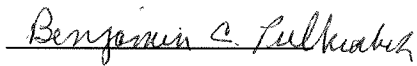


IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,

Plaintiff/Appellant,

v.

Randy Joseph Houle,,
Defendant/Appellee.Supreme Court File No.:
20210331**PETITION FOR REHEARING**-----
PETITION FOR REHEARING
-----Petition for Re-hearing on the Judgment entered on the 26th day of May, 202022

Benjamin C. Pulkrabek

ND BAR ID#02908

Pulkrabek Law Office

402 First Street NW

Mandan, ND 58554

Phone: (701) 663-1929

Email: pulkrabek@lawyer.com*Attorney for Defendant/Appellant*

TABLE OF CONTENTS

TABLE OF CONTENTS.....	page 2
TABLE OF AUTHORITIES.....	page 3
JURISDICTION.....	[¶2]
STATEMENT OF ISSUES.....	[¶3]
1. Why the following language is the correct and proper language when the circumstantial evidence is necessary part of the jury instruction: “A person can be convicted on circumstantial evidence alone if the circumstantial evidence is consistent. If one piece of circumstantial evidence contradicts another piece of circumstantial evidence, the circumstantial evidence is not consistent. You can convict a person on circumstantial evidence alone if the circumstances proved exclude every reasonable theory except that the accused is guilty.”	
LAW AND ARGUMENT.....	[¶4]- [¶7]
CONCLUSION.....	[¶8]

PETITION FOR REHEARING

[¶1] COMES NOW the Defendant/Appellant Randy J. Houle and petitions the court for a rehearing.

JURISDICITON

[¶2] Defendant/Appellant Randy J. Houle timely petitions for rehearing in accordance with N.D. R. App. P. 40.

STATEMENT OF THE ISSUES

[¶3] **ISSUE 1.** Why the following language is the correct and proper language when the circumstantial evidence is necessary party of the jury instruction: "A person can be convicted on circumstantial evidence alone if the circumstantial evidence is consistent. If one piece of circumstantial evidence contradicts another piece of circumstantial evidence, the circumstantial evidence is not consistent. You can convict a person on circumstantial evidence alone if the circumstances proved exclude every reasonable theory except that the accused is guilty."

LAW AND ARGUMENT

[¶4] **ISSUE 1.** The part of the jury instruction on direct and circumstantial evidence that was used in this case that Mr. Houle is appealing (district court case #47-2020-CR-455 Index #118, pg. 7 says:

"The law makes no distinction between direct and circumstantial evidence.

You should give all evidence the weight and value you believe it is entitled to receive. A conviction may be justified on circumstantial evidence alone if the circumstantial evidence has such probative force as to enable you to find the Defendant guilty beyond reasonable doubt."

[¶5] Probative force in the above instruction is not defined. Therefore, how can a jury decide or figure out that the circumstantial evidence has such probative fore as to enable them to find a defendant guilty beyond a reasonable doubt.

[¶6] The jury instruction used in State v. Johnson district court #30-2021-CR-0024 Index #65 pg. 24 states

"A person can be convicted on circumstantial evidence alone if the circumstantial evidence is consistent. If one piece of circumstantial evidence contradicts another piece of circumstantial evidence, the circumstantial evidence is not consistent. You can convict a person on circumstantial evidence alone if the circumstances proved exclude every reasonable theory except that the accused is guilty."

[¶7] That language is much easier to understand than one that deals with probative force and reasonable doubt.

CONCLUSION

[¶8] It is best to have a jury instruction that explains to the jury in language they can understand how to decide circumstantial evidence. The above language in State v. Jonson contains language a juror can understand. Therefore, Petitions Appellant Houle petitions for a rehearing should be granted.

Dated this 21 day of May, 2022.

Benjamin C. Pulkrabek
Benjamin C. Pulkrabek, ND BAR ID#02908
Pulkrabek Law Office
402 First Street NW
Mandan, ND 58554
Phone: (701) 663-1929
Email: pulkrabek@lawyer.com
Attorney for Petitioner/Appellant

IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota,

Plaintiff and Appellee,

v.

Randy Joseph Houle,

Defendant and Appellant.

Supreme Court File No.
20210331
Stutsman County District Court No.
47-2020-CR-00455
CERTIFICATE OF SERVICE

¶1 I certify that a true and correct copy of the following, specifically:

1. Petition for Rehearing
2. Certificate of Service

by electronically serving the same through the North Dakota Supreme Court e-filing system and that e-filing will provide service to the following:

North Dakota Supreme Court
supclerkofcourt@ndcourts.gov

Frederick Russell Fremgen
Stutsman County States Attorney
attorney@stutsmancounty.gov

and by U.S. postal service with proper postage affixed to:

Randy J. Houle
C/O Stutsman Co. Correctional Center
205 6th Street SE #2
Jamestown, ND 58401
Defendant/Appellant.

Dated this 26th day of May, 2022.

/S/ Benjamin C. Pulkrabek
Benjamin C. Pulkrabek
ND Bar No. 02908
Pulkrabek Law Office
402 First Street NW
Mandan, ND 58554
Office: 701-663-1929
Pulkrabek@lawyer.com
Attorney for the Appellant

IN THE SUPREME COURT OF NORTH DAKOTA

State of North Dakota,

Plaintiff and Appellee,

v.

Randy Joseph Houle,

Defendant and Appellant.

Supreme Court File No.
20210331
Stutsman County District Court No.
47-2020-CR-00455
CERTIFICATE OF SERVICE

[¶1] I certify that a true and correct copy of the following, specifically:

1. Petition for Rehearing
2. Certificate of Service

by electronically serving the same through the North Dakota Supreme Court e-filing system and that e-filing will provide service to the following:

North Dakota Supreme Court
supclerkofcourt@ndcourts.gov

Frederick Russell Fremgen
Stutsman County States Attorney
attorney@stutsmancounty.gov

and by U.S. postal service with proper postage affixed to:

Randy J. Houle
C/O Stutsman Co. Correctional Center
205 6th Street SE #2
Jamestown, ND 58401
Defendant/Appellant.

Dated this 3rd day of June, 2022.

/S/ Benjamin C. Pulkrabek
Benjamin C. Pulkrabek
ND Bar No. 02908
Pulkrabek Law Office
402 First Street NW
Mandan, ND 58554
Office: 701-663-1929
Pulkrabek@lawyer.com
Attorney for the Appellant