

IN THE SUPREME COURT

20090147

STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
November 25, 2009
STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20090147

DISTRICT COURT CASE NO.: 08-08-K-1576

State of North Dakota,

Plaintiff/Appellee,

- VS -

Joseph Henry Johnson

Defendant/Appellant.

PETITION FOR REHEARING

BENJAMIN C. PULKRABEK
Attorney for Appellant

402 First Street NW
Mandan, North Dakota 58554
(701)663-1929
N.D. Bar Board ID No. 02908

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STATEMENT OF THE ISSUES

1. Should the Supreme Court rehear this case on the issues raised in Appellant's brief?

NATURE OF THE CASE

This is a petition to rehear the opinion filed in the above entitled matter on
November 17 , 2009.

STATEMENT OF FACTS

Appellant Joseph Henry Johnson (“Johnson”) Petitions for Rehearing from the North Dakota Supreme Court’s summarily affirming under NDRApp.P 35.1(a)(3) and (7).

ISSUE

Should the Supreme Court rehear this case on the issues raised in Appellant’s brief?

ARGUMENT

The trial judge’s failure to instruct the jury on Maxim of Jurisprudence 31-11-05(6) had a significant impact on the verdict and affected the substantial rights of the Defendant/Appellant.

There was not sufficient evidence to convict Defendant/Appellant of the offence of criminal trespass. Therefore, the Defendant/Appellant’s Motion for Judgment of Acquittal under 29(a) of the NDR of Crim. P. should have been granted.

CONCLUSION

Mr. Johnson’s Petition for Rehearing should be granted.

Dated this _____ day of November, 2009.

Respectfully submitted:

Benjamin C. Pulkrabek, ID# 02908
Attorney for Appellant
402 First Street NW
Mandan, ND 58554
(701)663-1929

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that I am an employee in the office of Pulkrabek Law Office and I am a person of such age and discretion as to be competent to serve papers.

That on November _____, 2009, she served, by mail, a copy of the following:

PETITION FOR REHEARING

by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the U.S. mail at Mandan, North Dakota, addressed as follows:

Lloyd C. Suhr
Assistant State's Attorney
514 E. Thayer Ave.
Bismarck, ND 58501

I further certify that on November _____, 2009, I dispatched to the Clerk of the North Dakota Supreme Court, an original and seven copies of the PETITION FOR REHEARING and emailed the same containing the full text of the Brief.

Sharon Renfrow

Subscribed and sworn to before me on this _____ day of November, 2009.

Notary Public