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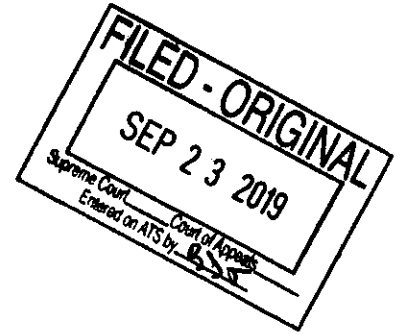
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IN THE SUPREME COURT OF IDAHO

MARK D. COLAFRANCESCHI,)	CASE NO. SUPREME COURT DOCKET
Appellant)	NO. 45112-2017
)	
Petitioner,)	APPEAL BRIEF
)	
vs.)	
DURENA SCHOONOVER, FARR,)	
BEDARD)	
)	
Respondent)	

MARK D. COLAFRANCESCHI'S (MDC) APPEAL BRIEF

APPEAL REPLY BRIEF
Appeal from the District Court of the
Fourth Judicial District of the State of Idaho
In and for the County of Valley to
Idaho Supreme Court
P.O. Box 83720 Boise, ID 83720-0101
supremecourtdocuments@idcourts.net

Judge Jason Scott: Presiding District Judge

Mark D. Colafranceschi

Durena Schoonover, Farr, Bedard

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LAW AND ANALYSIS

1. Was the Trial Court's failure of recusal in the above case a result of a violation of Judicial Canon 3 A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently
2. Was the Trial Court's Ex Parte Communication with Todd Wilcox grounds for DQ?
3. Was Judge Scott abusing his discretion by ignoring allegations brought on appeal?
4. Were the Distinct Trial Courts Orders clearly erroneous?

TABLE OF AUTHORITIES CASES:

Atkinson v. Atkinson, 124 Idaho 23, 25, 855 P.2d 484, 486 (Ct. App. 1993).
Aguiar v. Aguiar, 142 Idaho 331, 127 P.3d 234 (Ct. App. 2005),
Biggers v. Biggers, 103 Idaho 550, 555, 650 P.2d 692, 697 (1982);
Browning v. Browning, 136 Idaho 691, 39 P.3d 631 (2001);
Kornfield v. Kornfield, 134 Idaho 383, 385, 3 P.3d 61, 63 (Ct. App. 2000
Hoskinson v. Hoskinson, 139 Idaho 448, 454, 80 P.3d 1049, 1055 (2003);
Hoskinson, 139 Idaho at 455, 80 P.3d at 1056.
Noble v. Fisher, 126 Idaho 885, 888, 894 P.2d 118, 121 (1995);
Rohr v. Rohr, 126 Idaho 1, 3, 878 P.2d 175, 177 (Ct. App. 1994).
Rowell v. Rowell, 406 So.2d 993 (Ala. Civ. App. 1981)
Russell v. Russell, 99 Idaho 151, 578 P.2d 1082 (1978).
Sun Valley Shopping Center, Inc. v. Idaho Power Co., 119 Idaho 87, 94, 803 P.2d 993, 1000
(1991),
Weigel v. Weigel, 604 N.W.2d 462
West v. West, 431 S.E.2d 603 (S.C. Ct. App. 1993)

STATUTES:

Idaho Rules of Appellate Procedure Rule 11(a)(2) or 12 (a) I.A.R.
Idaho Rule of Civil Procedure 6(c)(6).
Idaho Code Rule 16(l).
Idaho Rules Of Evidence 201. (b) Judicial Notice of Adjudicative Facts
Judicial Code of Conduct.: CANON 3.(A)(4) (A)(7)
Idaho Rules of Civil Procedure, Rule 60(b)

STATEMENT OF ISSUES FOR REVIEW

This appeal asserts that Judge Scott abused his discretion by ignoring objective facts. This appeal challenges the entirety of Judge Scott's order denying each and every issue brought upon appeal. 1. Disqualification 2. Attorney fees 3. Child custody 4. Child support and 5. Remaining motions ignored by Justice Schroeder.

NATURE OF THE CASE

This case involves protracted litigation (9 years)

- Involving seven (7) different magistrate judges in this case.
- Involving a home study obtained and conducted fraudulently.
- The bad acts of Todd Wilcox, Durena Schoonover, Shawn Briley, Ashley Robinson, and Craig Beaver who willfully and knowingly abused the judicial process.
- Abuse of discretion of Justice Schroeder.
- Abuse of discretion of Judge Scott

Judicial notice by this court is warranted:

The nature of this case extends to the Supreme Court Ruling involving *Colafranceschi v Briley et al*, and the fraud conducted that was protected by judicial immunity by this Supreme Court. This court along with the District Court (Judge Scott) must consider these facts in accordance with Judicial Canons (or simply look at Appellant Brief outlining the same).

This court and the District Court must also consider Idaho Judicial Counsels finding of Judge Boomer being guilty of misconduct as relevant if the courts want to uphold Judicial Canons (or simply look at Appellant Brief outlining the same).

The only purpose of bringing up these facts is to show how Judge Scott (& Justice Schroeder) abused their discretion by ignoring or presuming the case was not tainted by judicial

misconduct or expert misconduct. It is undisputed that fraud and judicial misconduct were independent of Mr. Colafranceschi. - Judge Boomer violated Judicial Canons, and Briley et al committed fraud. Judge Scott cannot explain the reasons that MDC is somehow responsible for these bad acts. This presumption echoes Judge Scott's and Justice Schroeder's Orders. Instead of Judges taking responsibility for their actions towards this pro se litigant they continue to double down and protect the bad acts of the judges in question. Calling Mr. Colafranceschi names and ignoring facts only dismantles the *integrity* of the court.

COURSE OF PROCEEDINGS –Time Line

1. Seven judges have been assigned to this case (at magistrate level) because of violations of Judicial Canons and ethics issues. The district court ignoring (See Appeal Order) these issues creates protracted litigation by ignoring facts and abusing its discretion.
2. Judge Boomer was found guilty of Judicial Misconduct by the Idaho Judicial Council. The *wavering* of the Idaho Courts in covering up Judge Boomers acts is at the heart of this appeal, and they are connected to Judge Schroeder's rulings on appeal. The Supreme Court cannot make assumptions of why and how Senior Judge Justice Schroeder was disqualified/replaced in this case by senior Judge Darla Williamson. If assumptions are to be made it is fair to assume he (Justice Schroeder) violated Judicial Canons and or had cognitive impairment that disqualified him to act judiciously. If the Supreme Court does inquire into the reason Judge Schroeder was replaced by the trial Court Administrator and why a reason was not demonstrated in the order... it is fair for this Supreme Court to inquire to into allegations of Judge Schroder's cognitive function and abilities as a judge.

3. At the heart of this appeal is Judge Scott covering up and ignoring the claims made in the District Court Appeal Brief outlining why and how Justice Schroeder's actions are disqualifiable.
4. It had been brought to the attention of the appellant that Judge Boomers (while presiding) used illegal drugs, and was impaired. This is allegedly known amongst judges and attorneys in Idaho. Mr. Colafranceschi for the last seven years being vocal about these allegations has been retaliated against by this court. Also indisputable is that Judge Boomer has an out of court relationship with Briley, being seen at her home on several occasions.

TIMELINE

1. August 4th 2010 - MDC filed order for custody and child support – (the unmarried parents of Dominic Robert Colafranceschi). Durena Schoonover, at the time was interfering with contact between child and father and attempting to extort money from MDC because of his relationship with Julie Neustadt. Judge Boomer was the first judge to be assigned to the case.
2. January 26th, 2011 – At hearing to Order, the “Home Study” Judge Boomer stated in Court that because of the relationship between Durena Schoonover and Shawn Briley, Shawn Briley would not be allowed to be a part of the home study. It must be made clear that the main reason Justice Schroeder was assigned was because of Fraud involving Judge Boomer, Durena Schoonover, and Shawn Briley.

3. Durena willfully, fraudulently and secretly carried through with the home study while her friend and counselor (Shawn Briley) was the secret home study evaluator and supervisor. (It is also undisputed that Judge Boomer had an out of court relationship with Shawn Briley and was often seen at her home/residence). – These unaddressed facts by Justice Schroeder should set off alarms to this higher court. The fact is, protracted litigation was because of the bad acts of Durena, Briley, Robinson and Judge Boomer.
4. December 2011 – Judge Boomer (in hearing) was confronted on his ethics and violation of judicial Canons. He was disqualified on January 10th 2012. Judge Day was assigned on January 12th 2012. Judge Day’s abuse of Judicial Canons existed. Judge Day was replaced by Judge Berecz who was also disqualified because of his connection to Judge Boomer. On September 17th 2012 Judge Neville was assigned to this case. Judge Neville indisputably broke judicial canons by making extrajudicial comments about MDC to attorneys related and unrelated to cases involving MDC. Judge Neville was removed as Judge in another civil case involving Colafranceschi and Schoonover (2011).
5. On January 10th 2013 Judge Comstock was assigned to this case. Judge Comstock did NOT break ethics or Judicial Canons.
6. On February 21st 2013 Justice Schroeder was assigned to this case.
7. **In the case involving *Colafranceschi v Ericson* CV 2006-312, The Honorable Judge Comstock voided the home study and awarded custody of child Mark to father, and changed child support. Judge Comstock created a judicial anomaly in this case of which Judge Schroeder acknowledge as an issue. Then Judge Schroeder did not address this issue**

8. Powerful to note that the misdeeds of Judge Boomer, Shawn Briley, and Durena Schoonover unarguably created the need for retrial heard by Judge Schroeder. No person with virtue and or knowledge of the facts can claim otherwise. (Judge Scott in his appeal order flagrantly ignored the fact that Judge Schroeder made it clear that there was an anomaly by Judge Comstock overturning the home study, custody and child support). Justice Schroeder's relationship with Craig Beaver may have tainted his ability to call out the fraud involved with these experts.
9. Todd Wilcox became involved in this case on a pro bono basis for Schoonover. Wilcox has had an undisputed connection with Judge Boomer and other judges.
10. It is of public interest that judges are retaliating against MDC for actions brought against these unethical judges committing violations of Judicial Canons. Instead of newly assigned judges acting according to Canons, these judges have taken it upon themselves to disparage and name call Mr. Colafranceschi everything from vexatious, to frivolous. Instead of taking the virtuous path of Judicial Canons and acting with objectivity, they hid behind the vice of 'discretion', while ignoring the law.
11. There is definitively a hostile environment by Idaho Judges and attorneys to pro se litigants. MDC brought this appeal to Brain Defriez, a well respected appeal writer. Brain wanted to write this appeal on MDC, behalf and refused for fear of the Supreme Court retaliating upon him. MDC urged him to take the job as he would learn each case he cited and demonstrate respect and goodwill to the courts. This was not what Brain Defriez was concerned with. It was the Supreme Court targeting him for helping a pro se litigant. The jeopardy that MDC has in writing a brief that this or any court may criticize while at the same time hindering him from getting professional services is in question.

12. MDC was also told by numerous other attorneys that it is not possible to get a fair impartial pro se outcome in Idaho in this case because of the hostility that the Idaho courts have created in trying to protect and shield bad acts of peers.
13. In August 2013 Scot Ludwig told MDC, while at the pool at Whitetail Club, that he and Judge Schroeder are “good buddies” and that “Gerald” was Scots’ booster while he played basketball at Boise State University. Let it be known that Scot Ludwig was a part of the illegal acts to fraudulently obtain a vexatious litigant claim against MDC.
14. The Court Clerk at the Supreme Court indicated to MDC that whenever appeal briefs, reply briefs, etc are omitted from the record the Supreme Court requests them and makes them a part of the record.
15. This court can mistakenly and abusively construe the facts presented above as MDC relitigating or taking the virtuous path in that these facts are most relevant in obtaining justice for all. The cornerstone of this appeal is that Judge Boomer was found guilty of judicial misconduct and recused WITH CAUSE and that Briley et al committed fraud in the home-study.

GROUNDS FOR JURISDICTION

Idaho Rules of Appellate Procedure

STANDARD OF REVIEW

The Standard of Review in this appeal is whether the Trial Court's decision is clearly erroneous. *Hoskinson v. Hoskinson*, 139 Idaho 448, 454, 80 P.3d 1049, 1055 (2003); *Roberts v. Roberts*, 138 Idaho 401,403, 64 P.3d 327, 329 (2003). In reviewing such decisions, the relevant inquiry is whether the trial court (1) correctly perceived the issue as one of discretion; (2) acted within the

outer boundaries of its discretion and consistent with the legal standards applicable to the choices before it; and (3) reached its decision by an exercise of reason. *Hoskinson, supra; Roberts, supra*. It is the province of the trier of fact to weigh conflicting evidence and testimony and to judge the credibility of witnesses (evaluators). The trial court's findings of fact in a court tried case will be upheld if they are supported by substantial and competent evidence, even if the evidence is conflicting, and will be liberally construed in favor of the judgment entered. *State v. Hart*, 142 Idaho 721, 723, 132 P.3d 1249, 1251 (2006) (quoting *Roell v. Boise City*, 134 Idaho 214, 216, 999 P.2d 251, 253 (2000)). With respect to questions of law, however, this Court exercises free review to determine whether the law was properly construed and applied. *Id.* Idaho Code § 32-717B(4) provides as follows: "Except as provided in subsection (5), of this section, absent a preponderance of the evidence to the contrary, there shall be a presumption that joint custody is in the best interests of a minor child or children." That presumption can be overcome if a parent is found by the court to be a habitual perpetrator of domestic violence. I.C. § 32-717B(5). That condition does not exist in this case.

Reviewed on appeal for an abuse of discretion. *Noble v. Fisher*, 126 Idaho 885, 888, 894 P.2d 118, 121 (1995); *Kornfield v. Kornfield*, 134 Idaho 383, 385, 3 P.3d 61, 63 (Ct. App. 2000); *Atkinson v. Atkinson*, 124 Idaho 23, 25, 855 P.2d 484, 486 (Ct. App. 1993). As set forth in *Sun Valley Shopping Center, Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991), we examine (1) whether the trial court correctly perceived this issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistent with the applicable legal standards; and (3) whether the trial court reached its decision by an exercise of reason. An abuse of discretion will be found if the magistrate failed to give consideration to relevant factual circumstances, *Rohr v. Rohr*, 128 Idaho 137, 141, 911 P.2d 133, 137 (1996);

Yost v. Yost, 112 Idaho 677, 680, 735 P.2d 988, 991 (1987); *Margairaz v. Siegel*, 137 Idaho 556, 558, 50 P.3d 1051, 1053 (Ct. App. 2002), or if the magistrate's findings are not supported by the evidence, *Biggers v. Biggers*, 103 Idaho 550, 555, 650 P.2d 692, 697 (1982); *Rohr v. Rohr*, 126 Idaho 1, 3, 878 P.2d 175, 177 (Ct. App. 1994).

A district court sitting as an appellate court is required to review a magistrate's under an abuse of discretion standard, *Browning v. Browning*, 136 Idaho 691, 39 P.3d 631 (2001); *Aguiar v. Aguiar*, 142 Idaho 331, 127 P.3d 234 (Ct. App. 2005), and the party challenging that award bears the burden of establishing an abuse of discretion. *Henderson v. Smith*, 128 Idaho 444, 915 P.2d 6 (1996). Such an abuse will be found if the magistrate failed to consider relevant evidence, *Rohr v. Rohr*, 128 Idaho 137, 141, 911 P.2d 133, 137 (1996); *Margairaz v. Siegel*, 137 Idaho 556, 558, 50 P.3d 1051, 1053 (Ct. App. 2002), but only if that evidence exists in the record. *Stewart v. Stewart*, 143 Idaho 673, 677, 152 P.3d 544, 548 (2007).

Regarding Fraud this appeal request that this court applies 60(B) Taylor v Taylor Idaho 2018

LAW AND ANALYSIS

The Trail Courts prejudicial actions clearly violate the Judicial Conduct. The governing canon is as follows: CANON 3 A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently B. Adjudicative Responsibilities.

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**
- (4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.**
- (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest**

bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

Judge Schroeder made several prejudicial statements. In this case, Judge Schroeder was asked to rescue himself. The record shows and the district court appeal clearly outlines facts ignored by District Court Judge Scott on appeal.

See Justice Schroeder's misogynistic/misandrist remarks made and ignored by Judge Scott.

ARGUMENTS

From page 5 to page 48 of Appellant Brief Mr. Colafranceschi lists objective facts and testimony. If this court addresses each fact ignored by Judge Scott it is alarming. If a Judge (Scott) ignores every intelligent objective argument and denies this appeal – the Judge would seemingly make it look like the person receiving the unfavorable outcome is simply relitigating. With so many facts ignored this appeal simply asks that this court weigh the evidence and arguments presented in light of the Respondents lack reply to this intelligent objective

allegations and address the matter. The following highlights of ignored facts do not distract from others not mentioned.

Typically appeals from the district court to the Supreme Court require the laborious need to prove abuse and not re-litigate the decision from Magistrate to District Court. **The fact that 7 judges came and went, along with fraud conducted by Briley et al and NOT once mentioned by Judge Scott.** It is warranted and requested that this court use its own discretion to investigate the **Abuse of Process**

MDC is not going to recite his original Brief and Reply Brief to this Supreme Court. This Supreme Court may carefully take note of the facts presented on appeal. The clear and obvious lack of response or rebuttal by Todd Wilcox upon his respondent brief, and most importantly Judge Scott's failure, abuse of discretion and or fraud in ignoring facts to protect Justice Schroeder.

In Judge Scott's **Order On Appeal**, he states; "*Judge Boomer gave way as the presiding Magistrate. Ultimately the Idaho Supreme Court assigned Justice Schroeder...*" Clearly Judge Scott is ignoring the nefarious acts of Judge Boomer et al, by characterizing the assignment of Judges as he has done. Instead a virtuous Judge would objectively and fairly state Judge Boomer was disqualified with Cause and reference the fact that (4) judges Day, Neville, Comstock, and Bercez were assigned and removed. Without Judge Scott acknowledging this undisputed fact any reasonable person would conclude he is biased, possibly not wanting to shed light on the bad of judges and or most importantly give validation that Mark Colafranceschi required this ongoing litigation because of the bad acts of Judge(s). Furthermore without Judge Scott acknowledging that Judges (Boomer/Neville/Berecz) have been removed WITH CAUSE and the home study was conducted fraudulently he is making omissions that clearly show bias and abuse of

discretion. The only reason Mr. Colafranceschi is repeating and stressing these points is because of the egregious and blatant nature of these bold acts of abuse of discretion, and or fraud.

Judge Scott's ruling is clearly made on the presumption that the home study was valid, and Judge Boomer's decision was not tainted – The facts show neither a valid home study or a valid Order by Judge Boomer. If this appeal does not address this fact it has not exercised Judicial Canons

If this court or the lower courts can explain how they could characterize the acts of Briley et al and Judge Boomer as being honorable based on the undisputed facts – A reasonable person could not even characterize the acts of Judge Boomer, Briley et al as even being neutral.

To the same degree that Justice Schroder failed to assert that the home study was fraudulently obtained – When the evaluators lied in court and Justice Schroeder did NOT care, - should alarm this court. How can Justice Schroeder ignore fraud by expert witnesses and then claim Mr. Colafranceschi was acting frivolously to the “experts”.

How can Justice Schroeder ignore the false statements and name-calling made by Wilcox and Schoonover upon Mr. Colafranceschi? Then when Mr. Colafranceschi makes objective true statements about Schoonover and her character, Justice Schroeder calls them out.

This court should be alarmed that Judge Boomer and Briley have an out of court relationship, (or since the home study had one). It should alarm this court that Justice Schroder allowed the testimony of these experts that clearly committed fraud. This court may or may not be aware Judge Boomer's drug use while presiding as judge. Such an allegation made by Mr. Colafranceschi who holds a professional degree and designation does so for public interest and this case involving the interest of his child Dominic Robert Colafranceschi.

Next Judge Scott describes the appeal matters surrounding the disqualification of Justice Schroeder. Again Judge Scott ignores the most important aspects brought on appeal and without virtue minimizes and trivializes objective facts MDC brought on appeal. Judge Scott ignoring facts that damage Justice Schroeder's credibility and only be deemed as an abuse of discretion at the minimum

Page 5 of Judge Scott's order. A) DISQUALIFICATION – Judge Scott does not address the most objective allegations brought forth on appeal brief. See Appellant Appeal Brief listing the cognitive issues and blatant omissions of Justice Schroeder in light of Judge Scott immixing these.

Judge Scott does not address the October 15th, 2013 pg 18 lines 3-7. Where Justice Schroeder makes the statement that Judge Scott nor Judge Schroeder address.

Judge Scott fails to address the exparte communication between Justice Schroeder and Todd Wilcox, simply ignoring this – while at the same time Todd Wilcox offers no rebuttable in his brief. Judge Scott ignoring the following from Mr. Colafranceschi's appeal brief.

On 12/12/2013 an Order Denying Motion To Disqualify was entered by Judge Schroeder

A review of the allegations made in this motion and Judge Schroeder's lack of willingness to provide an adequate response to each allegation show that recusal would have been justified. Instead Judge Schroeder responded to this motion dismissing it and claiming he would order the transcripts regarding the one claim of bias – of which Judge Schroeder failed to execute and failed to give notice or reason why he failed to do so. This helps to prove the justification for removing Judge Schroeder with cause.

To highlight the above: In Justice Schroeder's own order he claims he would order transcripts – He did not. Justice Schroeder's remarks do not show discretion. Judge Scott ignoring the same do not show discretion.

Judge Scott's findings are not consistent with facts: MDC filed for disqualification
BEFORE Justice Schroeder made his order

Judge Scott's Order - Page 7. B Merits: Judge Scott analyses of the merits of the custody determination again fail to address the most important argument made by appeal brief that Justice Schroeder addressed the anomaly made by Judge Comstock in the Colafranceschi v Ericson case. Justice Schroeder failure to address this anomaly based upon his own pretrial order is alarming. One can only determine that the anomaly being an issue before trial then not an issue after trial is for one of two reasons. Either Justice Schroeder did not have the cognition or memory to address this or he was acting with abuse and neglected to address the anomaly because he had no objective facts to support this.

The unresolved motions that Judge Scott waves off show yet another vice of his decision. The record showed that MDC made every attempt to resolve and proceed with unresolved motions and the courts ignored all requests.

On-Page 27 of MDC Appeal Brief – Plaintiff filed a motion to reconsider and clarify on Jan 14th 2014. Justice Schroeder failing to clarify the most obvious and resolve oriented requests outlined can only be explained as cognitive impairment or abuse of discretion, Judge Scott ignoring the same should alarm this Supreme Court.

Judge Scott Order on Appeal - on page 12 claims that Todd Wilcox was not pro bona – The court transcripts reflects this as indisputable. The reply brief of Respondent written by Todd Wilcox does not refute this. Instead of Judge Scott considering the lack of rebuttal by Wilcox in his brief to claim otherwise Judge Scott abuses his discretion.

On page 10 of Judge Scott's order – he states that he “presumes the absence of decision that Justice Schroeder denied it.” Instead of making an assumption or presumption Judge Scott could have read the Appeal of Mr. Colafranceschi and the response (lack of one) by the Respondent that objective facts support that Justices Schroder either had a cognitive lapse or abuse of discretion consistent

CONCLUSION

MDC moves this court to remand the case to Magistrate court. MDC request cost on appeal both at District and Supreme court. Submitted this Date 23rd of September 2019.



Mark D. Colafranceschi D.C.

CERTIFICATE OF SERVICE

I, Mark D. Colafranceschi, hereby certify that a true and correct copy of this document: "APPELLANT'S BRIEF" was sent to the following individuals by

On behalf of Himself Date 23rd of September 2019.



Mark D. Colafranceschi D.C.