

**Filed 10/23/03 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2003 ND 155

State of North Dakota,

Plaintiff and Appellee

v.

Peter Paul Zephyrin,

Defendant and Appellant

No. 20020352

Appeal from the District Court of Cass County, East Central Judicial District,
the Honorable John Charles Irby, Judge.

AFFIRMED.

Per Curiam.

Birch Peterson Burdick, State's Attorney, P.O. Box 2806, Fargo, N.D. 58108-
2806, for plaintiff and appellee.

Monty Grant Mertz, P.O. Box 10396, Fargo, N.D. 58106-0396, for defendant
and appellant.

State v. Zephyrin
No. 20020352

Per Curiam.

[¶1] Peter Paul Zephyrin appealed from a criminal judgment and commitment entered on jury verdicts finding him guilty of class B felony robbery, class C felony felonious restraint, and class A misdemeanor unauthorized use of a motor vehicle. We conclude Zephyrin failed to establish his jury panel was selected in violation of N.D.C.C. ch. 27-09.1 or in violation of the fair cross-section requirement of the State and Federal constitutions. See State v. Marshall, 531 N.W.2d 284, 286-87 (N.D. 1995); State v. Fredericks, 507 N.W.2d 61, 63-65 (N.D. 1993). We conclude the district court did not abuse its discretion in refusing to declare a mistrial because of mid-trial publicity. See State v. Osier, 1999 ND 28, ¶¶ 23-30, 590 N.W.2d 205; State v. Voeller, 356 N.W.2d 115, 118-121 (N.D. 1984). We further conclude the photographic identification procedure was not impermissibly suggestive, see State v. Norrid, 2000 ND 112, ¶¶ 6-16, 611 N.W.2d 866, and the guilty verdicts are supported by substantial evidence. We affirm under N.D.R.App.P. 35.1(a)(3), (4) and (7).

[¶2] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Dale V. Sandstrom
William A. Neumann
Mary Muehlen Maring