

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA
SUPREME COURT NO. 20060329

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SUPREME COURT AUG 31 2007

State of North Dakota,)
)
 Appellee,)
)
 vs.)
)
 Terry Kautzman,)
)
 Appellant.)

20060329

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

AUG 30 2007

STATE OF NORTH DAKOTA

PETITION FOR REHEARING

Supreme Court Decision 2007 ND 133
Oliver County District Court
Hon. Thomas J. Schneider

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ISSUES

1. THE SUPREME COURT MISAPPREHENDED THE MOTION FOR MISTRIAL.
2. THE SUPREME COURT MISAPPREHENDED THAT KAUTZMAN HAD "INVITED" THE TRIAL COURT TO MAKE AN ERRONEOUS RULING.

PETITION FOR REHEARING

Terry Kautzman, Appellant, by and through his counsel, hereby files the following Petition for Rehearing, pursuant to Rule 40, N.D.R.App.P.

1. The Supreme Court misapprehended the motion for mistrial.

Kautzman, after the return of the verdict, filed a Motion for Mistrial, under Rule 31(b)(3), North Dakota Rules of Criminal Procedure.

Rule 31(b)(3), provides:

(3) Mistrial and Retrial. If a jury cannot agree on a verdict on one or more counts, the court may declare a mistrial on those counts.

Kautzman's claim was that there was not a complete verdict on the charge of Gross Sexual Imposition. The Special Finding was not made or agreed to by the jury, thereby rendering the verdict incomplete.

The Supreme Court failed to explain, on page 3 of the opinion, how Kautzman could have moved for a mistrial before the trial was over. Kautzman did bring it to the Court's attention. (Transcript, Volume III, p. 399, ll. 13-25; p. 400, ll. 1-9). The Court invited counsel for both the State and Kautzman to brief the issue of a mistrial.

Therefore, the Motion for Mistrial was not untimely.

2. The Supreme Court misapprehended that Kautzman had "invited" the trial court to make an erroneous ruling.

Kautzman merely suggested the use of a special verdict form on the issue of "serious bodily injury." It was consented to by the State and approved by the Court. To "invite" an erroneous ruling by the trial court implies that the Court erred in its ruling. The Supreme Court does not identify what ruling the Court made that was erroneous and how Kautzman "invited" the error. The Supreme Court again failed to understand the request of Kautzman for a special verdict.

Dated this 30 day of August, 2007.



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CERTIFICATE OF SERVICE BY MAIL

On the 30 day of August, 2007, a copy of the Petition for Rehearing was mailed to:

Michael G. Liffrig
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Kent M. Morrow