

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

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SUPREME COURT NO.: 20100218

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State of North Dakota,

Plaintiff/Appellee,

- VS -

Salome F. Hinojosa,

Defendant/Appellant.

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PETITION FOR REHEARING

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**TABLE OF CASES, STATUTES AND OTHER AUTHORITIES**

**STATUTES**

NDCC §19-03.1-23(1)(a)	.	.	.	.	.	.	.	¶2, 9, 10
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**STATEMENT OF THE ISSUES**

[¶1] 1. Should the Supreme Court rehear this case on the issue that a State's witness going on vacation is not good cause to grant a continuance?

[¶2] 2. Should the Supreme Court rehear this case on whether or not there was evidence and testimony sufficient for a jury to find beyond a reasonable doubt the sale occurred within 1000 feet required by NDCC §19-03.1-23(1)(a)?

**NATURE OF THE CASE**

[¶3] This is a petition to rehear the opinion filed in the above entitled matter on June 21, 2011.

## STATEMENT OF FACTS

[¶4] Appellant Salome Fierros Hinojosa Petitions for Rehearing from the North Dakota Supreme Court’s ruling affirming the decision of the District Court of Cass County, East Central Judicial District, the Honorable Wickham Corwin.

## ARGUMENT

[¶5] **ISSUE I. Should the supreme court rehear this case on the issue that a state’s witness going on vacation is not good cause to grant a continuance?**

[¶6] Appellant Salome Fierros Hinojosa was prepared to go to trial within the 90 days of the filing of his request for speedy trial.

[¶7] Neither Mr. Hinojosa or his attorney requested a continuance. Even though Mr. Hinojosa’s attorney had to withdraw because of a conflict, Mr. Hinojosa could have tried the case himself.

[¶8] The trial court just assumed Mr. Hinojosa wanted another attorney and said “in light of the pending problems on the defense side with the conflicts and preinquiry reassignment . . . a postponement would be beneficial, I assume for the defense as well.

[¶9] **ISSUE II. Should the supreme court rehear this case on whether or not there was evidence and testimony sufficient for a jury to find beyond a reasonable doubt the sale occurred within 1000 feet required by NDCC §19-03.1-23(1)(a)?**

[¶10] The exhibit showing measurement does not include any measurement from the door of the apartment building where the delivery took place. Therefore the jury could only guess and couldn’t find beyond a reasonable doubt that the door of the

apartment building was within the 1000 feet requirement of NDCC § 19-03.1-23.1(1)(a).

**CONCLUSION**

[¶11] For the above and foregoing reasons the North Dakota Supreme Court should grant Mr. Hinojosa's Petition for Rehearing.

Dated this 29th day of June, 2011.

Respectfully submitted:

/s/ Benjamin C. Pulkrabek  
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**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 June 29, 2011 she served, by e-mail, a copy of the following:

**PETITION FOR REHEARING**

to: Gary Euren  
Cass County State's Attorney Office  
eureng@casscountynd.gov

The undersigned further certifies that on June 29, 2011, she electronically filed with the Clerk of the North Dakota Supreme Court, Appellant's Petition for Rehearing.

/s/ Sharon Renfrow  
Sharon Renfrow, Legal Assistant to  
Benjamin C. Pulkrabek