

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

---

SUPREME COURT NO.: 20110337

---

State of North Dakota

Plaintiff-Appellee

- VS -

Miguel Humberto Medina Romero,

Defendant-Appellant

---

APPEAL FROM THE CRIMINAL JUDGMENT  
NORTHEAST JUDICIAL DISTRICT  
PEMBINA COUNTY CR. NO. 34-10-K-00242  
THE HONORABLE LAURIE A. FONTAINE, PRESIDING

---

BRIEF

---

BENJAMIN C. PULKRABEK

Attorney for Appellant

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

**TABLE OF CONTENTS**

Table of Contents . . . . . I

Table of Cases, Statutes and Other Authorities . . . . . ii

Abbreviations . . . . . iii

Statement of the Issues . . . . . ¶1

Nature of the Case . . . . . ¶5

Statement of the Facts. . . . . ¶13

Argument . . . . . ¶31

Issues Presented:

I. **Did the trial court err when it denied Mr. Romero’s motion to allow the jury to view the crime scene?** . . . . . ¶1, 31

II **Did the trial court err when it refused to either change the wording in the self defense reasonableness of the accused belief instruction from “great bodily injury” to serious bodily injury or to give a definition of “great bodily injury?”** . . . . . ¶2, 42

III. **Did the trial err when it denied Mr. Romero’s Rule 29 Motion to dismiss Count 3?** . . . . . ¶3, 54

IV. **Is a Defendant entitled to have a trial transcript truly disclose what occurred in the District Court?** . . . . . ¶4, 73

Conclusion . . . . . ¶83

Certificate of Service . . . . . ¶87

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

<u>State vs Schlichenmayer</u> 334 NW2d 196 (ND 1983) . . . . .	¶33
<u>Thompson v. State</u> , 399 A.2d 194, 198 (Del.1979) . . . . .	¶33
<u>Snyder v. State</u> , Ind.App., 939 N.E.2d 802, 807 (1979) . . . . .	¶33
<u>State v. Melvin</u> , 390 A2d 1024, 1032 (Me.1978) . . . . .	¶33, 36
<u>Commonwealth v. Andrews</u> , - Mass.App. -, 422 N.E.2d 484, 486 (1981)	¶33
<u>State v. Gone</u> , 179 Mont. 271, 587 P.2d 1291, 1294-1295 (1978) . . . . .	¶33
<u>State v. Motsko</u> 261 NW2d 860, 866 (ND 1977) . . . . .	¶46
<u>Herrington v. State</u> , Okl.Cr., 352 P.2d 931, 933. . . . .	¶51
<u>State v. Fashing</u> , 461 N.W.2d 102 (N.D. 1990) . . . . .	¶56
<u>State v. Ohnstad</u> , 359 N.W.2d 827 (N.D. 1987) . . . . .	¶56

**STATUTES**

NDCC 29-21-26 . . . . .	¶32, 33
NDCC 29-21-16. . . . .	¶40
NDCC 12.1-01-04. . . . .	¶48, 49
NDCC 12.1-01-04(4) . . . . .	¶49, 52
NDCC 12.1-01-04(29) . . . . .	¶49, 52
 NDR of Crim Pro	
Rule 29 . . . . .	¶3, 7, 13, 30, 54, 55

## ABBREVIATIONS

Page - P.

Line - L.

Jury Transcript - JT

Volume - V

## **STATEMENT OF THE ISSUES**

**[¶1] ISSUE I: Did the trial court err when it denied Mr. Romero's motion to allow the jury to view the crime scene?**

**[¶2] ISSUE II: Did the trial court err when it refused to either change the wording in the self defense reasonableness of the accused belief instruction from "great bodily injury" to serious bodily injury or to give a definition of "great bodily injury?"**

**[¶3] ISSUE III: Did the trial err when it denied Mr. Romero's Rule 29 Motion to dismiss Count 3?**

**[¶4] ISSUE IV: Is a Defendant entitled to have a trial transcript that truly discloses what occurred in the District Court?**

## NATURE OF THE CASE

¶5] On the 18th day of October, 2010 the State filed a Felony Complaint/Information charging Miguel Humberto Medina Romero (Mr. Romero) with the following crimes:

COUNT 1, Unlawful Possession/Manufacture of a Controlled Substance (Marijuana)

COUNT 2, Murder

On the 7th day of January, 2011 the State filed an amended Felony Complaint/Information charging Mr. Romero with the following crimes:

COUNT 1, Unlawful Possession/Manufacture of a Controlled Substance;

COUNT 2, Murder

COUNT 3, Unlawful Possession of a Controlled Substance (Cocaine) with intent to deliver;

COUNT 4, Tampering with physical evidence.

¶6] A jury trial on the above charges began on April 1, 2010.

¶7] During the trial Mr. Romero made a Rule 29 Motion under the NDR of Crim Pro for dismissal of all of the charges.

¶8] The trial court granted the Motion as to count 4 and denied it as to counts 1, 2, and 3.

¶9] Judgment and Sentence was given on October 18, 2011.

¶10] Mr. Romero timely appealed the judgment on November 14, 2011.

¶11] Entry of the Notice of Appeal was entered on November 14, 2011.

¶12] This matter is now before the North Dakota Supreme Court.

## STATEMENT OF FACTS

[¶13] In this case on October 18, 2010 Defendant/Appellant Miguel Humberto Medina Romero (Romero) was originally charged in a felony complaint/information with the following criminal offenses:

COUNT 1, unlawful possession/manufacture of a controlled substance (marijuana) a class B felony;

COUNT 2, murder a class AA felony; App. p. 7-8

On January 6, 2011 the above felony complaint/information was amended and in addition to Counts 1 and 2 above, 2 more counts were added:

COUNT 3, unlawful possession of a controlled substance (cocaine) with intent to deliver a class A felony;

COUNT 4, tampering with physical evidence a class C felony; App. P. 9-10

COUNT 4, was dismissed at trial after Defendant made a Rule 29 Motion. JT V4 P.75 L.6-8

[¶14] Defendant/Appellant Romero and some of his friends made a trip to Grand Forks, North Dakota on 15<sup>th</sup> day of October 2010. When they got to Grand Forks, North Dakota Mr. Romero rented a room at the Country Inn Suites. JT V3 P.184 L.3-14.

[¶15] Mr. Romero wanted to purchase some marijuana while in Grand Forks, North Dakota. Because of information Mr. Romero had received from BJ Kalis (BJ) he believed the person he could get to sell him the marijuana was Lindsey Lafferty (Ms. Lafferty). So Mr. Romero arranged a meeting with Ms. Lafferty. At the meeting, Ms. Lafferty offered to get Mr. Romero the marijuana if he would give her \$240.00 and some Xanax so she would have money to purchase the marijuana. Mr. Romero agreed to this

offer and gave Ms. Lafferty \$240.00 and some Xanax. JT V3, P.190 L.9 to P.193 L.8.

[¶16] When Ms. Lafferty testified at the trial she said when the above transaction was agreed to she had no intention of getting Mr. Romero the marijuana. She also told of a threatening text she got from Mr. Romero, but after she got it she still wasn't going to get Mr. Romero the marijuana. JT V3, P.90 L.6 to P.91 L.25.

[¶17] Mr. Romero was also angry with BJ because BJ got him involved with Ms. Lafferty. To let BJ know how he felt Mr. Romero began texting messages to BJ. JT V4, P.5 L.59. BJ started texting back and the messages began to contain threats. JT V3, P. 130 L.2 to P.143 L.21.

[¶18] Mr. Romero's house is located at 371 North Cavalier Street in Pembina, North Dakota. On the evening of October 16<sup>th</sup>, 2010, the following people were at Mr. Romero's home; Ben Ohmann, Beau Brown, Jace Brown, and Mr. Romero. JT V4 P.12 L 7-14.

[¶19] BJ had a car with a loud engine. Mr. Romero heard a car driving around his home with a loud engine and knew it was BJ. JT V4 P.14 L 14-18. Mr. Romero put on a bullet-proof vest JT V4 P.19 L 17-21, got his AR15, JT V4 P.14 L 19-20, and went outside. When Mr. Romero couldn't find BJ or his car he went back inside his house JT V4 P.35 L.9-12. Then he heard BJ's car again and went outside. BJ stopped his car, got out and went toward Mr. Romero JT V4 P.35 L.16 to P.37 L.14 and said "just shoot me you fucker, if you're going to shoot me, just shoot me." JT V4 P.15 L.23-24. Mr. Romero fired his AR15 fourteen times at BJ. JT V2 P.4 L 7-9. The fourteenth shell misfired JT V2 P.4 L.9-10. According to William Massello eight of the fourteen bullets struck BJ. JT V3 P.100 L.20-23. BJ fell dead about 3 feet from Mr. Romero.



[¶20] Mr. Romero called 911 and reported the shooting JT V2 P.5 L.9-11.

According to Mr. Romero, BJ was trying to break into his home with a bat and Mr. Romero shot him JT V2 P.38 L.17-19.

[¶21] Beau Brown testifies that after BJ got out of his car he had something in his hands, but couldn't tell what it was. JT V4 P.5 L.14 to P.16 L.11

[¶22] Jace Brown said BJ had something small in his hands and he thought he heard a bat hit the concrete by BJ's car. JT V4 P.26 L.23 to P.53 L.5.

[¶23] When law enforcement officers started arriving, John Metzger, a deputy sheriff for Pembina County, found a knife by BJ's body and a bat a few feet away. JT V2 P.30 L.3-15.

[¶24] The law officer assigned to process the crime scene was Brian Ness from the North Dakota Attorney Generals Office JT V2 P. 94 L 16-17. He took pictures of the crime scene and processed written material he found on two cell phone. One of the cell phones belonged to Mr. Romero and the other which was found on the other side of the dike belonged to BJ. JT V2 P.94 L.18 to P.126 L.12.

[¶25] The law enforcement officer who was in charge of taking measurements of the crime scene was Trooper Matthew Denault from the North Dakota Highway Patrol. JT V3 P.32 L.13 to P.42 L.17.

[¶26] Along with investigating the scene of the shooting law enforcement officers also searched Mr. Romero's home. In the upstairs of the home they found some growing marijuana plants and paraphernalia used to grow marijuana. JT V2 P.37 L.14 to P.38 L.4.

[¶27] Christopher Erdman was one of the people who went with Mr. Romero to Grand Forks, North Dakota on October 15, 2010. JT V3 P.184, L.19. While Mr. Erdman

was at the Country Inn Suites he saw Mr. Romero with cocaine. JT V3 P.186, L.14 to P.187, L14.

[¶28] Mr. Romero made a Motion to have the jury taken to view the crime scene. His attorney had made arrangements with the Pembina County Sheriff to take the jury to the crime scene. The State even admitted the crime scene was the same except BJ's car wasn't there. The Court trial judge denied Mr. Romero's Motion to allow the jury to view the crime scene. JT V4 P.111, L.23 to JT V5 P.20.

[¶29] During the trial the defense request that the words "great bodily injury" in the self defense after provocation instruction JT V5 P.61 L.16-25 be changed to "serious bodily injury" or that great bodily injury be defined. JT V5 P.5, L.3-15. The Court refused to make the change or define great bodily injury.

[¶30] Mr. Romero's Rule 29 Motion was made as to all four charges. The court denied the motion as to counts 1, 2 and 3. Mr. Romero believes that the court erred when it denied his motion as to count 3. JT V4 P.65, L.15 to P.75, L.8.

## ARGUMENT

[¶31] **ISSUE I: Did the trial court err when it denied Mr. Romero's motion to allow the jury to view the crime scene?**

[¶32] Juries in criminal cases in North Dakota may be allowed to view crime scenes. NDCC 29-21-26:

**29-21-26. Jury may view place.** When, in the opinion of the court, it is proper that the jurors should view the places in which the offense was charged to have been committed, or in which any other material fact occurred, it may order the jurors to be conducted in a body, in the custody of proper officers, to such place, which must be

shown to them by a person appointed by the court for that purpose, and the officers must be sworn to suffer no person to speak to nor communicate with the jurors, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time. The trial judge must be present and the state's attorney and counsel for the defendant may be present at the view by the jurors.

[¶33] State vs Schlichenmayer 334 NW2d 196 (ND 1983) states the following regarding NDCC 29-21-26:

“As the wording of § 29-21-26, N.D.C.C., suggests, and as other courts have held, the decision of whether or not to grant or deny a request for a jury view rests in the sound discretion of the trial judge, and, as such, the trial court may properly deny such a request when the view would serve no useful purpose in illustrating testimony. See, e.g., Thompson v. State, 399 A.2d 194, 198 (Del.1979); Snyder v. State, Ind.App., 939 N.E.2d 802, 807 (1979); State v. Melvin, 390 A2d 1024, 1032 (Me.1978); Commonwealth v. Andrews, - Mass.App. -, 422 N.E.2d 484, 486 (1981); State v. Gone, 179 Mont. 271, 587 P.2d 1291, 1294-1295 (1978).”

[¶34] The jury in this case would have benefitted from a view of the crime scene where the shooting took place because:

1. A view of the crime scene would have allowed the jury to better understand how the evidence and testimony presented at the trial relates to the crime scene.
2. A view of the crime scene is part of the process of submission of data to the triers of fact.

3. A view of the crime scene would have helped the jurors to understand the distances measured by law enforcement.

[¶35] Many times the problem with having a jury view a crime scene is that the crime scene has changed. In this case both State and defense have agreed that the crime scene hasn't changed. JT V4 P.95, L.22-23; P.112, L.11-13.

[¶36] In cases like State vs. Melvin 390 A 2d 1024 (ME 1978) the crime scene is at a place that could put the juror in physical danger or there is a security problem. No such problems exist in the case now before the court.

[¶37] To view the crime scene in this case, the jurors would have been given a one half hour car ride to the crime scene. Then the jurors could have viewed the scene and then given a one half hour ride back to the courtroom.

[¶38] In the case now before the court there is one diagram exhibit of the crime scene with measurements and 3 pictures of the crime scene. The diagram exhibit of the crime scene can be compared to the diagram of a house. When this is done in both diagrams you can figure out the measurements but in the crime scene diagram you can't visualize what the crime scene would look like and in the house diagram what the house would look like. JT V4, P.113, L.14; P.114, L.1-10.

[¶39] Pictures of the crime will show what the crime scene look like, but won't tell you what the distances are. A jury can easily put both the diagram and pictures of the crime together when they view the scene.

[¶40] The State's resisted allowing the jury to view the scene because the State seemed to be afraid of what the jury might do or decide while at the scene. These problems can easily be cured by the trial court setting up rules of procedure to be

followed by the jury while viewing the crime scene. Such rules of procedure are set out in NDCC 29-21-16.

[¶41] The case now before the Court is a AA Felony. Mr. Romero believes a view of the crime scene is necessary to complete his defense in this case.

[¶42] **ISSUE II: Did the trial court err when it refused to either change the wording in the self defense reasonableness of the accused belief instruction from “great bodily injury” to serious bodily injury or to give a definition of “great bodily injury?”**

[¶43] The defenses objection to the words “great bodily injury” self defense reasonableness of the accused’s belief instruction appears at JT V5, P.5, L.3-15.

[¶44] The trial court denied the defense’s request to change the wording from great bodily injury to serious bodily injury. The trial court also didn’t give a definition of great bodily injury.

[¶45] The self defense reasonableness of accused’s belief instruction given by the court appears at JT V5, P.1, L.21-25.

[¶46] The words “great bodily injury” could be considered words of common understanding. State v. Motsko 261 NW2d 860, 866 (ND 1977) states the words of common understanding need not be defined by the trial court in the absence of a specific request for such an instruction. In this case there was such a request so Motsko supra says “ the court should exercise an appropriate discretion in deciding whether definitions are necessary”.

[¶47] The court in the case now before the court’s response to the defenses request to change are found at JT V5, P.5, L.21-23. The court: “My basis is that the

instructions as a whole I believe correctly advise the jury of the law - - the instructions as a whole.”

[¶48] NDCC 12.1-01-04 General definitions contains definitions of many words that are commonly used and are readily understood, yet the North Dakota Criminal Code defines them:

[¶49] Two types of bodily injuries are defined in NDCC 12.1-01-04. Bodily injury is defined at NDCC 12.1-01-04(4) “Bodily injury” means any impairment of physical condition, including physical pain. Serious bodily injury is defined at NDCC 12.1-01-04(29) “Serious bodily injury” means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, or permanent loss or impairment of unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs.

[¶50] The North Dakota jury instruction on self defense reasonableness of accused’s belief requires the jury to determine whether or not a Defendant’s conduct was necessary to avoid great bodily injury. Therefore in order for the jury to properly understand and discuss the above jury instruction the jury has to know what great bodily injury is.

[¶51] Great bodily injury is defined in Blacks Law Dictionary Fifth Edition page 631 as: The term “great bodily injury” as used in statute stating when an assault and battery becomes aggravated, is not susceptible of precise definition but implies an injury of a graver and more serious character than ordinary battery. *Herrington v. State*, Okl.Cr., 352 P.2d 931, 933.

[¶52] The above definition differs from the serious bodily injury definition in NDCC 12.1-01-04(29) and from the definition of bodily injury in NDCC 12.1-01-04(4)

[¶53] Therefore the defense request for a specific instruction definition great bodily injury should have been granted.

[¶54] **ISSUE III: Did the trial err when it denied Mr. Romero's Rule 29 Motion to dismiss Count 3?**

[¶55] At the conclusion of the States case Mr. Romero made a Rule 29 Motion for dismissal of a four counts. The trial judge dismissed count four and denied the Rule 29 Motion as to counts one, two and three. Mr. Romero is now appealing the trial judge's denial of his motion to dismiss count three.

[¶56] In order to successfully challenge the sufficiency of the evidence on appeal, the defendant must show that the evidence viewed in the light most favorable to the verdict and permits no reasonable inference of guilt. State v. Fashing, 461 N.W.2d 102 (N.D. 1990). The standard of review for insufficiency of the evidence is a strict standard of review that only allows a motion for judgment of acquittal to be granted if the evidence is insufficient to sustain a conviction of the offenses charged. State v. Ohnstad, 359 N.W.2d 827 (N.D. 1987).

[¶57] The cocaine entered into evidence at the trial was not found in the possession of Mr. Romero. It was found in a bridge by law enforcement after they questioned Christopher Erdman and he took them to the bridge where he had hidden it. JT V3 P.153, L.9-21.

[¶58] Mr. Erdman said the cocaine was given to him in a black bag by and Ben Ohmann and that Mr. Ohmann said he took the black bag from Mr. Romero's home. JT V3 P.173, L.2 to P.176, L.10.

[¶59] Mr. Erdman's story about the cocaine begins on October 15, 2010 when he and some others went with Mr. Romero to Grand Forks, North Dakota and stayed at the Country Inn Suites on October 15, 2010.

[¶60] While Mr. Erdman was at the Country Inn Suites he saw Mr. Romero with some other people in the motel room and there was cocaine on the table. After these other people left, Mr. Erdman said the cocaine was still in the motel room.

[¶61] Mr. Erdman testified that:

- 1) Mr. Romero bought plastic baggies at a discount store in East Grand Forks;
- 2) put the cocaine in these baggies;
- 3) Mr. Romero wrote with a sharpie on some of the bags.

[¶62] At the trial Mr. Erdman also testified he never saw Mr. Romero buy the bags in East Grand Forks. JT V3, P.208, L.17-22

[¶63] During the trial Mr. Romero's attorney opened the exhibit containing the baggies of cocaine. The State's Attorney, Mr. Romero's attorney and the judge looked at all the bags and could find no writing on any of the bags done by a sharpie. JT V3 P.213, L.7-16

[¶64] Mr. Erdman testified that Ben Ohman brought the black bag to his house. Ben Ohman never testified at trial.

[¶65] Mr. Erdman told law enforcement that he and Ben Ohman dumped the contents of the black bag into the river. Mr. Erdman later said that was a lie and he only



said that because his dad was present. JT V3 P.216, L.17-20. After his dad left, Mr. Erdman said he hid the cocaine in a bridge and took law enforcement to the bridge.

[¶66] Mr. Erdman testified everything he knows is second hand and he got his information from Ben Ohmann and others. JT V3 P.215, L.1-3

[¶67] Mr. Erdman ended up his testimony by saying he never saw cocaine in black bag that belonged to Mr. Romero what was brought. JT V3 P.221, L.5-7

[¶68] Beau Brown testified that he didn't see any cocaine, but they said they had cocaine, and he saw the little baggies but they were empty. Mr. Brown then said Mr. Romero told him there was cocaine. JV V4, P.33, L.23-25, P. 34, L.1-5

[¶69] When Mr. Brown was cross examined about who told him they had cocaine and whether it was Miguel's or Ben's he answered "Ben" then Mr. Brown was asked if it was Ben not Miquel, his answer was "nope" JT V4, P. 80, L.21-25

[¶70] The above testimony of Mr. Brown doesn't indicate he saw any cocaine and doesn't really establish who told him there was cocaine. JT V4, P.40, L.14-25

[¶71] Because of the above facts even if there was cocaine on table in Country Inn Suites at Grand Forks there is no proof it was same as found at the bridge. In order for it to be the same, some bags would have had sharpie pen marks on some of them.

[¶72] Also to be the same cocaine Mr. Erdman should have had to see the cocaine in the black bags on the way home from Grand Forks, North Dakota. But he didn't and he testified he never saw cocaine in a black bag on the way home from Grand Forks.

[¶73] **ISSUE IV: Is a Defendant entitled to have a trial transcript that truly discloses what occurred in the District Court?**

[¶74] The original Voir Dire Transcript had over 100 places in it where the word “Indiscernible” appeared. A hearing was held in the District Court Chambers in the City of Cavalier, North Dakota on June 1, 2012 to try to determine what was said at each place in the Voir Dire Transcript where the word “Indiscernible” appeared.

[¶75] The following court personnel from the original trial were present.

1. District Judge Laurie Fontaine;
2. Court reporter Melissa Morden;
3. Prosecutor, Cameron Sillers;
4. Defense attorney, Robert Fleming.

[¶76] The Defendant, Miguel Humberto Medina-Romero was also personally present with this attorney, Benjamin C. Pulkrabek.

[¶77] At the hearing each place in the voir dire transcript where the word “Indiscernible” appeared was discussed and whenever there was agreement as to what was said those words were put in place of the word “Indiscernible”.

[¶78] The Jury Trial Voir Dire Corrected Transcript that was made after the hearing on June 1, 2012 still contains the word “Indiscernible” at the following lines and pages:

Page 4, Line 5

Page 9, Line 16

Page 13, Line 25

Page 14, Line 11

Page 34, Line 4

Page 35, Line 11

Page 52, Lines 11, 14

Page 65, Line 8

Page 74, Line 10

Page 88, Line 9

Page 90, Lines 9, 15

Page 91, Line 22

Page 92, Line 18

Page 93, Line 25

Page 27, Lines 17, 20, 23

Page 101, Line 2

Page 111, Line 17

Page 120, Line 11

[¶79] Therefore the word “Indiscernible” still appears 22 times in the Jury Trial Voir dire Corrected Transcript.

[¶80] When a record doesn't truly disclose what occurred in the district court the applicable rule to correct it is Rule 10 h of the North Dakota Rules of Appellate Procedure;

(H) Correction or modification of the record.

1. If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by the district court and the record conformed accordingly.

2. If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded;

[¶81] Mr. Romero believes he is entitled to a verbatim transcript of his trial and this concludes a voir dire transcript. He believes he has done all he can in the district court to get a verbatim transcript of the voir dire transcript to truly disclose what occurred in the district court.

[¶82] Because of Rule 10 NDR of Appellate Procedure Mr. Romero now properly suggests or respectfully asks the North Dakota Supreme Court to use its own initiative to correct the omissions in his trial voir dire corrected transcript where the word “indiscernible” appears.

### **CONCLUSION**

[¶83] For the above reasons:

1. the jury should have been allowed to view the scene of the shooting;
2. the jury should have been instructed as to what is great bodily injury;
3. the defense’s motion to dismiss count 3 should have been granted.

[¶84] This case should be remanded back to the trial court and Mr. Romero should be given a new trial at which the jury would be allowed to view the scene of the shooting and the jury should also be instructed as to what is great bodily injury.

[¶85] The trial court should also be directed to dismiss count 3.

[¶86] Unless and until the jury trial Voir Dire Transcript in Mr. Romero’s case truly discloses what occurred in the district court, Mr. Romero believes his entitled to a new trial.

Dated this 28th day of June, 2012.

/s/ Benjamin C. Pulkrabek  
Benjamin C. Pulkrabek

[¶87]                    **CERTIFICATE OF SERVICE BY MAIL**

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

That on June 28, 2012, she served, by e-mail, a copy of the following:

**APPELLANT'S BRIEF AND APPENDIX**

to:

Barb Whelan  
Pembina County State's Attorney  
[Bwhelan@nd.gov](mailto:Bwhelan@nd.gov)

By mail to:

Miguel Humberto Medina Romero  
P.O. Box 5521  
Bismarck, ND 58506

The undersigned further certifies that on June 28, 2012, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANT'S BRIEF.

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