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## North Dakota woman exonerated of felony child neglect charges after Great North Innocence Project uncovers serious flaws in the State's case

*The state dismissed charges against Cassandra Black Elk with prejudice "in the interest of justice"*

**(Bismarck, ND)** – The Great North Innocence Project (GNIP) announced today that their client, Cassandra Black Elk, has been fully exonerated of a 2022 felony child neglect conviction.

After meeting Ms. Black Elk during a prison outreach visit in August 2022 and learning about her case, GNIP's team conducted a thorough investigation and uncovered serious flaws in the State's case against her. Led by GNIP managing attorney Jim Mayer, Ms. Black Elk's legal team successfully argued to vacate her conviction in front of a North Dakota court in January of 2023. However, the state continued to pursue charges against her. Finally, after an unsuccessful appeal to the North Dakota Supreme Court, the State agreed to drop the charges against Ms. Black Elk on October 20, 2023.

"What Cassandra Black Elk and her two daughters went through was unimaginable to most of us – the grief of losing a baby, followed immediately by the trauma of false accusations, family separation, and prison", says James Mayer, a managing attorney with GNIP. "To see Cassi freed, reunited with her two older daughters, and now finally exonerated, has been exactly what we hoped for. What an honor to represent someone like Cassi, who inspired all of us with her powerful spirit."

### **A tragic death and a coercive interrogation**

At about 1:30 a.m. on February 19, 2022, Cassandra Black Elk fed her 3-week-old daughter, StarLight, a bottle, then swaddled her in a blanket and put her back down to sleep. When Ms. Black Elk woke up five hours later, StarLight was not breathing. Police and paramedics arrived and confirmed that the baby had died.

Shortly thereafter, Ms. Black Elk was taken away from her other two children and escorted to an interrogation room at the Bismarck Police Department where she was questioned about her child's death by multiple police officers for three hours. During the interrogation, officers falsely told Ms. Black Elk that they found evidence of inflicted injuries on StarLight and accused her of causing those injuries. Investigators also told Ms. Black Elk that she must have killed StarLight by shaking her and that they knew by the progression of rigor mortis that the baby died earlier the previous night, while Ms. Black Elk was awake. None of this was true. They also told Ms. Black Elk that the autopsy would confirm that someone had hurt StarLight, and that she would be treated better later if she simply confessed right then. Further, they informed Ms. Black Elk that her other two children had been placed with child protective services and that she would not get them back until she told them what she had done to StarLight.

Throughout this interrogation, Ms. Black Elk's story never changed - StarLight was perfectly fine when she fed and swaddled her and put her to bed.

At the end of the interrogation, Ms. Black Elk was handcuffed and taken to jail, and charged with felony child neglect. According to the charging documents, Ms. Black Elk was responsible for StarLight's death, though the

exact mechanism would not be known until after the autopsy. It was suggested that Ms. Black Elk's consumption of alcohol the night before had also played a role. Bail was set at an unattainable \$25,000. Ms. Black Elk was incarcerated and her other two children remained in foster care.

### **Pressured to plead guilty**

Ms. Black Elk obtained a public defender as counsel, and continually asked him to obtain a copy of her daughter's autopsy results. She believed the autopsy would confirm her version of events and demonstrate she did nothing to harm her daughter. Despite her persistent inquiries for the autopsy results, Ms. Black Elk's defense counsel persuaded her to plead guilty to the offense charged before they received the autopsy results. When she expressed reluctance about pleading guilty without the autopsy results, counsel told her that if the autopsy was favorable they could "deal with it later." Despite her continued insistence that she had done nothing wrong, Ms. Black Elk followed her lawyer's advice, pled guilty, and went to prison.

Even while in prison, Ms. Black Elk never gave up on trying to get the autopsy report, eventually contacting the medical examiner's office herself and obtaining a copy. *The autopsy report confirmed that there was no evidence of foul play or recent trauma, and this was a sudden, unexplained infant death. Nothing in the autopsy suggested that Ms. Black Elk had abused or neglected her baby, or that she bore any responsibility for the baby's death.*

### **The Great North Innocence Project takes the case**

After hearing her story, Managing Attorney Jim Mayer, with assistance from legal fellow Anna McGinn, dug into Ms. Black Elk's case. The team was also joined by Ryan Sandberg of Pringle & Herigstad, P.C. who provided local pro bono representation. Within a few months, the team had completed the investigation and filed a petition for post-conviction relief.

The petition argued that Ms. Black's representation was constitutionally ineffective because her attorney encouraged her to plead guilty despite not having received the autopsy results and despite Ms. Black Elk's insistence that she did nothing to abuse or neglect her child. The petition also argued that the State's Attorney violated Ms. Black Elk's constitutional rights because the State's Attorney had attended the autopsy and failed to disclose the exculpatory findings to the defense.

The Court held an evidentiary hearing which in Mandan, North Dakota, on January 19, 2023. Mr. Mayer in partnership with local counsel, presented testimony from the medical examiner who performed the autopsy, and from forensic pathologist Dr. Mary Ann Sens, an expert in sudden unexplained infant death, who testified that there was no evidence that abuse or neglect played any role in harming StarLight. Ms. Black Elk also took the stand and told her story, credibly and courageously.

### **The Court rules in Ms. Black Elk's favor**

The Court granted GNIP's petition, stating, *"The Court finds Ms. Black Elk's testimony credible," and that "It is clear with the results of the autopsy report that Ms. Black Elk's conduct was not attributable to S.B.'s death." The Court held that "had Ms. Black Elk received proper advice from counsel, she would not have entered her guilty plea...."* Because this ground alone was sufficient to overturn the conviction, the Court did not rule on the other claims the Great North team raised. Nevertheless, the Court cautioned the State, *"the Court would note its concerns of the allegation that the State knew of the likely results of the autopsy report prior to the plea agreement, yet did not relay that information [to defense counsel] so Ms. Black Elk could have been appropriately informed before making her decision...."*

As Ms. Black Elk waited for the State's next move, the Court agreed to release Ms. Black Elk without bail, and she was reunited with her other two children. Within months, Ms. Black Elk had regained full custody.

### **Justice is finally served**

Meanwhile, the prosecution appealed the decision to the North Dakota Supreme Court, and GNIP's pro bono partner Mark Bradford of the firm Bradford, Andresen, Norrie & Camaratto argued the case on Ms. Black Elk's behalf. The Supreme Court affirmed the district court's ruling.

Even after losing at the Supreme Court, the State continued to prosecute, threatening to force Ms. Black Elk to stand trial for felony child neglect. GNIP staff, along with pro bono partners Dane DeKrey and Bruce Ringstrom, continued to fight for Ms. Black Elk.

Ruling on a motion to dismiss drafted by GNIP legal fellow Anna McGinn, *the court agreed that the State's continued prosecution of Ms. Black Elk on this amorphous revised neglect charge raised constitutional concerns.* The court gave the State 14 days to specifically identify what Ms. Black Elk did to violate the law.

On October 19, 2023, unable to identify any felonious conduct by Ms. Black Elk, the State filed a motion to dismiss its own case with prejudice, in the "interest of justice." The following day, October 20, 2023, the court entered an order dismissing the charges with prejudice, exonerating Cassi of all charges.

"Cassi Black Elk's case is a perfect example of how tunnel vision and bias can drive criminal investigations and prosecutions", according to attorney Anna McGinn. "While I am comforted by the fact that Cassi is now able to properly grieve the death of her darling daughter, we must never forget that this tragic miscarriage of justice was preventable and should have never occurred."

Cassi is thrilled to be moving forward, while also continuing to mourn the loss of StarLight.

#### **About the Great North Innocence Project**

The mission of the Great North Innocence Project (GNIP) is to free the wrongfully convicted and prevent future wrongful convictions from occurring in Minnesota, North Dakota, and South Dakota. Formerly known as the Innocence Project of Minnesota, GNIP has screened and investigated individuals' credible claims of actual innocence and represented people who were wrongfully convicted or incarcerated for crimes they did not commit for over 20 years. GNIP also educates attorneys and other criminal justice professionals on best practices and works to reform the criminal justice system to prevent innocent people from going to prison. For more information visit [greatnorthinnocenceproject.org](https://greatnorthinnocenceproject.org).

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