francis cell phone as his business phone that he uses for all his drug-dealing” (T 1974).

There was no objection during closing argument, but this improper closing argument bootstrapped on the objected to misconduct during the evidence phase of the trial. While the general rule is that a defendant is deemed to have waived his right to raise an issue concerning the prosecutor’s closing

remarks if the defendant fails to object or seek cautionary instructions, the court may reverse a conviction if the prosecutor's comments are unduly prejudicial. State v. Parker, 353 N.W.2d 122, 127-28 (Minn. 1984) (citations omitted), see also State v. Salitros, 499 N.W.2d 815 (Minn. 1993).

E. The prosecutor's misconduct deprived Francis of his right to a fair trial, requiring reversal and remand for a new trial.

Misconduct is deemed harmful if it played a significant or substantial role in persuading the jury to convict. The more serious the misconduct, the more likely the misconduct was harmful. In any case, the test is whether misconduct is harmless beyond a reasonable doubt. E.g., State v. Forcier, 420 N.W.2d 884, 887 (Minn. 1988). The error and its impact are to be examined within the context of the record as a whole, considering the strength of the state's evidence and the weaknesses of any defense evidence.

While no single instance of misconduct might warrant a new trial, this Court should consider the cumulative affect of all the misconduct and grant Francis a new trial. See State v. Harris, 521 N.W.2d 348, 355 (Minn. 1994) (granting defendant a new trial because the cumulative effect of the prosecutor's misconduct made it impossible to say that the defendant received a fair trial); State v. Peterson, 530 N.W.2d 843, 848 (Minn. App. 1995) (concluding that while none of the incidents of misconduct was sufficient to warrant a new trial on their own, their cumulative effect required reversal).

In this case, the numerous instances of egregious conduct by the prosecutor, couple with the fact that the jury was not instructed on lesser-included offenses of unintentional murder and attempted murder, deprived Francis of a fair trial.

II. M [REDACTED] P [REDACTED] WAS A SINGLE WITNESS WHO DESCRIBED SEEING APPELLANT SHOOT HIM IN THE DARK, DRIVING-BY, AS P [REDACTED] WAS LEANING INTO AN AUTOMOBILE.

This amounts to a fleeting and limited observation of the appellant that was not supported by any corroboration. M [REDACTED] P [REDACTED] testimony cannot stand alone as the foundation of the conviction of

specific intent to commit murder in the first degree. The scene P ■ painted to investigators; after he was shot, was one of confusion and uncertainty. He could not identify appellant on the way to the hospital despite being alert.(T 1026). It wasn't until he was grilled by police that he came up with appellant's name.(T 1212-14, 1226-27, 1274-76, 1592-93). But nothing corroborated his testimony as to the supposed disagreement between him and appellant where he claims appellant threatened to harm him.(T 1661-62, 1682-84, 1110, 1236-37). No one else is of knowledge of this encounter. And his claim that the interior light of the Mitsubishi allowed him to see the face of appellant while he was being shot in the stomach over and over with what was more than likely a .44 caliber handgun, is unsupported by common sense or any evidence. (T 1207). M ■ P ■ testimony contains improbabilities and contradictions that appear on the record. For example; the bullet hole in the front passenger door is about a foot from the ground straight through.(See Exhibits: 14, 15, 31). P ■ was shown exhibit 5 to describe how close he claimed appellant was when shots began to be fired. (T 1205, 1207). If in fact appellant was this close as P ■ testified to, there's no way this bullet hole would have been created nor come from Lisa Jones' Tahoe as P ■ testified and the State contended. If in fact this hole came from shots fired from Lisa Jones' Tahoe on 22" rims with air shocks it would have been much higher with an angled pattern pointing down. M ■ P ■ also claimed there were street lights on Portland that night. Mainly one sitting right above him.(T 1207). Clearly from the crime scene photos there is no street light above the car.(See Exhibit 4). He also claimed the interior light from the car, was bright enough to flash in the Tahoe enabling him to see appellant's face.(T 1207). This is impossible, because car interior lights aren't that bright. P ■ testified that he also saw appellant's face because of the corner of R ■'s headlights help shine light on appellant's face. (T 1207). If appellant was side by side, right next to P ■ and R ■'s car it would be impossible for R ■ headlights to beam on appellant's face as P ■ testified too. P ■ then went on to testify that once he saw appellant's face he saw the a barrel of a gun at the same time. (T 1207). If this were true it would mean two things: The culprit had the gun held up to his face which would have block the view of his face

from P ■ not enabling him to have a good look or P ■ had less than a second to see the real culprit's face before he was staring down the barrel of a gun and shots being fired. M ■ P ■ also testified that appellant stopped right in the front of him when he was standing in the front passenger door when the shots began after, appellant pulled straight off fleeing South down Portland. (T 1201, 1203, 1210-11). This is impossible when there's a bullet hole in the upper right hand corner of the passenger rear window which was the entry of P ■ R ■ fatal gunshot wound.(T 1088, 1092-93, 1097-98, 1115) (See Exhibit 12, 13, 32). Evidence may be rejected if it contains improbabilities or contradictions that appear on the record.(Turay v. Allied Enters Inc, 284 Minn. 441, 170 N.W.2d 327, 1969; Caroga Realty Co. v. Tapper, 274 Minn. 164, 143 N.W.2d 215, 1966). The grounds for ignoring a witness testimony is usually improbability, inconsistency, or inconsistency with proven facts. Over all the State fail to sufficiently corroborate or prove beyond reasonable doubt P ■'s testimony implicating or identifying appellant as the shooter which is required by Due Process of the 14th Amendment. (In Re Winship 397 U.S. 357). DNA exonerations has revealed that eye witness identification can be unreliable in certain situation as in appellant's case misidentification is the single leading cause of wrongful conviction in the United States and England. (C. Ronald Huff ET AL, Convicted, but Innocent: Wrongful Conviction Public Policy 66 (1996); Samuel R. Gross, Lost Lives: Miscarriage of Justice in Capital Cases: 61 Law & Contemp. Probe. 125, 136 (1998)). This entire incident lasted at the most a minute in the blackness of the night. P ■'s testimony should be disregarded by this Court. It is inconsistent with other facts and evidence. P ■'s testimony or identification cannot be the foundation of appellant's conviction.

A. State v. Spann, 287 N.W.2d 406, 407-408 (Minn. 1979).

B. State v. Walker, 310 N.W.2d 89 (Minn. 1981).

C. State v. Gluff, 172 N.W.2d 63, 285, 148 (Minn 1969).

D. State v. Johnson, 324 N.W.2d 199 (Minn. 1982).

E. Minnesota Rules Evidence 403

III. THE VIDEO TAPE/PHOTOS OF THE SUV TYPE VEHICLE TAKEN FROM AN VIDEO CAMERA FOCUSED ON THE INTERSECTION OF 31ST AND PORTLAND, NOT WHERE THE CRIME WAS COMMITTED WHICH WAS 33RD AND PORTLAND SHOULD HAVE BEEN EXCLUDED.

The video tape/photos was speculative, unproven and unidentified as Lisa Jones' Tahoe. You are unable to see the license plate, driver or any characteristics of the Tahoe Lisa Jones' owned. (T 1382). This evidence was irrelevant, inadmissible and in no way can be said, by certainty that it was Lisa Jones' Tahoe on the way to the crime scene while appellant was driving. This evidence does not corroborates P's identification or testimony. Appellant cannot use this evidence to say for certain it wasn't him driving nor Lisa Jones' Tahoe and neither can the State say for certain it was. This evidence was prejudicial, confusing, misleading, unfair and unidentified; It should have been excluded. (See exhibits). There was not any bystanders brought to the stand that was on 31st and Portland to verify that it was what the State claimed it to be. The video/photographs focus only on the intersection of 31st and Portland. (T 1382). No one knows if this vehicle parked on 31st or turned off of Portland on 32nd Street. Absence of Certainty is Absence of Proof. It just leave room for only speculation. Speculation is exactly what the State had the jury do in deliberating appellant's guilt when evaluating this evidence. Michael Carlson an employee from Auto Max testified that there are "lots of Tahoes and Yukons running around with rims and stuff like that" so he could not be absolutely sure that the photographs from the CD shown to him depicted appellant's Tahoe (T 1707, 1713). Carlson has worked on many cars and trucks and is familiar with how people equips certain types of vehicles. Carlson was very familiar with Jones' Tahoe and he couldn't identify what was exactly depicted in the video/photographs.

A. *Minn. R. Evidence 401*

B. *Minn. R. Evidence 402*

C. *Minn. R. Evidence 403*

D. *Minn. R. Evidence 901*

IV. THE PHONE RECORDS AND THE EXPERT WITNESS ON THE PHONE/SATELLITE TECHNOLOGY SHOULD HAVE BEEN EXCLUDED.

The phone towers cannot pinpoint a cell phone user or caller exact location: (T 1560) further, the phone at issue was not registered in appellant's name but in Lisa Jones' name and used by her also. This evidence was insufficient to place appellant at the crime scene nor did it prove appellant committed the crime. The State claim is appellant wasn't home and he was riding around in the area then proceeded to commit the crime, then drove straight home. There's a major problem with this theory and it can be equally said or an inference drawn that appellant was on his way home or at home from the phone records. Overall a person of sound mind can only speculate a person's whereabouts from the Qwest phone records. Rick Dobbe a Qwest engineer employee testified about the general operation of cell phone towers. (T 1526-31). He testified that each tower has three faces, each one generally transmitting 120 degrees for a distance of three miles. (T 1527-28, 1564). However, where there is a lake, that is relatively open and unobstructed, a phone might send or received a signal over a larger area (T 1537, 1564). According to Dobbe, cell phones are programmed to continuously seek the strongest signal, however, the closest signal may not be the strongest.(T 1530-31, 1565). For example the strongest signal might be coming down the road two or three miles where the closest signal might be two blocks away, but be partially obstructed by buildings or trees (T 1531, 1565). It is also possible to be in the same spot geographically on two different days and get a signal from different towers or transmitters (T 1568). Appellant Michael C. Francis stayed in St. Louis Park at [REDACTED]. This is a minute away from Lake Calhoun a little over three miles away from the crime scene. Sgt. Jackson conducted a test drive from the crime scene to appellant's home located in St. Louis Park and concluded that it took about 12 minutes to drive from the crime scene to appellant's home.(T 1667-68). Trial exhibit 64 are the outgoing calls of Lisa Jones' cell phone that appellant occasionally used. Counting down to line 28 of exhibit 64 was the last recorded cell site of outgoing calls before the crime was committed. The call time was, started 22:39:19 and end time was 22:40:47, call

duration 01:28.8 and cell site 22 which was located at [REDACTED]. Just as the State theorize that appellant went straight home after committing the crime from this information and Sgt. Jackson test one can say from 22:40 to 22:52 that this was ample time for appellant to be at home before or by the time the crime was committed. The next recorded outgoing cell site was after the murder and attempted murder, line 32 call start time 23:07:15, end time 23:07:17, call duration 00:02.5, cell site 166 which is located at [REDACTED], St. Louis Park. (For cell site locations review trial exhibit 65). From this call it can only be inferred that appellant was at home, not the area of the crime scene. The State theory is the gap where there was no call activity appellant was busy shooting people. The 27 minutes gap where there wasn't any call activity it can be equally said that when most people get home from a long day of school, work or wherever the first thing they do is wine down and settle in. This evidence does not and cannot corroborate M [REDACTED] P [REDACTED] testimony in any form that appellant was the shooter. If appellant alibi witnesses were called it proves appellant to be near home or at home which is not a crime. Where the evidence is equally consistent with two hypotheses, it tends to prove neither. (*P.F. Collier & Son v Hartfeil*, 72 F.2d 625 (8th Cir. 1934)). Where two opposing inferences can be drawn with equal justification from the same circumstantial evidence, it cannot be said that one preponderates over the other, in which event that party having the burden of proof must lose. See, *Republic Nat'l Life Ins. Co. v. Marquette Bank & Trust Co*, 312 Minn. 162, 251 N.W.2d; *Village of Plummer v. Anchor Gas Co*, 240 Minn., 355, 61 N.W.2d 225. Though an inference may reasonably be drawn from part of the facts proved, it must be disregarded if it is inconsistent with and repelled by, other facts conclusively proved. (*Pennsylvania RR v. Chamberlain*, 288 U.S. 333 (1933); *Akerson v. Great NRY*, 158 Minn. 369, 197 N.W. 842 (1924). Inferences cannot be based on pure speculation or conjecture, *Smith v. Kahler Corp*, 297 Minn. 272, 211 N.W.2d 146 (1977); *Gerhardt v. Welch*, 267 Minn. 206, 125 N.W.2d 721 (1964).

A. Minn. R. Evidence 403, excludes a given piece of evidence if the prejudice, confusion or delay substantially outweighs the value of the evidence.

V. **APPELLANT IS ENTITLED TO A NEW TRIAL BECAUSE THE TRIAL COURT ERRED WHEN IT REFUSED TO INSTRUCT THE JURY ON LESSER-INCLUDED OFFENSES AS REQUESTED BY THE APPELLANT.**

This Court recently clarified the standards for determining whether to instruct the jury on lesser-included offenses. *State v. Dahlin*, 695 N.W.2d 588 (Minn. 2005). In that case, the defendant was convicted of premeditated first-degree murder after the trial court denied his request to instruct the jury on the lesser-included offenses of second-degree intentional murder and second-degree unintentional murder during the commission of an assault. *Id.* In this case, like *Dahlin*, Francis' request to instruct the jury on unintentional second-degree murder and attempted second-degree murder during an assault were denied. In refusing the requested instructions in *Dahlin*, the trial court judge stated that "felony murder was not a lesser-included offense of first-degree premeditated murder." *Id.* at 592. The trial court judge in *Dahlin* was also the presiding judge in this case. So too, when denying Francis' request for lesser-included offenses, the trial court stated that it did "not believe that felony murder is a lesser-included offense [of first-degree premeditated murder or attempted first-degree premeditated murder]." (T 1913). The trial court was wrong in *Dahlin*, and wrong in this case. Like the defendant in *Dahlin*, Francis was prejudiced because the jury could not consider anything other than that Francis premeditated R■■■■'s death, or that he acted with the intent to cause the death of P■■■. This court should reverse and remand for a new trial.

In this case, evidence regarding premeditation and intent was scant. The state posited that Francis had been planning to kill P■■■ ever since the supposed argument over tire rims a month earlier. Even if the argument did take place, it is absurd to conclude that Francis would be seeking some kind of revenge on P■■■, because he had nothing to gain from P■■■ and no "score" to settle. Francis had the rims on his Tahoe. P■■■ was the person who was mad that he did not have the rims on his Yukon.

The evidence was that P■■■ was shot in the hip and abdomen. If Francis intended to kill P■■■, he would have shot him in the heart or head, not in his hip. The car window was broken and there was a bullet through the door. This evidence is consistent with reckless discharge of a gun during a drive-by

shooting. It is also possible that Francis, shot out the vehicle to hassle or maybe scare P [REDACTED], but did not aim to kill and did not know that anyone was in the car.

A defendant is entitled to an instruction on his or her theory of the case if there is a rational basis to acquit on the greater charge and convict on the lesser charge. Dahlin, 695 N.W.2d at 600. An error in jury instructions is not harmless and a new trial should be granted if it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict. State v. Pendleton, 567 N.W.2d 265, 270 (Minn. 1997).

“Where one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of *some* offense, the jury is likely to resolve its doubts in favor of conviction”. Dahlin, 695 N.W.2d at 596 (citation omitted) (emphasis in original). The trial court’s refusal to instruct the jury on intentionally causing death meant that, absent an acquittal, the jury would resolve any doubts about Francis’ intent by finding him guilty. Like Dahlin, this case is not the “exceptional” one where an “either-or” choice is appropriate. Id at 601. Francis was prejudiced by the trial court’s refusal to give the requested instructions on lesser-included offenses.

A. State v. Dahlin, 695 N.W.2d 588 (Minn. 2005).

B. Minn. Stat. 609.19 Subd. 1

C. Minn. Stat. 609.66 Subd. 1e.

D. CRIMJIG 11.28.

VI. APPELLANT IS ENTITLED TO A NEW TRIAL BECAUSE THE COURT REFUSE TO ALLOW APPELLANT TO USE THE THIRD-PARTY PERPETRATOR DEFENSE.

The Court refuse to allow appellant to use the third-party perpetrator defense and admitting to the jury evidence of the dead victim’s ex-boyfriend who had in close proximate to the crime made assaults against her and threatened to kill her and where a possible order for protection was active against him by the dead victim. (T 79-180). Appellant was prejudiced in his ability to raise a defense and to raise

reasonable doubt on his behalf, base on the trial court ruling. Appellant has a 6th Amend. right to defend himself against criminal prosecutions. This right was infringed by the trial court.

A. *United States Constitution 6th Amend.*

VII. APPELLANT IS ENTITLED TO A NEW TRIAL DUE TO TRIAL COURT ERROR IN REFUSING TO ALLOW APPELLANT TO QUESTION WITNESS/VICTIM, M█████ P█████ AS HOSTILE AND BIAS.

Due to his arrest by the Court for not showing up for appointed meeting with the State and for refusing to come testify at appellant's trial and the high bail put on M█████ P█████ causing him to testify against his will.(T1150-59). It was relevant to examine M█████ P█████ on the missed appointment with the State concerning his testimony, especially when there are many inconsistencies and impossibilities in his testimony. P█████ must have been concerned about his testimony and identification being positive of appellant. The State was very concerned about M█████ P█████ showing up to testify that she compelled him to testify. The Jury needed to hear this and concluded their own inference being the trier's of facts. Defense counsel should be permitted to elicit on cross-examination those facts from which the jurors, as the sole trier's of facts and credibility, might draw appropriate inferences relating to reliability and truthfulness of witnesses. Cross-examination into any motivation or incentive witness may have for falsifying his testimony should be given largest possible scope, particularly with regard to testimony accomplices or other with substantial reason to cooperate with government.

A. *United States Constitution 6th Amend.*

B. *Davis v. Alaska, 415 U.S. 308, 315, 94. S. Ct. 1105, 39 L. Ed 2d, 347 (1974).*

C. *Johnson v. United States, 418 A.2d 136 (D.C. App. 1980).*

VIII. IT IS A VIOLATION OF THE 4TH AMENDMENT OF THE U.S. CONSTITUTION FOR STATE POLICE AND STATE TO FAIL TO COME UP OR ESTABLISH PROBABLE CAUSE:

Yet invade the property of Lisa Jones' and confiscate the name of appellant, and to issue a blanket on-sweep search of every blue Tahoe in the Minneapolis area that has "Fancy Rims on its tires" as

Sgt. Pete Jackson did when the video evidence did not suggest that a blue Tahoe had been the drive-by shooting vehicle, (T 1595) where thousands of these vehicles are in the Minneapolis area, and no warrant was issued by the court for said search.(T 1279-80, 1596, 1657) Further, arrest of appellant without probable cause to bring charges within 48 hours was a 4th Amend. Violation of the U.S.C.A. During appellant Probable Cause hearing the presiding Judge found there to be No Probable Cause. Appellant was not afforded the opportunity to be present at this vital hearing and should have been released from detention because the State had failed to establish probable cause. The state was required to obtain a warrant to arrest appellant (T 1687) where over a month had passed since the crimes were committed and the appellant was named as the suspect. There was no immediate reason to do a warrant less arrest. All the fruit from the illegal searches and seizures must be suppressed.

- A. Illinois v. Gates, 462 U.S. 213 (1983).
- B. Katz v. U.S., 389 U.S. 347 (1967).
- C. Mincey vs. Arizona, 98 S. Ct. 2408 (1978).
- D. U.S.C.A. 4th Amendment.

IX. APPELLANT WAS PREJUDICED AND DENIED A FAIR TRIAL AND UNBIASED, UN-PREJUDICIAL JURY, A IMPARTIAL, JURY BY THE TRIAL COURT'S REFUSAL TO RE-POOLE AND HAVE A NEW JURY SELECTED WHEN APPELLANT COMPLAINED THAT JURY WAS NOT MADE UP OF HIS PEERS AND HAD NOT ENOUGH MINORITIES ON IT.

The jury pool that jury was selected from should have been made up of a percentage of African Americans, Hispanics, Asians, Arabians, etc. Compared to the percentage of there population in the district the jury was pulled from. The methods for choosing jury pool selections is unconstitutional because they require prospective jurors to be voters have a driver licenses or State identification etc...Many minorities don't vote or have a driver licenses or State identification. This methods of choosing jurors is a systematic exclusion of minorities. The trial courts failure to sequester jury in a protected domain to keep them from exposure to prejudicial and inflammatory news media and people media about the appellant which would

undoubtedly prejudice the jury and unduly influence their decision making in the deliberation phase or trial, amounts to a violation of appellant's right to have fair trial and impartial jury. Jurors were seen having biased conversations in the hall of the courthouse and the jury responded positive to the accusation but the district court judge purposefully passed over the juror hand when he raised it to admit to having biased conversation and exposure.

- A. *United States Constitution 6th & 14 Amendments.*
- B. *State v. Georgian, 124 Minn. 515, 145 N.W.2d 385.*
- C. *State v. Sanders, 1985, 376 N.W.2d 196.*
- D. *Miller-El v. Dretke, United States Supreme Court (2005).*

X. THE STATE CANNOT PRESENT TO THE JURY MUG SHOTS OF APPELLANT FROM ARREST ON PREVIOUS CHARGES UNLESS IT IS THE ONLY WAY TO ESTABLISH IDENTIFICATION.

The mug shots prejudice the minds of the jury and serve strictly that purpose.(T 1658-59). The state cannot be allowed to even their case by the illicit means of prejudicing the juries minds by causing them to believe defendant is a habitual type of criminal or well known with police and the courts. This circumvents the trial process of the state having to prove that defendant committed crimes charged beyond a reasonable doubt.

- A. *State v. Breedlove, 271 NE 2d 238 (Ohio Supreme Court) St.2d 178.*
- B. *State v. Gluff, (1969), 285 Minn. 148, 172 N.W.2d 63.*
- C. *Commonwealth v. Jamison, (1969), 215 PA Super 379 258, A2d 529.*
- D. *Bruton v. U.S. (1968) 391 U.S. 123, 88 S. Ct. 1620, 20 LD 2d 476.*

XI. TRIAL COURT ABUSED HIS DISCRETION BY RULING WITNESS MOANA TEPPEN AS COMPETENT AND ADMITTING HER TESTIMONY. HER TESTIMONY WAS IRRELEVANT AND SHOULD HAVE BEEN EXCLUDED.

Teppen was mentally ill and was on medication to treat her mental illness.(1340). The medications used to treat her mental illness caused major side effects that makes her testimony

untrustworthy and unreliable. Teppen medications were Effexor, Seroquel, Risperdal and Lexapro. (T 1340). Teppen has been diagnosed with Bipolar Schizophrenia. (T 1341). Even though Teppen's medications are use to treat her mental illness they may cause confusion, hallucinations, dizziness, disorientation, altered mental status, paranoia, amnesia change in moods and many other side effects. (References to side effects: Physicians Desk Reference Product information; Johns Hopkins, The Consumer Guide to Drugs). Further Teppen's testimony was irrelevant, speculative, did not corroborate any of P's testimony and nothing in the testimony pertained to appellant's innocence or guilt. (T 1324-57). The statement Teppen attributed to appellant was untrue and not corroborated by any other evidence. The statement Teppen attributed to appellant was something to the effect "If this guy wants to mess with me, I'll pop that nigger, too.(1334). Along with the statement being untrue there's another major problem with it. The State argued the "too" meant appellant had already shot someone and with this statement supposedly been made a few weeks after May 24, 2004. Appellant was talking about M, F and P. This is pure speculation without any supporting evidence. If appellant did indeed make that statement it was never mentioned who, what, where and how. This testimony was confusion, unfair, misleading and prejudicial to appellant.

A. *Minn. Rules Evidence 401*

B. *Minn. Rules Evidence 402*

C. *Minn. Rules Evidence 403*

XII. IT IS A BRADY (S. CT.) VIOLATION TO WITHHOLD FROM THE APPELLANT EVIDENCE OF A WITNESSES INSURRECTABILITY.

Witness Moana Teppen was on probation at the time of her testimony and was on nueroleptic medications for severe mental disease but the state with held vital information from appellant like the true effects of her medication and the nature of her criminal offense warrant her probation.

A. *Brady v. Maryland U.S. Supreme Court, 373 U.S. 83 (1963).*

- B. *Minn. Rule Evidence, 601, 605 & 606.*
- C. *State v. Watts, App. 1990, 452 N.W.2d 728.*
- D. *State v. Whelan, 1971, 291 Minn. 83, 189 N.W.2d 170.*
- E. *State v. Hane, 1945, 219 Minn. 518, 18 N.W.2d 315.*
- F. *State v. Tosney, 1879, 26 Minn. 262, 3 N.W. 345.*

XIII. IT VIOLATE THE DEFENDANTS FAIR TRIAL RIGHTS. TO ADMIT INTO EVIDENCE BEFORE THE JURY PRIOR BAD ACTS OR ACCUSATIONS OF PRIOR BAD ACTS THAT DON NOT AMOUNT TO MORAL TURPITUDE.

Even if they are felonies as the court allowed in via the state prosecutrix. When possession of a firearm misdemeanor was admitted;(T1817-24) and state prosecutrix questioned witnesses about supposed domestic violation and running over a teenage girl with his car when appellant was a teenager. (T 1726-39)

- A. *State v. Volk, 421 N.W.2d 360 (Minn. Ct. App. 1988).*
- B. *State v. Diamond, 308 Minn. 444, 241 N.W.2d 95 (1976).*
- C. *Ex Parte Marshall v. 207 ALA. 566, 93 SO. 471, 25 ALR 338.*
- D. *Posley v. State, 199 Tenn, 608, 288 S.W.2d 455.*
- E. *White v. State, 4 OKLA Crim. 143, 111 P 1010.*
- F. *Keith v. State, 127 Tenn 40, 152 S.W. 1029.*
- G. *Hartford v. Williams, (Tex CIV App. Am Arillo) 516 S.W.2d 425.*
- H. *Bain v. State, 38 Tex Crim 635, 44 S.W. 518.*

XIV. IT WAS MISCONDUCT FOR THE PROSECUTOR TO USE IMPROPER, FALSE AND MISLEADING EVIDENCE TO PROVES APPELLANT GUILT.

The State cannot be allowed to submit into evidence before the jury photographs that are to blurry to accurately make out yet the State prosecutrix uses to convince the jury the photo is of the appellant's blue Tahoe going to the scene of the crime. Nor can irrelevant or bias evidence that is speculative like the phone records of Lisa Jones cell phone that the prosecutrix claimed to the jury to be the

calls of appellant at the scene of the crime. Nor can these phone records and the accompanying satellite records that indicate the cell phone of Lisa Jones was within a three mile radius of the crime scene, when the State prosecutrix failed to prove the cell phone had been in possession of appellant the night of the crime, and appellant as well as Lisa Jones, live within the three miles geographical radius of the crime scene and the crime scene was near a large lake,(T 1537) thus stretching the distance of the phone tower tracking that allows the pick up of cell phone transmissions from phone tower farther away when there is no structural interference or also when there is structural interference and the signal from the phone will bounce from one phone tower to another as far as three miles away to be relayed.(T 1530-31, 1537, 1565). This evidence was too speculative to be of merit and the prosecutrix erred by using it to convince the jury appellant was in the area of the crime during the time of the crime and to also corroborate the testimony of single witness M [REDACTED] P [REDACTED] falsely.

A. *Minn. R. Evidence 401, 402, 403, 901.*

B. *State v. Sutherlen, 396 N.W.2d 238 (Minn. 1986).*

C. *Michelson v. U.S. 335 U.S. 469, 475, 69 S. Ct. 213, 218, 93 L.Ed 168 (1948).*

D. *Nowell v. Brathwaite, 432 U.S. 98. 53 L.Ed 2d 140, 97 S. Ct. 2243 (U.S. S. Ct June 16th 1977).*

XV. TRIAL COUNSEL OF APPELLANT WAS INEFFECTIVE IN DEFENDING HIM AND HIS PERFORMANCE WAS OBJECTIVELY UNREASONABLE.

Criminal trial lawyers whether paid for by defendant or by the state are bound by the lawyers professional responsibility codes of conduct and standards of conduct for modern lawyers. Failure of trial counsel to hire a investigator, to procure defense, cross-examine witnesses, call alibi witnesses object to state prosecutrix evidence, and his adherence to cowardliness and incompetence by simply agreeing to the state prosecutrix version of the facts, and his betrayal of appellant by promising him he would not question him about his drug dealing but questioning appellant anyway thus “opening” the door for the prosecutrix to attack his credibility, all amount to ineffective assistance of trial counsel and damaged the appellant’s

defense and trial, prejudicing appellant to a significant degree: Said, conduct fell far below the common and modern standards of legal profession in Murder defense.

A. 49 M.S.A., Rules Crim. Proc. Rule 26.03 Subd. 1(1); State v. Grey, 256 N.W.2d 74, 76 (Minn 1977) and State v. Charles, 634, N.W.2d, 425 (Minn. App 2005):

Trial counsel cannot waive defendants presence during any point of his trial or vital points or stages as appellant's trial counsel did in waiving appellants presence at the probable cause hearing; See Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932); Adams v. U.S. Ex rel. Maccann, 317 U.S. 269 63 S. Ct. 236, 87 L. Ed. 268 (1942); Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Graff, 510 N.W.2d 212 (Minn App. 1993).

Article 1 Sec. 6 of the Minnesota Constitution and the Federal 6th Amend. Guarantee defendants in all criminal prosecutions the right to the assistance of counsel: This right being crucial in the adversary system because counsel's expertise accords the defendant ample opportunity to meet the case of the prosecution.

B. Lockhart v. Fretwell, 506 U.S. 364, 113 S. Ct. 838, 122 L.Ed. 2d 180 (1993).

C. Garza v. Wolff, 528 F. 2d 208 (8th Cir. 1975).

D. U.S. v. Matos, 905 F. 2d 30 (2nd Cir. 1990).

E. Berry v. Gramley, 74 F. Supp. 2d 808 (ND ILL. 1990).

F. Kemp v. Leggett, 635 F. 2d 453 (1981): et al.

XVI. APPELLANT CAN NOT BE FOUND GUILTY OF FIRST-DEGREE MURDER OF P [REDACTED] R [REDACTED] BY TRANSFER OF INTENT ANALYSIS AS THE STATE PROSECUTRIX MAINTAINED AT TRIAL AND COURT CONCEDED TOO. THERE WAS INSUFFICIENT EVIDENCE TO PROVE APPELLANT PREMEDITATED P [REDACTED] R [REDACTED]'S DEATH.

Appellant could not of know a bystander would be killed by doing a drive-by on M [REDACTED] P [REDACTED] in a dark street if in fact he had committed these heinous crimes. Forensic evidence in this case shows that the gunshot that hit and killed P [REDACTED] R [REDACTED] was consistent with a errant round or more than one shooter or

not deliberately inflicted. It is error to force the jury to contemplate only guilt at the highest degree because the State is allowed to transfer intent from the supposed premeditated intent to kill victim M [REDACTED] P [REDACTED] despite evidence suggesting the crime was committed of the moment by a drive by shooter or shooters. It is impossible to transfer appellant's intention. That would be saying once the bullet missed it's intended target, appellant changed the bullet's direction by *mind control* telling it to hit Ms. R [REDACTED]. Or it would be saying a .44 caliber handgun was equipped with the technology as a *military weapon* that has *heat seeking* bullets. It is scientifically impossible to transfer intent the way Trial Court and the Prosecution conceded. If a person intended to shot A. but missed hitting B. this can only be classified as an accident, not intended or premeditated. There was insufficient evidence to prove or say appellant premeditated P [REDACTED] R [REDACTED]'s death which Due Process of the 14th Amendment Federal Constitution requires all elements of the charged crime to be proven beyond a Reasonable Doubt.

A. State v. Hough, 585 N.W.2d 393 (Minn 1998).

B. Cheek v. U.S., 498 U.S. 192 (1991).

C. In Re Winship, 397 U.S. 357.

XVII. IT WAS AN ABUSE OF DISCRETION FOR TRIAL COURT TO DENY APPELLANT POST-CONVICTION RELIEF AND NOT GRANTING A EVIDENTIARY HEARING IN ORDER TO EVALUATE THE MAGNITUDE OF APPELLANT'S TRIAL COUNSEL OMISSIONS AND ERRORS WHICH RESULTED IN APPELLANT'S CONVICTION.

Trial Court abused his discretion when he solely relied on the State's response in opposition of appellant's 590 Petition. Trial Court in his order denying appellant's Post-Conviction relief was not impartial and was not a independent conclusion of the facts asserted in appellant's Petition and was written word for word from the State's response instead of being written in his own words after independently evaluating the facts. If Trial Court impartially and independently reviewed the facts he would have seen that Paige Jones-Smith and Lisa Jones' affidavits were consistent with appellant's testimony and that there never was prior statements made by Paige Jones-Smith and Lisa Jones. Also Trial court nor the State

explained how their statements are inconsistent with appellant's testimony and what their prior statements were. By coping word for word, making "no finding" Trial Court misstated the facts regarding what the phone records actually revealed. Trial Court and the State both stated the phone records placed appellant within a few blocks of the crime scene. Careful examination of Rick Dobbe testimony, a wireless engineer employed by Qwest would reveal that each antenna tower had a radius of three miles and the phone signals were programed to always feed off of the strongest signal which is not always the closest. (T 1530-31, 1565). Also, where there is a lake that is relatively open and unobstructed, a phone might send or receive a signal over a larger area. (T 1537, 1564). Appellant Stayed near Lake Calhoun at [REDACTED], St. Louis Park.

Trial Court abuse his discretion by not granting appellant a evidentiary hearing to evaluate the magnitude of his trial Counsel performance which resulted in appellant conviction and to challenge the photographs/video that violated Minnesota and Federal Rules of Evidence 403 and 901. Trial Court did not touch on any of appellant's points on the photographs/video and the problems with star and only eyewitness M [REDACTED] P [REDACTED]. There's many problems with M [REDACTED] P [REDACTED]'s testimony which weigh heavily against the reliability of his identification of appellant. M [REDACTED] P [REDACTED]'s identification should be carefully examined evaluated by this court. An evidentiary hearing would have proven many facts that reveals appellant's innocence and the insufficiencies of the evidence presented at this trial. Trial Court made absolutely no finding why appellant wasn't entitled relief or at minimum an evidentiary hearing.

Trial Court abused his discretion by not conducting a evidentiary hearing to properly examine appellant's challenge of a systematic exclusion of minorities. Appellant was prepared to prove by preponderance of the evidence by the demographics of minorities in the State of Minnesota, the County of Hennepin and total population of minorities vs Whites in all neighborhoods of Hennepin County where summons are sent for juror service. Along with the demographics appellant could show that the systematic exclusion has been going on for a significant time period through the MINNESOTA SUPREME COURT

TASK FORCE REPORT ON RACIAL BIAS IN MINNESOTA JUDICIAL SYSTEM OF 1993. This report clearly reveals the bias against minorities in Minnesota's Judicial System. After conducting the investigation on the bias against minorities it was proven that bias does exist in the selections of jurors against minorities and many recommendations were recommended to help involve minorities in juror services. None of the recommendations were followed up on which has resulted in the systematic exclusion of minorities to continue. An in-depth look into juror pools will reveal that zero to less than two minorities are on juror pools to this day in Hennepin County which is an under representation of minorities resulting from a systematic exclusion from the way Minnesota conducts juror selections. If the procedures used to select jurors reached 98% of the population as claimed the under representation would not be as large as it does when juror pools are selected. Having a diverse jury is part of the fundamental right guaranteed by the 6th Amendment in having an impartial jury. Diversity brings in different environments, different lifestyles, different understandings and different stereotypes to none at all. It is highly unlikely for an African American defendant as appellant to have an impartial jury when 99% of the jurors were white that set on his jury panel. A white jury can easily misunderstand an African American defendant especially when their lifestyles, environments and understandings are completely different. Appellant is entitled to an evidentiary hearing based on the composition of his jury pool.

ENDING OF ARGUMENTS IS IN THE LOWEST OF APPELLANTS' INTENTIONS. BUT DO TO HIS IGNORANCE OF THE APPLICABLE AMERICAN LAW AND NON-ACCESS TO A PRISON LAW LIBRARY HE HAS NO CHOICE. JUSTICE CANNOT PREVAIL FOR A MAN BORN IN THE SUB ROSA OF OUR SOCIETY. IT CAN ONLY APPEAR AT THE MERCY OF THE SUPPRESSORS.

THE APPELLANT HAS LISTED OTHER ISSUES IN THIS APPEAL FOR REVIEW BY THIS COURT BUT THERE IS VOID IN LAW CITED BY HIM. IT APPEARS LAW IS EXPENSIVE TO OBTAIN KNOWLEDGE OF, AND IT EQUALLY APPEARS THE MINDS OF THOSE INCARCERATED ARE WELL TAXED WITH THE DESIRE TO LEARN. A PRECEDENT NEEDS TO BE SET BY THIS

COURT TODAY, ONE IN PURSUIT FOR A FAIRER, LESS COMPLEX LEGAL SYSTEM, THAT RELIES ON SCIENTIFIC FACTS AND NOT THE FLIMSY WEIGHT OF AN EYEWITNESS. MANY STUDIES HAVE BEEN MADE IN THE WORLD REGARDING THE TRUTHFULNESS AND ACCURATENESS OF EYEWITNESSES. THE FINDINGS ARE OVERWHELMING IN THAT TOO GREAT A NUMBER OF EYEWITNESSES AT CRIMINAL CASES HAVE BEEN FOUND TO BE INACCURATE AND IN MANY CASES DISHONEST. M [REDACTED] F [REDACTED] DID NOT LIKE APPELLANT, YET APPELLANT BARELY KNEW HIM. A GRUDGE BY P [REDACTED] TOWARDS APPELLANT WAS WHAT ALLOWED HIM TO LIE AND SAY THAT APPELLANT SHOT HIM. BUT THERE IS NO WAY THAT ANY CRIMINAL DEFENDANT OR THE APPELLANT CAN PROVE THIS IS FACT. SO THESE NON-PROVABLE ARE THE MARKS OF GUILT ACCORDING TO OUR SYSTEM. BASICALLY, ANY PERSON CAN GET ON A STAND AND TESTIFY TO ANOTHER'S GUILT. THERE SEEMS TO BE NO WAY TO COUNTER THEIR TESTIMONY. THE COURT SYSTEM IS SIMPLY NOT SET UP FOR THIS TYPE OF REASONING.

THIS STATE SHOULD NOT ALLOW CONVICTIONS FOR SUCH GRAVE GRIEVANCE CRIMES THAT ARE SPECULATIVE IN NATURE, BASED OFF THE SINGLE WITNESS IDENTIFICATION IN FLEETING OR LIMITED OBSERVATION, IN BIAS PRINCIPLE, IN QUESTIONABLE SITUATIONS, OR WHERE THE CRIME SCENE AND ELEMENTS OF THE CRIME CAUSE MEN WITH COMMON SENSE TO DOUBT THE REALITIES OF SAID WITNESS WHO MINIMIZES GEOGRAPHICAL EFFECTS OF THE CRIME SCENE DESPITE THE OVERWHELMING EVIDENCE TO THE CONTRARY.

SINGLE EYEWITNESSES ARE UNRELIABLE IN SITUATIONS LIKE THIS.

ALSO, AS A TOTALITY OF CONDITIONS IN THE APPELLANT'S TRIAL AND PRETRIAL AND POST TRIAL, THE COURT MUST FIND INJURY AND PREJUDICE. IT ALL AMOUNTS TO THE ERRANT BREATHE OF A OVER-LOADED LEGAL SYSTEM THAT FAILS MORE OFTEN THAN IT

COMMITTS TO JUSTICE. THE SEEMINGLY TAXED MINNEAPOLIS POLICE HANDLE THIS CASE INCOMPETENTLY WHY LET A SUSPECTED MURDERER RUN FREE FOR MONTHS AFTER THE SURVIVING VICTIM IDENTIFIED HIM?

THE COURT ACTED OUT OF CHARACTER AND REFUSED TO GRANT A MISTRIAL EACH TIME THE APPELLANT REQUESTED ONE. THERE WAS GREAT LENIENCY ON THE STATE AND MANY RESTRICTIONS ON THE APPELLANT. THE STATE PROSECUTRIX FAILED TO SHOW GUILT OF INTENT TO COMMIT MURDER IN THE FIRST DEGREE; SHE ALSO FAILED TO SHOW CORROBORATION OF HER STAR OR LEAD WITNESS M [REDACTED] P [REDACTED]. SHE MADE MANY REVERSIBLE MISTAKES. SHE DELIBERATELY DEFIED THE COURT. SHE FAILED TO SHOW A PRIMA FACIE SHOWING OF APPELLANT'S GUILT. SHE FAILED TO PROVE BEYOND A REASONABLE DOUBT EACH FACT OF HER CASE AND EACH ELEMENT OF APPELLANT'S GUILT. BUT THE COURT WAS VERY GENEROUS TO HER. HE ALLOWED HER TO SKATE ON THE ICE OF MISCONDUCT AND INADEQUACY. THAT IS HOW SHE UNFAIRLY AND UNJUSTLY WON.

SHE WAS EVEN ALLOWED TO MODIFY THE VERY DEFINITION OF PROOF BEYOND A REASONABLE DOUBT DURING HER CLOSING ARGUMENTS SO THAT THE JURY COULD REALLY BE AND ACT IN HER FAVOR.

ALL IN ALL THE STATE FAILED TO PROVE THEIR CASE OF THE APPELLANT BEING GUILTY OF INTENTIONAL HOMICIDE AND ATTEMPTED HOMICIDE BEYOND A REASONABLE DOUBT.

THE APPELLANT IS TRULY AND FOREVER INNOCENT. MAYBE THIS COURT CANNOT FATHOM THIS, OR MAYBE THE COMPASSION OF JUSTICE IS MISSING IN THIS STATE. BUT THE REALITY IS THAT THE COURT IS BOUND BY JUSTICE AND CONTRACT. THE GOVERNMENT HAS THE DUTY TO SERVE AND PROTECT THE PEOPLE. THIS COURT HAS

THE DUTY TO SERVE THE ENDS OF JUSTICE. TO CREATE BALANCE IN THE RIVER OF CRIMINAL PROSECUTIONS.

LAST TO YOU IS THE MINNESOTA CONSTITUTIONS ARTICLE III DISTRIBUTION OF THE POWERS OF GOVERNMENT.

THE POWERS OF GOVERNMENT SHALL BE DIVIDED INTO THREE DISTINCT DEPARTMENTS: LEGISLATIVE, EXECUTIVE AND JUDICIAL. NO PERSONS BELONGING TO OR CONSTITUTING ONE OF THESE DEPARTMENTS SHALL EXERCISE ANY OF THE POWERS PROPERLY BELONGING TO EITHER OF THE OTHERS EXCEPT IN THE INSTANCES EXPRESSLY PROVIDED IN THIS CONSTITUTION.

YET, WHY IS IT THAT THE JUDICIAL DEPARTMENT OF THE STATE IS CHARGED WITH HANDLING ALL CRIMINAL AND CIVIL JURISDICTION; BUT IT IS THE GOVERNOR THROUGH THE COMMISSIONER OF CORRECTIONS WHO CARRIES OUT OR EXERCISES THE POWER OF PUNISHING APPELLANT BY HOUSING HIM IN PRISON FOR 45 yrs.? THE EXECUTIVE BRANCH OF OUR GOVERNMENT IS NOT CHARGED WITH DUTY PRESCRIBED BY LAW TO THE JUDICIAL BRANCH. THE DEPARTMENT OF CORRECTIONS CANNOT CONSTITUTIONALLY KEEP APPELLANT IMPRISONED IN THEIR PRISONS WHEN IT IS THE DUTY OF THE JUDICIAL SYSTEM TO CARRY OUT PUNISHMENTS. THIS COURT MUST REINSTATE THE DEPARTMENT OF HUMAN SERVICES AS THE EXECUTORS OF PUNISHMENT IN THIS STATE BECAUSE DHS IS NOT AFFILIATED WITH GOVERNOR COMPARED TO THE MINNESOTA DEPARTMENT OF CORRECTIONS WHICH RUNS A PROFITABLE CORPORATION CALLED MINNCORR INDUSTRIES. THE STATE CANNOT ILLICIT THE DUTIES OF OUR GOVERNOR TO EXECUTE PUNISHMENTS IN ORDER TO OPERATE A PROFIT MAKING BUSINESS IN LIEU OF THE DEPARTMENT OF HUMAN SERVICES OPERATING THE EXERCISE OF DUTY TO PUNISH. IN TOTALITY YET IN LACK OF SOLIDIFIED LEGAL KNOWLEDGE, THE APPELLANT ASKS

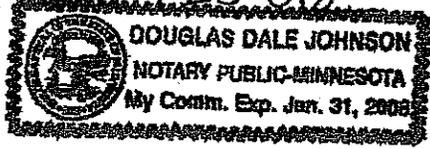
THE COURT TO TAKE AN UTMOST LIBERAL VIEW IN REVIEWING THE ENTIRETY OF APPELLANTS TRIAL AND SENTENCING. A MAN ON TEEMS WITH JUSTICE NEEDS YOUR GUIDANCE.

CONCLUSION

FOR THE REASONS SET OUT ABOVE, MR. MICHAEL C. FRANCIS RESPECTFULLY REQUESTS THE MINNESOTA SUPREME COURT FIND THAT MANY ILLEGALITIES EXIST IN HIS CASE, THAT THEY RULE IN FAVOR OF ALL ISSUES RAISED, AND IN ISSUES NOT RAISED DUE TO IGNORANCE OF THE LAW, AND THAT THE HIGH COURT SET ASIDE THE JUDGEMENT OF THE TRIAL COURT, TOTALLY REVERSE APPELLANT'S CONVICTION AND SENTENCE, AND/OR GRANT APPELLANT A NEW TRIAL WITH CURATIVE INSTRUCTIONS FOR THE DISTRICT COURT, AND THAT THIS COURT GRANT TOTAL RELIEF ON ALL ISSUES AND THAT THE STATE BE BARRED FROM RETRYING THIS CASE IN ANY FORM OR VIOLATION OF MR. FRANCIS' DOUBLE JEOPARDY PROTECTION RIGHTS WOULD RESULT.

UNDER THE PENALTY OF PERJURY THE APPELLANT RESPECTFULLY SUBMITS. THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.

SIGNED: Michael C. Francis
PLAINTIFF / APPELLANT
MICHAEL C. FRANCIS

DATE: 4-28-06
 DOUGLAS DALE JOHNSON
NOTARY PUBLIC-MINNESOTA
My Comm. Exp. Jan. 31, 2008

NOTARY: Douglas Dale Johnson

DATE: 04/28/06

This document was signed and sworn before Douglas D. Johnson on this date 04/28/06

CERTIFICATE OF COMPLIANCE

This brief contains 26,283 words (exclusive of the table of contents and table of authorities), as computed by the word processing program used to prepare this brief, Microsoft Word Perfect 2000, and it complies with the type face provisions of the Rule of Civil Appellate Procedure 132.01, subd. 3.



Appellant,
Michael C. Francis OID #215520

