A18-0205

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Nigeria Lee Harvey,

Appellant.

APPELLANT'S PRO SE SUPPLEMENTAL BRIEF

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APPELLANT

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A P P E L L A N T'S B R I E F

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I N T R O D U C T I O N :

1. I'm a appellant,in the Minnesots State Supreme Court,i was directed by my present attorney Mr.Benjamin J.Butler to compose,and file any issues and supporting grounds that i desire to be considered,by this Honorable Court,to preserve them for possible future litigation of well established Federal and State constitutional rights violations,that were not filed by Trial counsel.

2. These issues/grounds are submitted Pro-se to the best of my abilities,while being aided by other prisoners due to my ignorance of law.See,-Resnick v.Hayes,213 F.3d.443,446(9th Cir.-2000)Gomez v.USAA Fed.Sav.Bank,171 F.3d.794,795-96 (2d.Cir.1999).

3. THE APPELLANT INVOKES THE U.S. SUPREMACY CLAUSE,**ART.VI.SECT.S,2,3.**

The United States Supremacy Clause pre-empts,particular State Laws/State Court decisions,-that are contrary to,or abrogate,the U.S.Supreme Court Cases herein cited,Cippolone v.Liggett Group Inc.505 U.S. 504,516,112 S.ct.2608,120 L.ed.2d.407(1992),the Minn. Const. ART.v.Sect.6.-explains,that the State Courts are bound to obey,conform,to the Federal Constitution,consequently,-U.S.Supreme Court decisions relating to same or similar issues/subject matter, Boyle V.U.S. Tech. Corps.,487 U.S.500,504,108 Sct.2510,101 Led.-442(1988).

LIST OF SUPPORTING AUTHORITIES

Doe v.Archdiocese of Saint Paul,817 N.W.2d.150,167-68(Minn. 2012).
Goeb v.Tharalsdon,615 N.W.2d.800(Minn.2000).

Illinois v. Gayes,462 U.S. 213,103 S.ct.2317,76 L.ed.2d.527, (1983).

Kimmelman v.Morrison,477 U.S. 365,91 L.ed.2d. 305,106 S.ct., 2142(1984).

Mapp v.Ohio,367 U.S. 643,655(1961).
Mooney v.Holohan,294 U.S.103 55 S.ct. 340,79 L.ed 791.
Ohio v.Johnson,467 U.S.493,498(1984).
State v.Chamberlain,373 N.W.2d.854(Minn.CCT. APP. 1985)
State v.Expose,872 N.W.2d.252,260(Minn.2015).
State Exrel Hanson v.Rigg, 258,104 N.W.2d.553.
State v.Iten,401 N.W.2d.127(Minn.App.1987).
State v.Moore,438 N.W.2d.101,105(Minn.1989).
State v.Roan,532 N.W.2d.563(Minn.1995).
State v.Traylor,656 N.W.2d.885,891(Minn.2003).
State v.Zanter,535 N.W.2d.624,634(Minn.1995)
Washington v.Strickland,466 U.S. 668,694,104 S.ct.2052,2064,20, 68,(1984)

Boyle v.U.S.Tech.Corps,487 U.S.500,504 108 S.ct.2510,101 L.ed 442(1988).

Brock v. Merrell Dow Pharm.,Inc.,874 F.2d.307(Ca.5 1989),U.S.579 587..
Carpenter v. United States,138 S.ct.2206,2220(2018).
Cippolone v.Liggett Group Inc.505 U.S. 504516,112 S.ct.2608,120 L.-ed.2d.407(1992).
Frye v.United States,293 F.1013 (D.C.Cir.1923.
Gomez v.USAA Fed.Sav.Bank,171 F.3d.794,795-96(2d.cir.1999).
Johnson v.Zerbst,304 U.S.458,58 S.ct.1019,82 L.ed.2d.1461.
U.S.v.Begnaud,783 F.2d.144,147,N.4,(1986)
U.S.v.Huntsman959 F.2d.1429(8th cir.1992)
U.S.v.Samango,607 F.2d.877(9th.cir.1979).
Weeks v. United States,232 U.S. 383,34 S.ct.341,58 L.ed.652(1914).

ISSUE-GROUND I

TRIAL COUNSEL WAS INEFFECTIVE WHERE HE FAILED TO MOTION THE TRIAL COURT FOR DISSMISSAL OF INDICTMENT AS **PREJUDICIALLY,AND UNCONSTITUTIONALLY DEFECTIVE,**OR DIRECTIVE VEDICT OF DISMISSAL OR AQUITTAL,DUE TO SERIOUS PROSECUTORIAL MISCONDUCT **AT THE INDICTMENT HEARING** WHERE HE KNOWINGLY INTENTIONALLY SUBMITTED AND/OR SOLICITTED **PREJUDICIAL INADMISSIBLE EVIDENCE OR FACTS** TO THE INDICTMENT HEARING BODIE,WHO HEAVILY RELIED ON THIS EVIDENCE AND FACTS IN DETERMINING WHETHER TO INDICT,IN VIOLATION,OF THE APPELLANTS 4th,6th,14th,AMENDMENT RIGHTS AND GUARANTEES,AND RIGHT TO A FAIR TRIAL,DUE PROCESS AND FUNDAMENTAL-FAIRNESS.

A R G U E M E N T S :

(A). The C.S.L.I.,and all of it's resulting fruits were obtained in violation of the 4th amendment's **(Warrant Clause)**and **(Probable Cause Clause)** due to the lack of a warrant,and the use of the C.S.L.I., in the application,and affidavit in support of probable,for the issuance of a warrant.

1. The c.s.l.i,is and was highly prejudicial to the appellant,the same is true concerning the poisoness fruit thereof.

THE COUNTY ATTORNEY SUBMITTED AND OR SOLICITTED ALL OF THIS TO THE INDICTMENT HEARING BODIE,**WITHOUT INFORM-THE INDICTMENT HEARING BODIE OF THE UNCONSTITUTIONAL-ITY,OR INADMISSIBILITY**

The county attorney/prosecutor **originally obtained the c.s.l.i., by using,brandishing a (court-order)instead of a (warrant),**to the Sprint Cell Phone company,**inducing the cell phone company to** release,hand-over,the c.l.s.i.,information and facts.See,Illinois, v.Gates,462 U.S. 213,103 S.ct.2317,76 L.ed.2d.527(1983), Weeks v.United State, 232 U.S.383,34 S.ct.341,58 L.ed.652(1914), Kimmelman v.Morrison,477 U.S.365,91 L.ed.2d.305,106 S.ct.2142(1984). Mapp v.Ohio,367 U.S.643,655(1961).

Carpenter v.United States, 138 S.ct. 2206,2220(2018).

It is the c.s.l.i.,information/technology,that **is the poisoness tree,**-due to being obtained in violation of the 4rh amendment. This technology and information,thereof,--was used **in the GAR technology testing,thus rendering the Gar technology,and tests** conclusions,and information,facts,and derivative facts and information,**unconstitutional,inadmissible,prejudicial to the appellant as** the fruit of the poisoness tree.

The county attorney's submission and use of this evidence at the indictment hearing,and not informing the hearing bodie of it's unconstitutionality or it's inadmissibility,was **materially misleading,**as well as unreliable as a matter of law and fact.

See,State v. Chamberlain,373 N.W.2d.854(Minn.CNT.App.1985), a defective-unconstitutional indictment,that reveals prejudice,-**can be raised at any time,due to established cause,and or being incurable,** see,**Minn.R.Crim.Proc.17.06,subd.2(b)(g).**Mooney v.Holohan,294 U.S. 103 55 S.ct.340,79 L.ed.791,-**deliberate deception of indictment-bodie.**Minn.R.Crim.Proc.17.06 subd.2-6,subd.2-A,subd.2-1-a. U.S.v.Samango, 607 F.2d.877(9th cir.1979).

> THE PROSECUTOR SHOULD HAVE PRESENTED ALL EVIDENCE FAVORABLE TO THE APPELLANT TO THE INDICT HEARING AND IN THE APPELLANT'S CASE,**THE FACTS THAT THE C.S.L.I., AND THE TESTIMONY/STATEMENTS OF OFFICER BERNI WAS INADMISSIBLE,ILLEGALLY,- OBTAINED CONSTITUTES FAVORABLE EVIDENCE.**State v.Iten,401 N.W.2d.127(Minn.App.1987). **A.B.A.-"PROSECUTOR'S FUNCTION SECT.3-3.6(b),Minn.R. Crim.Proc.18.06,subd.1,2,17.06,subd.2-1(e).State v.Moore, 438 N.W.2d.101,105(Minn.(1989),the absence of this evidence, at the indictment hearing prejudiced the appellant.** State v.Roan,532 N.W.2d.563(Minn.1995).

THE APPELLANTS INDICTMENT IS REQUIRED BY LAW TO BE BASED UPON **ADMISSIBLE EVIDENCE,— THE RECORD REVEALS THE INDICTMENT WAS SIGNIFICANTLY BASED UPON ALL THE ABOVE-MENTIONED INADMISSIBLE EVIDENCE AS WELL,**ONLY ADMISSIBLE EVIDENCE IS TO BE USED AND CONSIDERED AT THE INDICTMENT HEARING,-THE APPELLANT WAS CLEARLY,**DENIED THAT ENTITLEMENT AND GUARANTEE under such conditions any other evidence does not alter the requirement of absence of inadmissible evidence.State v.Expose,872 N.W.2d.252,260(Minn.2015).**

ISSUE-GROUND 2

TRIAL COUNSEL WAS INEFFECTIVE WHERE HE FAILED TO RAISE THE ISSUE THAT THE STATE/THE COUNTY ATTORNEY OBTAINED **(C.S.L.I.)**INFORMATION EVIDENCE AND USED IT AT THE MAGISTRATE PROBABLE CAUSE/WARRANT HEARING TO-,ACQUIRE **PERSONAL/SUBJECT MATTER JURISDICTION TO SEARCH,SEIZE PROSECUTE,-BY ESTABLISHING PROBABLE CAUSE WITH GAR TECHNOLOGY TO GET A (COURT ORDER),WHICH IS REFERED TO AS A(WARRANT)IN THE AMENDED COMPLAINT,AND REFERED TO AS A(COURT ORDER)IN THE ORIGINAL COMPLAINT** THUS,VIOLATING THE 4th AMENDMENTS (WARRANT CLAUSE),AND(PARTICULAR PROBABLE CAUSE CLAUSE,ALSO VIOLATING DUE PROCESS FUNDAMENTAL-FAIRNESS,CLAUSES OF THE 14th,6th,AMENDMENTS,-CONSTITUTING SERIOUS PROSECUTORIAL ,MISCONDUCT

A R G U E M E N T S :

(A). The **G.A.R.-** technology/evidence was prejudicial,and material,to the appellant's case/trial,and was also,unreliable and inadmissible **at trial** and unreliable,at the appellant's probable cause magistrate hearing,due to the fact that the**(GAR)** technology has **never been established as reliable,accurrate or trustworthy and excepted by the contemporary scientific community,**see Goeb v.Tharalsdon,615 N.W.2d.800(Minn.2000),Brock v. Merrell Dow Pharm.Inc.,874 F.2d.307(Ca.5 1989).509.U.S.579,587.

1.Such technology/evidence is inadmissible,and unreliable as a **matter of law,**and consequently cannot be used to support,or authorize,or establish the mandatory indicia of reliability nor trustworthiness,-or accurracy **required by the (Warrant Clause),** or the **(Specific Probable Cause Clause)** of the 4th Amendment.

EVIDENCE OBTAINED IN VIOLATION OF THE 4th AMENDMENT MUST BE SUPPRESSED AT TRIAL,AND SUCH EVIDENCE TESTS USED OR SUBMITTED IN SUPPORT OF AFFIDAVIT OF PROBABLE CAUSE, OR APPLICATION OF PROBABLE CAUSE,IS **UNRELIABLE,THUS INADMISSIBLE,RENDERING PROBABLE CAUSE AND THE PROPOSED WARRANT SOUGHT,-NON-EXISTENT, AND UNCONSTITUTIONAL,CAUSING A LACK OF PERSONAL,AND SUBJECT-MATTER JURISDICTION OF THE COURT.MINN.CONST.ART.1,SECT.10**

Carpenter v.United States,138 S.ct.2206,2220(2018),State v.Zanter, 535 N.W.2d.624,634(Minn.1995).Mapp v.Ohio,367 U.S.643,655(1961). Illinois,v.Gates,462 U.S.213,103 S.ct.2317,76 L.ed.2d.527(1983). **THE GAR TEST,IS THE POISONESS FRUIT OF CSLI,-- TECHNOLOGY.Weeks v.United**

States,232 U.S.383,34 S.ct.341,58 L.ed.652(1914)the testimony of officer Berni is fruit of the poisoness tree.

SERIOUS PROSECUTORIAL MISCONDUCT

(B). The County Prosecutor knew that the G.P.S.,had pin pointed the appellants location where the appellant had stated that he was residing at the time of the offense.

1. The county prosecutor took it upon himself to embark upon a personal exploration of a more accurate form of **location pin-pointing.** The prosecutor knew,or should have known due to research,and investigation,that the GAR technology **has not been established through the "Contemporaneous scientific community" as being reliable accurate,nor the level of accuracy.**Therefore without such scientific community acknowlegement and recognition **(By scientists)** ,the county attorney knew as an attorney himself,--that **THE GAR TECHNOLOGY IS AND WAS UNRELIABLE UNTRUSTWORTHY AS A MATTER OF "SCIENTIFIC LAW),**but still knowingly submitted and solicitted **the unreliable unexcepted thus,inadmissible Gar Technology,(NOT HAVING THE STATUS OF SCIENTIFIC LAW),see-959 F.2d. 1344,cert.den.,506 U.S.826,121 L.ed.2d.47.**This resulted in rendering,**The probable cause hearing,the affidavit in support,and the resulting warrant, of the ammended complaint,and the trial unconstitutional.**

> THE COURT JUDGES IS REQUIRED TO DEFER TO SCIENTISTS ASSESSMENTS OF THE GAR TECHNOLOGY,**NOT STATE OR FEDERAL POLICE,AND INVESTIGATORS,**FRYE v.UNITED STATES,293 F.1013(D.C. Cir.1923.STATE V. TRAYLOR,656 N.W.2d.885,891(MINN.-2003),GOEB,615 N.W.2d.at 813.

The Court Judge relied on **a police officer,"Berni"**and therefore, the State **never met it's obligation to proove** that the Gar technology, was reliable accurate.Doe v.Archdiocese of Saint Paul,

817 N.W.2d.150,167-68(Minn.2012).**The State Court** cannot rely on officer Berni's theories,which were never subjected to scientific,testing by scientists,-nor could the State rely on Berni's anecdotes.

The prosecutor's knowing submission solicitation use and bolstering of prejudicial,unreliable evidence/technology,and failure to prove,-it's reliability by way of a scientist,or scientific community,of contemporaneous society,**Constitutes serious prosecutorial misconduct, in a felony offense,when violating the 4th amendment** or denying a fair trial under the 6th,14th Amendments.

ADDITIONAL PROSECUTORIAL MISCONDUCT

C. The prosecutor originally relied on a **(COURT ORDER)** instead of a Warrant, to seize confiscate obtain the **C.S.L.I.** from the Sprint cellphone company,the absence of the 4th amendment's (WARRANT CLAUSE) and the 4th amendment's (PROBABLE CAUSE CLAUSE) while in the act of seizing obtaining the C.S.L.I.,information from sprint, not only rendered the C.L.S.I.,inadmissible for trial,it rendered it inadmissible,as unconstitutional,to the **Indictment** hearing bodie,and the **Amended Complaint** probable cause hearing.This C.S.L.I.,was highly prejudicial, and **relied on significantly,substancially,by the (INDICTMENT HEARING BODIE),(THE PROBABLE CAUSE HEARING)(THE JURY), (TRIAL COURT),**and these constitutionally infirm admissions of evidence,into these court hearings,and the solicitation of it,only served to infect the hearings with the **use of prejudicial inadmissible,evidence,(prohibitted by a spectrum of constitution**'s amendments,such as the 4th,6th,14th,.

1. **THE APPELLANT'S,FOURTH AMENDMENT ISSUES/GROUNDS AND INDICTMENT ISSUE/GROUNDS ARE "JURISDICTIONAL IN NATURE AND THUS,MAY BE RAISED/PRESENTED AT ANY TIME;**

See Minn.R.CRIM.PROC.17.06,subd.2(b)(G),State v.Chamberlain , 373 N.W.2d.854(Minn.CCT.APP.1985)**The appellant's defective,unconstitutional indictment.**
See,State Exrel Hanson v.Rigg,258 Minn.388,104 N.W.2d.553. U.S.v.Huntsman, 959 F.2d.1429(8th cir.1992).U.S.v.Begnaud,783 F.2d.144,147,N.4(1986).Therefore no procedural or time bars would be applicable to **such issues jurisdictional in nature.**

D. INEFFECTIVE TRIAL COUNSEL

Trial counsel's ineffectiveness relating to grounds herein presented of this issue,**have not been waived by the appellant nor is the appellant responsible for the failures of these grounds to be presented and raised in the District Court.**

Therefore to penalize,the appellant by procedurally barring the enclosed grounds in this issue which are based in the constitutions,of the State and/or Federal constitution-, would constitute a direct abrogation/violation of the 6th amendments,guarentees,protections,and rights.

1. THE 6th AMENDMENT,AND U.S.SUPREME COURT DECISIONS WELL ESTABLISHED,MAKE IT CLEAR THAT ,**it is counsel's duty to protect the appellant from his own ignorance,**Johnson v.Zerbst,304 U.S. 458,58 S.ct.1019,-82 L.ed.2d.1461,Kimmelman v.Morrison,477 U.S.365,91-L.ed.2d.305,106 S.ct.2142(1984),Washington v.Strickland, 466 U.S.668,694,104 S.ct.2052,2064,2068,(1984).

The **Minnesota State Constitution obligates the State Courts to comply with,and protect,and enforce the above-cited U.S.Supreme Court decisions** because the Minnesota Constitution requires

the State Courts/Judges to obey protect and enforce the United States Constitution,--**see MINN.STATE CONST.ART.V.SECT.6, this duty overrides the judicially created "Knaffla-Bar"rule/ court decision,or at the very least,prevents the application of the knaffla bar,due to the knaffla bar's** transgression into the State Constitution, and 6th amendment's realm,doctrine, that,-**ineffective counsel,is itself,good-cause excusing any** judicially creaed procedural bars,**(Namely),** the Knaffla-Bar.

THE STATE CREATED KNAFFLA BAR DECISION/RULE IGNORES THE 6th AMENDMENTS,AND MINN.STATE CONSTITUTIONS,AND U.S.SUPREME COURT DECISIONS DOCTRINES,MANDATES GUARANTEES **ESTABLISHING,THAT INEFFECTIVE COUNSEL IN THE STATE COURTS,IS CAUSE,EXCUSING PROCEDURAL AND TIME BARS.See,authorities already cited relating,to (INEFFECTIVE COUNSEL) supra.**

E. SEPERATION OF POWERS VIOLATION

Minn.Const.Art.3,Sect.1,U.S.CONST. Art 1,Sect.8,cl.18,these are the State and Federal Seperation of Powers Clauses.

1. The above facts and details outlined above in combination with the State and Federal authorities reveal that as a matter of law, the Knaffla-bar/rule being a judicial creature violates them both,by contradicting them being inconsistent with them,and usurpong,them and the Constitutions they are based upon.**The Knafla rule/ bar, is judicially created,and invades the legislative,and constitutional, authorities and the U.S.Supreme Court authorities cited in this ineffective counsel issue.**See, State exrel.Verbon B. St. Louis County,216 Minn.140,145,12 N.W.2d.193,196.Ohio v.Johnson, 467 U.S.493,498(1984),Id.at 499.--the knaffla bar,judicial in it's nature operates to effect and infect branches of government who,s legal doctrine is seperate and outside the judicial branch of government.

CONCLUSION

This Court must dismiss Mr.Harvey's indictment;

Vacate the conviction and sentence due to serious prosecutorial misconducts;

Quash the Warrant of arrest seizure and search.

Dated:December 2nd **,2018**

Respectfully Submitted,

Pro-se,
Signed, Nigeria Harvey

By:Nigeria Lee Harvey