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FILED
IN THE OFFICE OF THE
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JULY 31, 2014
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

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| State of North Dakota, |) | Supreme Court No. 20130346 |
| |) | |
| Plaintiff/Appellee, |) | |
| |) | |
| v. |) | |
| |) | |
| Nathan Lawrence Ratliff, |) | |
| |) | |
| Defendant/Appellant, |) | |

PETITION FOR REHEARING
OF NORTH DAKOTA SUPREME COURT OPINION AND JUDGMENT DATED
JULY 17, 2014 AFFIRMING DISTRICT COURT CRIMINAL JUDGMENTS

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STATEMENT OF THE ISSUES

[¶1] It is the opinion of Petitioner and Appellant, Nathan Lawrence Ratliff (Ratliff), that the Supreme Court overlooked or misapprehended the importance of the testimony at trial, particularly testimony by Carmen Jones that she was struck by one individual and that she did not see more than one individual strike Sherman Jones and the testimony of Sherman Jones that he was struck by one individual. It is also Ratliff's opinion that the Supreme Court overlooked or misapprehended the importance of the audio recording which was admitted at trial. It is Ratliff's opinion that the Supreme Court overlooked or misapprehended the importance of the statement by potential juror 34. Ratliff is also of the opinion that the Supreme Court overlooked or misapprehended the importance of the audio provided with the video to the jurors for deliberation.

STATEMENT OF THE PETITIONER

[¶2] After a consolidated trial, with Allen Ratliff and Cody Boulduc, a jury returned verdicts finding the three guilty of robbery, burglary, two counts of aggravated assault, theft of property, and felonious restraint. A Criminal Judgment was filed on September 30, 2013. A Notice of Appeal was filed and on July 17, 2014, the North Dakota Supreme Court affirmed the verdicts and judgment of the District Court.

[¶3] Pursuant to Rule 40 of the North Dakota Rules of Appellate Procedure, Ratliff requests the undersigned attorney file this Petition for Rehearing of the North Dakota Supreme Court opinion and judgment dated July 17, 2014, which affirmed District Court's Criminal Judgment and Commitment. On July 28, 2014, Nathan Lawrence Ratliff, Allen Ratliff and Cody Joe Boulduc jointly filed a petition for rehearing with the North Dakota Supreme Court. The arguments

presented in that joint petition for rehearing are incorporated herein by reference for consideration.

[¶4] It is the opinion of Ratliff that the Supreme Court overlooked, or misapprehended, the importance of the testimony of Carmen Jones and Sherman Jones that they did not recognize any of the voices or individuals that came into the trailer home and therefore did not identify Nathan Ratliff as one of the three that entered the trailer, committed the burglary, robbery, aggravated assault, theft of property, or felonious restraint. The evidence at trial only shows that Nathan may have been in possession of stolen property.

[¶5] The Jones' testimony only shows that one individual struck Carmen Jones and one individual struck Sherman Jones. If it was determined all three individuals committed an assault on Carmen and Sherman Jones, which Ratliff argues is not possible, it is impossible to determine if all three caused serious bodily injury. If it is impossible to prove all three caused a serious bodily injury, the evidence does not prove beyond a reasonable doubt that Nathan Ratliff in fact did commit aggravated assault on either Carmen or Sherman Jones. An aggravated assault conviction cannot be upheld when there is a failure to prove that an assault was the cause of serious bodily injury. The joint petition, incorporated herein, more fully sets out the argument on those issues and support an argument that all three individuals cannot be found guilty of the act of two individuals and therefore the verdicts must be reversed.

[¶6] It is the Ratliff's opinion that the Supreme Court overlooked or misapprehended the importance of the audio which was not admitted during trial to go to the jury with the video for deliberations. The audio tape recorded shuffling and voices at the law enforcement center and was not a part of the original video recording made at the scene of the crime. Ratliff argues that

the admission of the audio tape was prejudicial and that prejudice substantially outweighed any probative value the recording may have had. The district court was informed that the jurors did not consider the audio during deliberations, however it was given to the jurors although it was not offered or admitted into evidence. The audio portion would have been deemed inadmissible during trial and it was obvious error to permit the jurors to hear it.

[¶7] It is Ratliff's opinion that the Supreme Court overlooked or misapprehended the importance of the statements of potential juror 34. Juror 34 stated that "[J]ust from what I heard and, then, what everybody – I guess what I've – what everybody was saying about it. It sounds like they did it; so". Juror 34 informed the court that he knew the defendants from his place of employment, had past experience with them, and had formed a decision on the case. Although that past experience was not discussed, it was apparent those were not good past experiences. Ratliff argues that as a result of Juror 34's statements, the entire jury panel was tainted and the trial judge should have dismissed the entire panel. The failure to do so denied Ratliff a fair and impartial jury to hear and deliberate at his trial.

CONCLUSION

[¶8] For the foregoing reasons, Nathan Lawrence Ratliff, requests a rehearing.

Respectfully submitted this 31st day of July, 2014.



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Nathan Lawrence Ratliff,)
)
Defendant/Appellant,)

I, Mark T. Blumer, do hereby certify that on July 31, 2014, I served the following documents:

1. Petition for Rehearing

On:

David T. Jones
Assistant Grand Forks County States Attorney
Grand Forks, ND
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Nathan Ratliff #25216
PO Box 5521
Bismarck, ND 58506

To David T. Jones by Electronic Filing, pursuant to N.D. Sup. Ct. Admin. Order 16 at the email address above and to Mr. Nathan Ratliff by 1st Class US Mail, postage prepaid, to the address above, by depositing the same at the US Post Office, Fargo, ND.

Dated this 31st day of July, 2014.



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