

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20140332

State of North Dakota,

Plaintiff and Appellee

- vs -

Dallas Pius Lang,

Defendant and Appellant

APPEAL FROM THE CIVIL JUDGMENT
SOUTH CENTRAL JUDICIAL DISTRICT
BURLEIGH COUNTY CR. NO. 08-2014-CR-00957
THE HONORABLE SONNA ANDERSON PRESIDING

PETITION FOR REHEARING

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STATEMENT OF THE ISSUES

[¶1] ISSUE:

I. Should the trial court have either granted a mistrial because of evidentiary statements made by a juror during voir dire or instructed the jury to disregard any evidentiary statement made by a prospective juror on voir dire?

NATURE OF THE CASE

[¶2] This is a petition to rehear the opinion in the above-entitled matter that was filed on July 1, 2015.

STATEMENT OF FACTS

[¶3] Defendant/Appellant Dallas P. Lang is petitioning for a rehearing of the North Dakota Supreme Court's ruling affirming the decision of the District Court of Burleigh County South Central Judicial District the Honorable Sonna Anderson Judge.

ISSUES

[¶4] **ISSUE I. Should the trial court have either granted a mistrial because of evidentiary statements made by a juror during voir dire or instructed the jury to disregard any evidentiary statement made by a prospective juror on voir dire?**

ARGUMENT

[¶5] According to *Fahy vs Connecticut* 375 U.S. 85 “The question is whether there is a possibility the evidence complained of might have contributed to the conviction: “The question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction.” *Id.*, at 86087. Although our prior cases have indicated that there are some constitutional rights so basic to a fair trial that there infraction can never be treated as harmless error, this statement in *Fahy* itself belies any belief that all trial errors which violate the Constitution automatically call for reversal. At the same time, however, like the federal harmless-error statute, it emphasizes an intention not to treat as harmless those constitutional errors that “effect substantial rights’ of a party. An error in admitting plainly relevant evidence which possibly influenced the jury adversely to a litigant cannot, under *Fahy*, be conceived of as harmless.

[¶6] In the case now before the court a prospective jury became a witness and made statements that could be looked at an experts opinion. Such a n opinion could influence the jury.

[¶7] The trial judge should have but didn't cure any error that resulted from the prospective jurors opinion by giving a jury instruction to disregard such testimony.

CONCLUSION

[¶8] For the above and foregoing reasons Lang's Petition for Rehearing should be granted.

DATED this 8 day of July, 2015.

Benjamin C. Pulkrabek
Benjamin C. Pulkrabek, ID #02908

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.

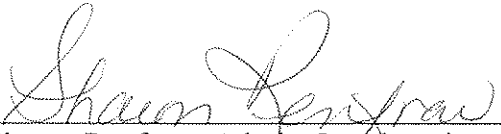
That on July 8th, 2015, she served, by e-mail and mailed a copy of the following:

APPELLANTS PETITION FOR REHEARING

to: Dawn Deitz
Burleigh County State's Attorney
Dmdeitz@nd.gov
Bc08@nd.gov

Mailed to: Dallas P. Lang
JRCC
2521 Circle Dr.
Jamestown, ND 58401

The undersigned further certifies that on July 8th, 2014, she served electronically on the Clerk, North Dakota Supreme Court, the APPELLANTS PETITION FOR REHEARING.



Sharon Renfrow, Admin. Legal Assistant
Pulkrabek Law Office