

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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SUPREME COURT NO.: 20100337

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State of North Dakota,

Plaintiff-Appellee

- VS -

Miguel Humberto Medina Romero,

Defendant-Appellant

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

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PETITION FOR REHEARING

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## STATEMENT OF THE ISSUES

**[¶1] ISSUES:**

I. Did the trial court err when it denied Mr. Romero's motion to allow the jury to view the crime scene?

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?"

III. Did the trial err when it denied Mr. Romero's Rule 29 Motion to dismiss Count 3?

IV. Is a Defendant entitled to have a trial transcript truly disclose what occurred in the District Court?

**NATURE OF THE CASE**

[¶2] This is a petition to rehear the opinion in the above-entitled matter that was heard on May 14, 2013.

## STATEMENT OF THE FACTS

[¶3] Appellant Miquel Humberto Medina Romero is petitioning for a rehearing of the North Dakota Supreme Court's ruling affirming the decision of the District Court of Pembina County, North East Judicial District, the Honorable Laurie A. Fontaine. This petition includes a four issues raised by Mr. Romero in Appellant's Brief.

## ARGUMENT

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

[¶5] This issue involves a AA Felony with a maximum penalty of life in prison.

[¶6] 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. (Emphasis added). 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)."

[¶7] In this case the obvious useful purposes of allowing the jury to view the crime scene would be:

1. A better understanding of how the evidence and testimony presented at the trial relates to the crime scene.

2. A better understanding of all of the distances measured by law enforcement.

3. That the crime scene hadn't changed from the date of the alleged offenses.

**[¶8] 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?”**

[¶9] In State vs Romero 2013 ND77 indicates that “Serious bodily injury” and “great bodily injury” have been used interchangeably and are synonymous See Leidholm 334 NW2d at 814-19. Therefore the trial court could have and should have either change changed the wording in the self define reasonableness of the accused instruction from great bodily injury to serious bodily injuries or given an instruction that great bodily injury and serious bodily injury are synonymous.

[¶10] Without giving either one of the above definitions for great bodily injury and serious bodily injury the jury could have according to Romero thought great bodily injury was:

1. A term commonly understandable to a jury;
2. A term that has many different meaning but serious bodily injury is a greater bodily injury;
3. A term that is synonymous with serious bodily injury.

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

[¶12] The facts are that the cocaine wasn't found in Mr. Romero's possession. It was found hidden in a bridge and the person who put it there was not Mr. Romero but was Christopher Erdman. Then the baggies found weren't marked by a sharpie pen.



[¶13] In *State vs Rasmussen* 365 NW2d 481 (N.D. 1985) in the special concurring opinion of Justice Levine. Obviously, mere speculation, surmise, guesswork, conjecture, or suspicion that an accused is guilty is insufficient to overcome the presumption of innocence and does not authorize a conviction. *State v. Miller*, 357 N.W.2d 225 (N.D. 1984); *State v. Holy Bull*, 238 N.W.2d 52 (N.D. 1975); *Thomas v. State, Supra*; *People v. Johnson*, 356 N.E.2d 1373 (Ill.App.Ct. 1976); *United States v. Jones*, 545 F.2d 1112 (8 Cir. 1976), cert. denied, 429 U.S. 1075, 97 S.Ct. 814, 50 L.Ed2d 793 (1977).

**[¶14] ISSUE IV. Is a Defendant entitled to have a trial transcript truly disclose what occurred in the District Court?**

[¶15] In this case the trial transcript should be accurate. It isn't the Defendants responsibility to make an accurate transcript. The jury transcript had over 100 places where the word indiscernible appears. The Defendant requested and got a hearing that reduced the indiscernibles to 22.

[¶16] It appears in *Romero* that the burden is on him to establish that what was said in the 22 places where the word indiscernible appears and that what was said was prejudicial to his case. If this is the case Defendant's in criminal trials will need to bring their own court reporters to trial.

#### CONCLUSION

[¶17] For the above and foregoing reasons Mr. *Romero* should be allowed a rehearing.

DATED this 23rd day of May, 2013.

/s/Benjamin C. Pulkrabek  
Benjamin C. Pulkrabek  
Attorney for the Petitioner/Appellant  
402 - 1<sup>st</sup> St. NW  
Mandan, ND 58554

[¶18] 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 May 23, 2013, she served, by e-mail, a copy of the following:

**PETITION FOR REHEARING**

to:

Barb Whelan  
Pembina County State's Attorney's Office  
Bwhelan@nd.gov

By mail to: Miguel Humberto Medina Romero  
P.O. Box 5521  
Bismarck, ND 58506

The undersigned further certifies that on May 23, 2013, she served electronically on the Clerk, North Dakota Supreme Court, the PETITION FOR REHEARING.

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

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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 May 24, 2013, she served, by e-mail, a corrected copy of the following:

**PETITION FOR REHEARING**

to:

Barb Whelan  
Pembina County State's Attorney's Office  
[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 May 24, 2013, she served electronically on the Clerk, North Dakota Supreme Court, the PETITION FOR REHEARING.

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

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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 May 28, 2013, she served, by e-mail, a corrected copy of the following:

**PETITION FOR REHEARING**

to:

Barb Whelan  
Pembina County State's Attorney's Office  
[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 May 28, 2013, she served electronically on the Clerk, North Dakota Supreme Court, the PETITION FOR REHEARING.

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